IN THE HIGH COURT OFJHARKH AND AT RANCHI

Cr. Appeal (S.J.) No. 351 of 2006

[Against judgment and order of conviction and sentence dated 22.02.2006/23.02.2006 passed by learned 5th Additional Sessions Judge (FTC), Jamtara in Sessions Case Nos.94/2005/13/2003]

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1. Jamuni Devi @ Jari, wife of Nandlal Pandit
2. Jhuni Pandit @ Jhuni Chand Pandit, S/o-Nandlal Pandit

All residents of village-Bariarpur, P.S.-Narayanpur, District-Jamtara

……Appellants

Versus

The State of Jharkhand …. Respondent

For the Appellants : Mrs. Vani Kumari, Advocate
For the Resp.-State : Mr. Sardhu Mahato, A.P.P.

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

CAV On 16/09/2026 **Pronounced On 06/11/2026**

1. Heard Mrs. Vani Kumari, learned counsel for the appellants and learned A.P.P.

2. It is to be mentioned at the very outset that the present appeal was filed by three accused persons, out of them, appellant No.1 Nandlal Pandit had died and his appeal was abated vide order dated 16.09.2026. The names of surviving appellants, Jamuni Devi @ Jari and Jhuni Pandit @ Jhuni Chand Pandit have been renumbered and this appeal is heard on behalf of the aforesaid alive appellants.

3. Instant criminal appeal is directed against the judgment and order of conviction and sentence dated 22.02.2006/23.02.2006 passed by learned 5th Additional Sessions Judge (FTC), Jamtara in Sessions Case

Nos.94/2005/13/2003, whereby and whereunder the appellants have been held guilty for the offences under section 304(B) of IPC and Section 4 of D.P. Act and has been sentenced to undergo R.I. for 7 years for the offence under section 304(B) of IPC and no separate sentence has been awarded for the offence punishable under section 4 of D.P. Act.

Factual Matrix:-

4. Factual matrix giving rise to this appeal as per written report of the informant, Dwarika Pandit is that his daughter, namely, Malti Devi was married with Manik Pandit on 10.11.1993. After marriage, the husband of the informant's daughter along with his other family members started demanding of Rs.5,000/- to start a business and a bicycle in the shape of dowry. Due to non-fulfillment of the aforesaid demand, they started torturing his daughter mentally and physically and thereafter she was brought to her parental house. After *panchyati*, the informant's daughter again went to her matrimonial house along with his father (informant) and other two persons where they stayed in the night. At about 11:00 pm, the informant heard the sound of cry from inside the house, thereupon he rushed inside the house and found his daughter dead with froth coming from her mouth. The informant has suspected that the accused persons have administered poison to his daughter and was done to death.

5. On the basis of written report of the informant, Narayanpur P.S. Case No.68 of 1993 was registered for the offence under sections 498A and 302/34 of IPC.

6. After completion of investigation, charge-sheet was submitted against the appellant for the aforesaid offences. After taking cognizance, the case was committed to the court of sessions, where charge has been framed under sections 306/304(B)/34 of IPC and also under sections 3/4 of D.P. Act.

7. The accused persons have denied the charges leveled against them and claimed to be tried.

8. After conclusion of trial, the impugned judgment and order was passed, which has been assailed in this appeal.

9. In the course of trial, altogether 4 witnesses were examined by the prosecution, namely:-

P.W.1-Manik Pandit

P.W.2-Dwarika Pandit (informant)

P.W.3-Dhedho Mandal

P.W.4-Dr. A. Murmu

10. Apart from oral testimony of the witnesses, following documentary evidences have been adduced by the prosecution.

Ext.1-Signature of informant on fardbeyan

Ext.2-Post-mortem report of Malti Devi

Ext.3-P.S.L report of viscera of Malti Devi

11. On the other hand, the defence has examined only one defence witness, namely, **Pandu Mandal (D.W.1)** and apart from which, two documentary evidence, **Ration Card** in the name of Nandlal Pandit and Chand Mohan Pandit **(Ext.A and Ext.B)** has been adduced by the defence

12. The case of defence is denial from the occurrence and false implication only on the basis of suspicion.

13. Learned trial court after evaluating the evidence available on record held the appellants guilty for the aforesaid offences and sentenced them as stated above.

Submission on behalf of appellants:-

14. Learned counsel for the appellants has submitted that the informant has merely raised a suspicion of the appellants having killed his daughter by administering poison to her rather at the time of occurrence, the informant was present along with Hira Lal Mandal and Jagdish Pandit but none of them has heard the crying of his *Samidhi* as alleged in the FIR nor they have been examined in this case, as such, it is a case of suicide. It is further submitted that non-examination of the Investigating Officer has caused serious prejudice to the appellants as they could not cross-examined him on the point of recovery of any bottle or jar containing any poison from the house of the appellants and where such death can be caused because of bite of snake. The inquest report has also not been exhibited. It is further submitted that Manik Pandit

(P.W.1), who happens to be brother of the informant and anohter witness, Dhadho Mondal (P.W.3), have also not supported the prosecution story and declared hostile by the prosecution. It is further submitted that the appellants have been seriously prejudiced because the competent authority did not verify the chemical report, and the forensic team was never examined. Consequently, the defense could not cross-examine the experts regarding a critical technicality whether a viscera sample preserved in a chemical long ago could naturally decompose and generate its own poison. Learned trial court has miserably failed to properly appreciate the overall evidence adduced by the prosecution in its right perspective considering the core testimony of every witness and arrived at wrong conclusion about guilt of the appellants. Hence, the impugned judgment and order of conviction and sentence of the appellants is absolutely illegal and based beyond the evidence available on record, which is fit to be set aside and this appeal be allowed

Submission on behalf of State:-

15. On the other hand, learned A.P.P. controverting the aforesaid arguments submitted that there is no substance in the points of argument raised by the appellants. Learned trial court has very wisely and aptly considered the overall factual aspects of the case, which has been proved by the prosecution witnesses. The prosecution story cannot be disbelieved only on account of non-examination of the Investigating Officer of this case and other two witnesses, namely, Hira Lal Mandal and Jagdish Pandit.

The contents of FIR have been consistently proved by the ocular testimony of the informant, who was present on spot and find corroboration from the evidence of the doctor, P.W.4. Therefore, there is no illegality or infirmity in the impugned judgment calling for any interference by way of this appeal, which is devoid of merits and fit to be dismissed.

Analysis, Reasons and Decision:-

16. I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.

17. The only point for determination in this appeal is that "**as to whether the impugned judgment and order of conviction and sentence of the appellants passed by learned trial court suffers from any error of law calling for any interference in this appeal?**"

18. Before adjudicating the above point, it is necessary to take brief resume of oral as well as documentary evidence adduced by the prosecution to substantiate the charges leveled against the appellants.

The most important witness of this case is the informant **Dwarika Pandit** (father of the victim), who has been examined as **P.W.2**. According to his evidence, the occurrence has taken place 10 years back. His daughter has been married with Manik Pandit about two years prior to the occurrence. After marriage, the husband of his daughter along with his other family members, namely, Nandlal

Pandit(father), Jamuni Devi(mother) and Jhuni Pandit(*Bhaisur*) started demanding one bicycle and Rs.5,000/- cash from the deceased in the shape of dowry. Due to non-fulfillment of the aforesaid demand, she was tortured with the hands of the accused persons. Thereafter, his daughter came to his parental house and stayed for 15-20 days and a *Panchyati* was convened and his daughter was again sent to her matrimonial home and he himself along with Hiralal Mondal and Jagdish Pandit accompanied with her. In the same night, he stayed in the matrimonial home of his daughter but at about 11:00 pm, he heard the cry of his *Samidhi*, Nandlal Pandit and when he went inside the house, he found his daughter died and from her mouth, forth is coming out. He further states that his *Samadhi* Nandlal Pandit and *Samadhin* Jamuni Devi and *Bhaisur,* Jhuni Ch. Pandit have committed murder of his daughter by administrating poison to his daughter. He further states that in the next morning, he instituted the case and proved his signature on *fardbeyan* marked Ext.1.

In his cross-examination, he admits that he has never filed any case as regards the demand of dowry. He further admits that he and his *Samadhi* have never got treatment of his daughter in hospital at Jamtara. After one year of marriage, he came to know about the demand of dowry of one cycle and Rs.5,000/- cash from his daughter. He further admits that a *Panchyati* was convened at the village Bariyarpur but no paper was prepared. He further admits that at the time of incident, his

son-in-law was not present. He has denied the suggestion of defence that he has forcibly sent his daughter on foot to her matrimonial home despite being her ill and subsequently died due to diarrhea and acidity. He has further denied the suggestion of defence that he has falsely implicated the accused persons due to non-payment.

P.W.1-Manik Pandit is the uncle of the deceased and he has been declared hostile by the prosecution. However, he has stated that in the year, 1991 the marriage of his niece, Malti Devi was solemnized with Manik Pandit but after marriage, her in-laws did not prove her proper treatment. He further states that prior to the occurrence, on assurance of father-in-law of his niece, she returned back to her matrimonial home but subsequently, he heard the news of her death.

P.W.3-Dhadho Mondal has also been declared hostile by the prosecution and expressed nothing about the occurrence.

P.W.4-Dr. A Murmu has conducted autopsy of the deceased and found following:-

(i) Froth on nostrils

(ii) Liver, spleen and kidney congested

Time elapsed since death within 24 hours from post-mortem examination.

No definite opinion regarding cause of death has been given by him.

The viscera report of the dead body was preserved.

Viscera report of the deceased of FSL, Bihar, which shows that "Methyl Parathion" was detected in the material sent for viscera examination. It further shows that "Methyl Parathion is an oregano phosphorous pesticides, which is commonly used in agriculture for killing pesticides and is poisonous".

19. On the other hand, the defence witness **(D.W.1)** has stated that Jhuni Pandit, Manik Pandit and Nandlal Pandit are living separately with their respective family for about 15-16 years. They have their houses separately at about a distance of 300 yards. Ext.A is the ration card in the name of Nandlal Pandit, which shows that this card was issued in the year 1998 and according to the entries were made from that period. Ext.B is another ration card in the name of Chand Mohan Pandit, which shows that it was issued in the year 2004-05.

20. It is here pertinent to scrutinize the evidence, points of arguments raised on behalf of the appellants in the light of relevant provisions of law, which are extracted here as under:-

304 B. Dowry Death reads as under:

(i) Whether the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with, in demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation- *For the purpose of this sub-section "Dowry" shall have the same meaning as in section 2 of the dowry Prohibition Act, 1961.*

(ii) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life.

498 A. Husband or relative of husband of a woman subjecting her to cruelty-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation*.-For the purposes of this section, "cruelty" means-*

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

113-B. Presumption as to dowry death.

When the question is whether a person has committed the dowry death of a woman and it is shown that soon for her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation*.-For the purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code.*

21. In view of the above provisions, in order to convict an accused for the offence punishable under Section 304(B) of the IPC, the following essentials must be satisfied:-

> *(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;*
> *(ii) such death must have occurred within seven years of her marriage;*
> *(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;*
> *(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.*

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.

22. The provision of section 304-B of IPC as regards cause of death does not categorize death as homicidal, suicidal or accidental rather any death occurring "otherwise than under normal circumstances" may attract the provision of section 304-B of IPC, if other ingredients are fulfilled.

23. In the instant case, the post-mortem report of the deceased proved by Dr. A. Murmu (P.W.4) disclosed that the cause of death was poisoning. The father of the deceased, who happens to be informant of this case and examined as P.W.2, has also proved that on the date of occurrence,

he along with other two persons, namely Hiralal Mondal and Jagdish Pandit went to the matrimonial house of his daughter and at about 11 pm, he heard the cry of his *Samidhi*, Nandlal Pandit, thereupon, he went inside the house and found his daughter dead with froth coming from her mouth due to poisoning. Therefore, it is established beyond doubt that the death of the deceased has occurred "otherwise than under normal circumstances" and First Ingredient of offence under section 304 B of IPC is proved.

24. So far the Second Ingredient is concerned, it is admitted fact that the marriage of the deceased was solemnized with Manik Pandit two years before prior to her death and the deceased died in her matrimonial home on 10.11.1993. Therefore, she died within seven years of her marriage. Accordingly, the Second Ingredient is also proved.

25. So far 3rd and 4th ingredients are concerned, it is specifically stated in the FIR that there was a constant demand of a bicycle and Rs.5,000/- cash as dowry from the deceased by her husband and other family members i.e. Nandlal Pandit (father-in-law), Jhuni Chand Pandit (*Bhaisur*) and Jamuni Devi (mother-in-law). But in his cross-examination, the informant has admitted that at the time of incident, his son-in-law was not present in the house and he was not charge-sheeted in this case. So far the other accused persons are concerned, the main allegation of demand of dowry against Nandlal Pandit, who happens to be father-in-law of the deceased, has been died during pendency of this

appeal and present appellants have taken ground that they have no connection with the family affairs of the deceased and his husband and in support of their version, they have adduced two separate rations cards carrying the names of Nandlal Pandit and Chand Mohan Pandit. Hence, the question of demand of dowry and cruelty meted with the deceased soon before her death is not proved.

26. In this connection reliance has been placed upon reported judgment in ***Sham Lal Vs. State of Haryana*** *reported in* ***(1997) 9 SCC 759*** , wherein at paras 11 to 13, it is observed as under:-

> *"**11**. It is imperative, for invoking the aforesaid legal presumption, to prove that "soon before her death" she was subjected to such cruelty or harassment. Here, what the prosecution achieved in proving at the most was that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, Neelam Rani was taken by her parents to their house about one and a half years before her death. Further evidence is that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence in this case. There is nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken to the parental home and her tragic end.*
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> ***12**. In the absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act. That rule of evidence is*

prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband, as then it would be the burden of the accused to rebut the presumption.

***13**. The corollary of the aforesaid finding is that the appellant cannot be convicted of the offence under Section 304-B IPC. But this would not save him from the offence under Section 498-A of the IPC for which there is overwhelming evidence, particularly of PW 3, Bhagwan Dass, who heard from his daughter, which evidence is admissible under Section 32 of the Evidence Act, besides his own direct dialogue with the appellant and his father. As the trial court and the High Court found his evidence reliable, we hold that the prosecution has succeeded in proving the offence under Section 498-A of IPC."*

27. In the case of ***Kans Raj Vs. State of Punjab*** *reported in* ***(2000) 5 SCC 207,*** it has been held as under:-

"***15**……. "soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed*

to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.

16. *No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman……."*

28. From the evidence of aforesaid ocular witnesses, it appears that the husband of the deceased has not been charge-sheeted in this case and the main allegation regarding demand of dowry and consequent torture meted with the deceased is alleged against Nandlal Pandit only, who was asking a bicycle and Rs.5,000/- cash as additional dowry. It further appears that no specific overt act has been attributed against the present appellants, Jamuni Devi, who happens to be mother-in-law aged about 80 years at present and Jhuni Pandit, brother-in-law(*bhaisur*) of the deceased, who is also married person having no connection with marital affair in between his younger brother and his wife. Therefore, presumption invoked under section 113 B of Evidence Act against these

surviving appellants without any materials *prima facie* proving the foundational facts and ingredients of section 304 B of IPC against them has wrongly been invoked by the learned trial court. The main accused, Nandlal Pandit, who was guilty for commission of offence charged under section 304B of IPC, has been died. There is no iota of evidence proving the charge under section 304B of IPC against the present appellants.

29. In view of the above discussion and reasons, it appears that learned trial court has miserably failed to properly appreciate the evidence available on record and wrongly held the appellants guilty for the offence under sections invoking the rebuttal presumption under section 113 of Evidence Act. Therefore, the impugned judgment and order of conviction and sentence of the surviving appellants are hereby set aside and this appeal is **allowed**.

30. The appellants are on bail. They are discharged from liability of their bail bonds and sureties are also discharged.

31. Pending I.A(s), if any, is also disposed of accordingly.

32. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Dated:- 06/11/2026

***Pappu*/-N.A.F.R.**

Uploaded on 06 /11/2026