

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1130 of 2018**

Arising Out of PS. Case No.-35 Year-1992 Thana- NATWAR District- Rohtas

Ajay Choudhary, S/o Kailash Choudhary, R/o Vill.- Muswat, P.S.- Natwar,
District- Rohtas Sasaram.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.D.K. Sinha, Sr. Advocate Mr.Alexander Ashok, Advocate Mr.Jawaed Akhtar, Advocate
For the Respondent/s	:	Mr.Ajay Mishra , APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

Date : 25-02-2026

The present criminal appeal has been preferred by the appellant against the judgment of conviction dated 12.07.2018 and order of sentence dated 12.07.2018 passed by the learned Presiding Officer, Fast Track Court No. II, Rohtas at Sasaram in Sessions Trial No. 206 of 1994 arising out of Natwar P.S. Case No. 35 of 1992.

2. By the impugned judgment, the learned trial court has held the appellant guilty for the offence punishable under Section 304B of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. The appellant has further been convicted under Section 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for

seven years. Both the sentences have been directed to run concurrently.

3. The appellant, who is the husband of the deceased woman, has assailed the aforesaid judgment and order of conviction and sentence before this Court.

4. The prosecution case originates from the fardbeyan of Bikrama Pandey, a village chaukidar of village Muswat within Natwar Police Station in the district of Rohtas.

5. According to the prosecution, on 29.04.1992 the informant, after returning from night patrolling duty, came to know from one Ramayan Choudhary that the daughter-in-law of Kailash Choudhary, namely the wife of the present appellant Ajay Choudhary, had died during the preceding night. Upon enquiry regarding the cause of death, it was stated that she had allegedly died after consuming poison.

6. On receiving such information, the informant proceeded to the house of Kailash Choudhary to verify the said information. However, according to him, no satisfactory explanation was furnished regarding the circumstances of death. The informant suspected that the death was not natural. He is stated to have instructed the family members of the deceased not to cremate the dead body until the police authorities arrived.

7. The informant thereafter proceeded to inform the police. On his way, he met the police party and returned to the

village along with them. Upon reaching the village, it was allegedly found that the dead body of the deceased had already been cremated by the family members of the appellant along with their co-villagers.

8. The informant alleged that the deceased had not died a natural death but had been done to death by her matrimonial family members and that the cremation of the body had been hurriedly conducted in order to screen the evidence of the offence.

9. On the basis of the aforesaid fardbeyan, Natwar P.S. Case No. 35 of 1992 came to be instituted initially under Sections 302, 328 and 201/34 of the Indian Penal Code against the accused persons including the present appellant.

10. After registration of the case, investigation was taken up by the police. Upon completion of investigation, the Investigating Agency submitted charge-sheet against the accused persons including the present appellant under Sections 304B and 201/34 of the Indian Penal Code.

11. The case being exclusively triable by the Court of Sessions, it was committed to the Court of Sessions by the learned Sub-Divisional Judicial Magistrate, Bikramganj, Rohtas on 21.02.1994.

12. During the pendency of the trial, two of the accused persons, namely Laxman Choudhary and Rajaram Choudhary,

died and the proceedings against them stood abated. Ultimately, the trial proceeded against the remaining accused persons including the present appellant.

13. Upon consideration of the materials available on record, the learned trial court framed charges against the accused persons including the appellant under Sections 304B/34 and 201 of the Indian Penal Code.

14. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried. The defence of the accused, as would appear from the trend of cross-examination and the statements recorded under Section 313 of the Code of Criminal Procedure, was one of complete denial and false implication.

15. In order to substantiate the charges, the prosecution examined altogether nine witnesses.

16. P.W.1 Surendra Kumar Rai and P.W.7 Devendra Rai are the brothers of the deceased.

17. P.W.2 Ram Pravesh Rai, P.W.3 Shyam Bihari Barai and P.W.6 Satyendra Rai are co-villagers from the parental village of the deceased.

18. P.W.4 Laxman Choudhary and P.W.5 Ram Raj Choudhary are residents of village Muswat, the matrimonial village of the deceased.

19. P.W.8 Bikrama Pandey is the informant and village

chaukidar.

20. P.W.9 Ram Narayan Rai is another co-villager from the parental side.

21. The prosecution also brought on record certain documentary evidence including the fardbeyan, formal FIR, seizure list and a letter alleged to have been written by the deceased to her parental family complaining of harassment.

22. After closure of the prosecution evidence, the statements of the accused persons were recorded under Section 313 CrPC. The defence did not adduce any evidence.

23. The learned trial court, upon appreciation of the oral and documentary evidence, recorded a finding that the deceased had died within seven years of her marriage and that she had been subjected to cruelty and harassment in connection with demand of dowry. The trial court invoked the statutory presumption under Section 113B of the Evidence Act and held the appellant and other accused persons guilty for the offence punishable under Section 304B of the Indian Penal Code.

24. The trial court further held that the cremation of the dead body prior to arrival of police amounted to causing disappearance of evidence of offence and accordingly convicted the appellant under Section 201 of the Indian Penal Code.

25. On the basis of the aforesaid findings, the appellant was sentenced in the manner indicated hereinabove.

26. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence passed by the learned trial court, the present appeal has been preferred by the appellant seeking setting aside of the impugned judgment and order.

27. Learned counsel appearing on behalf of the appellant submitted that the judgment of conviction and order of sentence passed by the learned trial court are unsustainable in law and on facts. It was contended that there is no medical evidence on record to establish the cause of death of the deceased and no post-mortem examination was conducted. It was further submitted that the Investigating Officer has not been examined in the present case, thereby causing serious prejudice to the defence.

28. Learned counsel further submitted that all the material witnesses regarding alleged cruelty and dowry demand are interested witnesses from the parental side of the deceased and independent witnesses of the matrimonial village have not supported the prosecution case. It was argued that there is no evidence of cruelty or harassment soon before the death of the deceased so as to attract the provisions of Section 304B IPC or the presumption under Section 113B of the Evidence Act. It was lastly submitted that the conviction recorded by the trial court is based on suspicion and not on legal evidence and the appellant

is entitled to acquittal.

29. Learned Additional Public Prosecutor appearing on behalf of the State supported the judgment of the trial court and submitted that the death of the deceased occurred within seven years of marriage and there is consistent evidence regarding demand of dowry and harassment of the deceased. It was contended that the trial court has rightly invoked the presumption under Section 113B of the Evidence Act and recorded the conviction. It was thus submitted that the judgment of conviction requires no interference.

30. Having noticed the background of the prosecution case and the findings recorded by the learned trial court, this Court now proceeds to reappreciate the evidence on record in its entirety, as is required in an appeal against conviction

P.W.8 – Bikrama Pandey (Informant and Chaukidar)

31. Since the prosecution case originates from his fardbeyan, it is appropriate to first examine his testimony.

32. P.W.8 has deposed that on 29.04.1992 he was returning from night patrolling duty when he met Ramayan Choudhary near Muswat bridge, who informed him that the daughter-in-law of Kailash Choudhary had died during the night allegedly after consuming poison. Upon hearing this, he went to the house of Kailash Choudhary and made enquiry. According to him, he was told that the deceased had consumed

poison and died.

33. He has further stated that he suspected foul play because the deceased had been healthy till the previous day. He claims that he instructed the family members not to cremate the dead body until police arrived. Thereafter, while proceeding to the police station, he met the police party and returned with them to the village. Upon arrival, he allegedly found that the body had already been cremated.

34. He proved his fardbeyan and signature thereon. He also proved the seizure list relating to recovery of ash and bones from the cremation site.

35. In cross-examination, he admitted that he had not seen the deceased consuming poison nor had he witnessed any assault upon her. His information was based on what he was told by villagers. He further admitted that when he reached the cremation site, villagers were present but he did not specify who had actually set fire to the body.

36. He denied the suggestion that his statement was recorded at the police station and not at the place of occurrence. However, it is significant that the Investigating Officer has not been examined to corroborate the manner of recording of the fardbeyan.

37. The testimony of P.W.8 establishes that the deceased had died and that her body was cremated prior to police

intervention. However, his evidence is entirely hearsay with respect to the cause of death and the alleged involvement of the accused in causing death. He is not a witness to any act of cruelty, harassment, poisoning or assault.

38. His evidence is relevant only to the extent of suspicious circumstances and cremation of the body.

39. P.W.1 Surendra Kumar Rai (Brother of the Deceased) is one of the principal witnesses of the prosecution. He has deposed that the deceased was his sister and that her marriage with the appellant was solemnized in the year 1988. He stated that the accused persons used to demand a colour television and used to subject his sister to harassment on that account.

40. He further deposed that the deceased had written letters to the parental family informing them of ill-treatment. According to him, one such letter was exhibited in the case. He also stated that during the marriage of his brother Devendra Rai, the appellant and his sister had come and at that time also demand of television was raised. He stated that at the time of departure, the deceased told them that if the television was not given, they would not see her face again.

41. He further stated that within a few days of her return to the matrimonial home, information was received that she had died. According to him, the accused persons had killed her and

cremated her body without informing the parental side.

42. In cross-examination, P.W.1 admitted that he had not lodged any complaint before any authority regarding the alleged harassment prior to the death. He admitted that no report was filed with the police during the lifetime of the deceased regarding demand of television.

43. He also admitted that the letters allegedly written by the deceased were handed over to the police several months after the occurrence. There is no expert evidence to prove the handwriting of the deceased.

44. He further admitted that the Investigating Officer had not visited his village more than once and that he did not know whether any village panchayat complaint had been filed.

45. The evidence of P.W.1 is that of an interested witness being the brother of the deceased. His testimony does indicate allegations of dowry demand and harassment. However, the delay in producing letters, absence of handwriting verification and absence of prior complaint weaken the evidentiary value of his testimony.

46. P.W.7 Devendra Rai (Brother of the Deceased) has supported the prosecution case in material particulars. He has stated that his sister was subjected to cruelty and dowry demand. He reiterated that at the time of his own marriage, the appellant demanded a television and threatened consequences if

the demand was not fulfilled.

47. He stated that shortly thereafter information was received that the deceased had died and later it was learnt that she had been poisoned

48. In cross-examination, he admitted that he had not personally witnessed any assault upon his sister. He also admitted that he did not go to the matrimonial village immediately upon receiving information. He further admitted that the information about death was received through others.

49. P.W.7's evidence, like that of P.W.1, is largely based on what the deceased had allegedly told them. It establishes allegations of harassment but does not provide direct evidence of the circumstances of death.

50. P.W.2 Ram Pravesh Rai is a co-villager of the parental side. He has stated that at the time of departure from parental house after the marriage ceremony, the appellant demanded a colour television and said that if it was not given, he would not see the face of the deceased.

51. In cross-examination, he admitted that he had not visited the matrimonial village and that his knowledge was limited to what he saw during the marriage function.

52. His testimony supports the allegation of demand of television but does not speak about cruelty soon before death. His evidence is limited in scope.

53. P.W.3 Shyam Bihari Barai has stated that the appellant demanded television and threatened that if not given, he would not see the face of the deceased. He further stated that later information was received that she had been killed and cremated.

54. In cross-examination, he admitted that he did not witness any occurrence of assault and that his knowledge about death was based on what he heard.

55.. His testimony corroborates the allegation of demand but does not provide evidence regarding actual cause of death.

56. P.W.6 Satyendra Rai has deposed that the deceased was harassed for dowry and that she was taken back to her matrimonial home after the marriage of her brother. According to him, within a few days, information was received that she had been killed and cremated.

57. In cross-examination, he admitted that he had not personally seen any assault and that he came to know about the death from others.

58. His evidence is also hearsay regarding the cause of death and limited to supporting dowry demand allegations.

59. P.W.4 Laxman Choudhary did not support the prosecution case fully. He stated that he had only heard that the deceased had died. He denied witnessing any seizure of bones

and ash. He suggested that the deceased had good relations in her matrimonial home.

60. His testimony does not support the allegation of harassment or dowry death.

61. P.W.5 Ram Raj Choudhary stated that the deceased died due to stomach pain. He admitted his signature on the seizure list but stated that it was obtained on blank paper. He did not support the prosecution version of harassment.

62. P.W.9 Ram Narayan Rai supported the prosecution case regarding alleged letter written by the deceased and dowry demand. However, like other parental witnesses, his knowledge regarding death is based on information received.

63. Observations on Overall Prosecution Evidence

- i, There is no eyewitness to the death.
- ii, No medical evidence regarding cause of death.
- iii, No post-mortem examination conducted.
- iv, Investigating Officer not examined.
- v, Allegation of dowry demand supported mainly by interested witnesses.
- vi, Independent witnesses from matrimonial village have not supported prosecution case of harassment.

64. The evidence establishes that the deceased died within seven years of marriage and that there were allegations of dowry demand. However, the precise cause and manner of

death remain unproved through medical or scientific evidence.

65. Having examined the prosecution evidence in detail, this Court now proceeds to analyse whether the conviction under Section 304B of the Indian Penal Code can be legally sustained.

66. Having considered the evidence adduced on behalf of the prosecution and the findings recorded by the learned trial court, this Court proceeds to examine whether the essential ingredients of Section 304B of the Indian Penal Code stand established so as to sustain the conviction of the appellant.

67. For bringing home a charge under Section 304B IPC, the prosecution is required to establish that the death of a woman occurred otherwise than under normal circumstances within seven years of her marriage and that soon before her death she was subjected to cruelty or harassment by her husband or his relatives in connection with demand of dowry. Only upon proof of these foundational facts can the statutory presumption under Section 113B of the Evidence Act be invoked.

68. In the present case, it is not in dispute that the death of the deceased occurred within seven years of her marriage. However, the crucial question is whether the prosecution has been able to establish that the deceased was subjected to cruelty or harassment in connection with demand of dowry soon before

her death and that her death occurred in circumstances attracting the provisions of Section 304B IPC.

69. Upon careful scrutiny of the evidence on record, this Court finds that the prosecution has failed to establish the precise cause of death of the deceased. No post-mortem examination was conducted. No medical or scientific evidence has been adduced to show that the deceased died due to poisoning or any other unnatural cause. In absence of medical evidence, the prosecution has not been able to conclusively establish that the death occurred otherwise than under normal circumstances.

70. It further appears that all the material witnesses regarding alleged cruelty and dowry demand are relatives of the deceased from her parental side. Independent witnesses from the matrimonial village examined during trial have not supported the prosecution case with regard to cruelty or harassment. Their evidence does not indicate that the deceased was subjected to any such treatment in the matrimonial home immediately prior to her death.

71. Significantly, the Investigating Officer has not been examined in the present case. The non-examination of the Investigating Officer has caused serious prejudice to the defence as contradictions between the statements of prosecution witnesses recorded during investigation and their deposition

before the Court could not be brought on record. The manner of investigation and seizure of alleged documentary material also remains unproved.

72. The evidence of the parental witnesses, though indicative of strained matrimonial relations and allegations of demand of a colour television, does not establish any specific instance of cruelty or harassment inflicted upon the deceased soon before her death. The prosecution evidence is general in nature and lacks the proximity required to establish a live link between the alleged harassment and the death of the deceased.

73. In this context, reference may be made to the decision of the Supreme Court in **Karan Singh v. State of Haryana** reported in **2025 SCC OnLine SC 214**. In paragraph 6 of the said judgment, the Hon'ble Supreme Court has observed as follows:

“6. The following are the essential ingredients of Section 304-B:

- a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;
- b) The death must have been caused within seven years of her marriage;
- c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and
- d) Cruelty or harassment must be for, or in connection with, any demand for dowry.”

74. Further, in paragraph 16, the Supreme Court has held:

16. In the cross-examination, PW-7 stated that police had recorded his statements on

3rd April 1998 and 7th April 1998, which were marked as exhibits DG and DH, respectively. He accepted that the allegation that the accused used to maltreat his sister on account of insufficient dowry given in the marriage and having brought broken furniture is not found in both the police statements. He also stated that the demand for a refrigerator, a motorcycle, and a mixi does not find place in both statements. Therefore, the version of PW-7 in his examination-in-chief about the demands of dowry is a significant and relevant omission. Hence, this amounts to a contradiction. The public prosecutor claimed that the demand for a refrigerator, a motorcycle, and a mixi was mentioned in his third statement, which was recorded on 23rd June 1998. The third statement, recorded belatedly, obviously appears to be an afterthought. As regards his statement that the accused used to give a beating to his sister, it seems that he got this information when he visited the matrimonial home of his sister three months after the marriage. It is a very vague allegation. Moreover, the witness has not stated that this was disclosed to him by his deceased sister. Assuming that what he has said is correct, this incident of beating must have taken place between 25th June 1996 till end of September 1996. Therefore, this incident did not happen soon before the death. It is not his case that when the deceased allegedly visited his house nine to ten days before the incident, she complained about any cruelty or any harassment. Thus, none of the three statements of the witnesses contain any specific instances of cruelty or harassment.

75. The Supreme Court has further observed in paragraph 17:

17. Now, coming to evidence of PW-8, Ram Singh. PW-6 has not deposed that any demand of dowry was made to PW-8 or in his presence. She claimed in the cross-examination that PW-8 had told her about the maltreatment and the demand of dowry by the accused three to four months after the marriage. She stated that before

23rd June 1998, the police did not record the statement of PW- 8. She stated that PW-8 had come to her house after the death of the deceased but she did not tell her brother to make a statement before the police. The statement of PW-8 was recorded more than two and half months from the date of the incident. Moreover, he had no personal knowledge whether the appellant had subjected the deceased to cruelty or harassment. Therefore, the prosecution did not prove the material ingredients of the offence punishable under Section 304-B. Not a single incident of cruelty covered by Section 498-A was proved by the prosecution. Section 304-B of the IPC was brought on the statute book in 1986. This Court has repeatedly laid down and explained the ingredients of the offence under Section 304-B. But, the Trial Courts are committing the same mistakes repeatedly. It is for the State Judicial Academies to step in. Perhaps this is a case of moral conviction.

76. The aforesaid principles laid down by the Hon'ble Supreme Court clearly indicate that vague and general allegations regarding dowry demand, in absence of specific and proximate evidence of cruelty soon before death, are insufficient to sustain conviction under Section 304B IPC and that the statutory presumption under Section 113B of the Evidence Act cannot be invoked unless foundational facts are firmly established.

77. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecution has failed to establish by cogent and reliable evidence that the deceased was subjected to cruelty or harassment soon before her death in connection with demand of dowry. The cause of death remains

unproved and the evidence on record does not disclose any proximate or live link between the alleged harassment and the death in question.

78. In such circumstances, the foundational facts necessary for invoking the presumption under Section 113B of the Evidence Act are not established. Suspicion, however strong, cannot take the place of legal proof. The prosecution has failed to prove the charge under Section 304B IPC beyond reasonable doubt and the conviction recorded by the learned trial court cannot be sustained.

79. Further, there is no reliable evidence on record to establish that the deceased committed suicide or that the appellant abetted the commission of suicide. In absence of proof of suicide and abetment within the meaning of Sections 306 and 107 of the Indian Penal Code, conviction under Section 306 IPC would also be impermissible in law.

80. Accordingly, this Court is of the considered view that the appellant is entitled to benefit of doubt.

The prosecution has failed to establish beyond reasonable doubt that the appellant intentionally caused disappearance of evidence with the object of screening himself from legal punishment. The conviction under Section 201 IPC therefore cannot be sustained.

81. In view of the discussions and findings recorded hereinabove:

82. The conviction of the appellant under Section 304B of the Indian Penal Code and the sentence imposed thereunder are set aside.

83. The conviction and sentence of the appellant under Section 201 of the Indian Penal Code are also set aside.

84. The appellant is acquitted of all the charges.

85.If the appellant is in custody, he shall be released forthwith, unless required in any other case.

86. If on bail, his bail bonds stand discharged.

(Bibek Chaudhuri, J)

uttam/-

(Dr. Anshuman, J)

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