

**(2005) 08 PAT CK 0011**  
**In the Patna High Court**  
**Case No : Appeal No. 14 of 2003**

|                                       |            |
|---------------------------------------|------------|
| Bhudeo Choudhary @ Bhudeo and Another | APPELLANT  |
| Vs                                    |            |
| State of Bihar                        | RESPONDENT |

**Date of Decision :** 26-08-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319  
Penal Code, 1860 (IPC) — Section 304B, 498A

**Citation :** (2006) 1 DMC 747 : (2006) 2 PLJR 68

**Hon'ble Judges :** Rajendra Prasad, J

**Bench :** Single Bench

**Advocate :** A.K. Thakur, for the Appellant; Indubala Pandey, APP., for the Respondent

**Final Decision :** Allowed

## Judgement

Rajendra Prasad, J.—This criminal appeal is directed against the judgment and order dated 23.12.2002 passed by Mr. Gopal Krishna Jha, learned Additional Sessions Judge, IXth, Munger in Sessions Case. No. 55 of 1992/Tr. No. 25 of 2002 whereby and whereunder appellant No. 2, Inderdeo Choudhary @ Indradeo Prasad Choudhary was convicted and sentenced to undergo rigorous imprisonment for ten years u/s 304B, IPC and rigorous imprisonment for two years u/s 498A, IPC and appellant No. 1, Bhudeo Choudhary @ Bhudeo Kumar Choudhary was convicted and sentenced to undergo rigorous imprisonment for seven years u/s 304B, IPC and rigorous imprisonment for one year u/s 498A, IPC and sentences against both the appellants were ordered to run concurrently. It also appears that other co-accused Lata Kumari, Paro Kumari and Gauri Kumari were tried along with the appellants and held guilty were not awarded any substantive sentence and released taking into consideration the fact that all these three accused on the alleged date of occurrence were juvenile.

2. The prosecution story, in short, is that, Sita Devi (deceased) daughter of informant, Uma Devi (P.W. 2) was married with appellant No. 1 Inderdeo

Choudhary of village Chhoti Mirzapur in June, 1989. After marriage Sita Devi (deceased) spent one to two months in matrimonial home peacefully and thereafter she was subjected to various kinds of torture by mother-in-law, sister-in-law, brother-in-law. Bhudeo Choudhary (appellant No. 1) and husband Inderdeo Choudhary (appellant No. 2). Whenever deceased came to her parents house and whenever brother of deceased Mahesh used to visit the matrimonial house of Sita she used to inform about she was being tortured by in-laws. P.W. 2, Uma Devi, the informant, used to persuade Sita (deceased) to maintain good relation at matrimonial house. It is further alleged that the appellants and other co-accused, who are in-laws of deceased began to torture deceased for less dowry and for her being not beautiful by passing remarks against her. Appellant No. 2 Inderdeo Choudhary also demanded Rs. 10,000 through deceased but the informant gave only Rs. 5,000 in February, 1999. Appellant No. 2, Inderdeo Choudhary did not satisfy and began to press for remaining Rs. 5,000. The informant went to Gajandi in Hazaribagh district where her husband Sukhdeo Choudhary was working with assurance and promising Inderdeo Choudhary that she would pay the balance Rs. 5,000 after making arrangement. On 2.4.1991 when deceased was burnt at matrimonial house then her son went to Gajandi and informed her about the occurrence that the accused persons burnt Sita Devi. On receiving such information she came to Munger on 4.4.1991 and went to Munger Sadar Hospital where Sita Devi was admitted for treatment. She saw that Sita Devi was brutally burnt. When she asked about the occurrence from Sita Devi (deceased) then Sita Devi told her mother that--

MAA TUM KUCH KARWAI NAHI KAROGI, UNKO JO KARNA THA SO KAR HI DEEYAI, MAI TO MAR HI RAHI HOO MERE BACHE KO APNE PASS RAKHKAR USKA DEKHBHAL KAROGI ANYATHA USKO BHI WAIH LOG MAR DALENGE

Later on Sita died in the night of 5.4.1991. It is also alleged that wrist and palm of both hands of Sita was not burnt nor any sign of burnt was present.

3. However, U.D. Case No. 73 dated 2.4.1991 (marked Ext. 1) was registered by the police, which was registered on the basis of Fardbeyan of deceased (Sita Devi) recorded by A.S.I, at 11.15 hour at Sadar Hospital, Munger. The police began to investigate the U.D. Case and in course of investigation the police prepared the inquest report and also obtained post-mortem report. Thereafter the informant went to lodge the case but the same was not entertained and as such she approached the Dy. S.P. Town on whose endorsement the present case has been registered by the police and began investigation in the light of allegations contained in the written report Ext. 1.

4. On the basis of this report a case was registered, formal FIR was drawn and investigation of the case was taken up by the police and on completion of investigation police submitted charge-sheet against appellant No. 1 Inderdeo Choudhary only and learned Chief Judicial Magistrate also took cognizance against appellant No. 1, Inderdeo Choudhary only. Later on the case was committed to the Court of Sessions. However, later on appellant No. 2 along with

other co-accused were also made accused under provisions of Section 319, Cr PC were tried with these appellants. Both the appellants were held guilty, convicted and sentenced as indicated in para 1 of the judgment.

5. As it appears from trend of cross-examination and also the statements of appellants recorded u/s 313. Cr PC the defence is denial of charges, plea of innocence and false implication. The specific defence set up is that Sita Devi (deceased) died in an accidental fire and the death was natural.

6. The only point for consideration is whether the prosecution has been able to prove the charges levelled against the appellants beyond shadow of reasonable doubt and in the manner, as alleged.

7. In order to prove and establish its case the prosecution examined as many as eight prosecution witnesses and also brought on record and proved some documents which are the written report of Uma Devi (Ext. 1), endorsement of Dy. S.P. on Ext. 1 (Ext. 2) which is dated 10.4.1991, protest petition of the informant (Ext. 3). Signature of Advocate Umesh Prasad Yadav on Vakalatnama (Ext. 4), Vakalatnama of Uma Devi (Ext. 5) signature of informant Uma Devi on written report (Ext. 4/1), signature of Uma Devi on protest petition (Ext. 4/2). The signature of Uma Devi on Vakalatnama (Ext. 4/3), inquest report (Ext. 6), signature of witnesses on inquest report (Exts. 4/4 to 4/6), certificate of B.R.M. College showing that Sita Devi was the regular student of college during Session 1989-1991 (Ext. 7), post-mortem report (Ext. 8) formal FIR (Ext. 9), Ext. 10 is the letter of Deputy Superintendent, Sadar Hospital Munger stating therein that the original Bed Head Ticket No. 1474 dated 2.4.1991 is traceless but he had given a copy of indoor and death register of Sr. No. 1474 dated 2.4.1991 and 6.4.1991, Ext. 11 is the photo copy of Bed Head Ticket of Sita Devi dated 2.4.1991 to 6.4.1991. Ext. 4/7 is the signature on Ext. 10.

8. P.W. 1, Mahesh Kumar is the brother of deceased Sita Devi. On a plain reading of statement of this witness on the point that soon before the death of his sister deceased Sita Devi was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, is not only general and omnibus but vague also. This witness being brother of deceased states that after marriage her sister (deceased) was all well in her Sasural for two months but thereafter the husband and in-laws started her torturing for dowry but this witness does not appear to have stated any specific instance of torture to his sister (deceased) for dowry. As per this witness the husband of his sister had demanded Rs. 10,000 for business and Rs. 5,000 was paid and remaining Rs. 5,000 was to be paid also does not appear believable. It also appears from the statement of this witness that he came to know that his sister (deceased) was burnt by her husband and in-laws only on 2.4.1991 but instead of informing the police this witness proceeded to Gajendi for bringing his mother. It also appears from the statement of this witness that this witness along with his mother came to hospital and also met the deceased on 4.4.1991, but the deceased never alleged that she was burnt by her husband and in-laws and

the deceased stated only to the extent that her mother should keep quite otherwise the child of the deceased could not be taken proper care by her husband and in-laws. As per this witness sister died in the night of 5.4.1991 but on that day also neither this witness nor the mother of the deceased lodged any FIR and it appears from the statement of this witness that his father had informed police on 10.4.1991. The statement of this witness clearly indicates that the police was informed on 10.4.1991 i.e. after 2.4.1991 the alleged date of burning of the deceased.

9. P.W. 2, Uma Devi, is the mother of the deceased Sita Devi and also the informant. It appears from her statement that the statement of this witness on the point of cruelty for demand of dowry is also general, omnibus and vague. As per this witness, though she got information on 3.4.1991, but she did not inform the police immediately rather the police was informed on 10.4.1991. The statement of this witness shall be considered in the light of the statement of other witnesses at an appropriate stage.

10. P.W. 3, Sukhdeo Choudhary, is the father of the deceased Sita Devi. As per this witness, on the alleged date of occurrence, was at Gajendi and so had not seen the occurrence of burning with his own eyes. The statement of this witness on the point of cruelty or demand of dowry soon before the death of his daughter is not only general and omnibus but vague also. This witness also stated that he had no information about burning of his daughter (deceased) on 3.4.1991. P.W. 4, Jitendra Kumar Sahani is also not any eye-witness to the alleged occurrence and also relation of the deceased. There is general, omnibus and vague allegation against the appellants. There is nothing specific in the statement of this witness. P. W. 5, Dinesh Kumar is also brother of the deceased and so close and highly interested witness. His statement on the point of cruelty soon before death of the deceased for demand of dowry is also general and omnibus.

11. P.W. 6, Bijay Choudhary is the brother-in-law of the deceased and so related and highly interested witness and his statements on the point of cruelty for demand of dowry soon before death of the deceased is also general, omnibus and vague.

12. P.W. 7, is Dr. Dharmendra Kumar Sinha, who had conducted postmortem examination on the deceased and P.W. 8, Manohar Prasad Arya and Raj Kumar Singh, examined as Court witness No. 1 are formal witnesses. The IO of this case has not been examined.

13. As against this the defence also examined as many as five witnesses. D.W. 1. Laxmi Mistry, D.W. 2 Kameshwar Kumar Sharma and D.W. 3 Jogender Ram are the formal witnesses. Ext. B is the injury report of Indradeo Choudhary. D.W. 4 is Pradeep Kumar Sharma and D.W. 5. (Indradeo Prasad Choudhary) is an accused in this case.

14. On a careful consideration of statement of D.W. 1, Laxmi Mistry, it appears that he is next door neighbour of appellant No. 2, Indradeo Choudhary, who

happens to be the husband of the deceased. As per this witness after marriage the deceased had come to her Sasural and this witness further stated that wife and husband used to live peacefully and not he used to torture and subject deceased to cruelty for demand of dowry. This witness specifically stated that on the alleged date of occurrence all of sudden deceased caught fire and her husband appellant No. 1 attempted to extinguish fire and while making effort to extinguish fire he was also burnt. The deceased was taken to hospital where this witness had seen brother and sister of appellant No. 2 Indradeo Choudhary taking care of deceased. This witness had also seen Sasural people of appellant No. 2. Similarly, D.W. 5, who is appellant No. 2 himself also stated that he was married to deceased and no dowry was taken by him even at the time of marriage, as the marriage was an ideal marriage. He further stated that he brought his wife and lived together happily. He also got male child from his wife. This witness further stated that on 2.4.1991 at about 10 hours in the day, when he had gone to purchase fish he heard shouting of his wife "bachao bachao" and when he came he saw his wife had caught fire in her saree. As per this witness, mohalla "s people had collected there. This witness attempted to rescue and extinguish fire and while doing so this witness also got burnt. Thereafter, this witness took his wife to hospital where the statement of his wife was taken. As per this witness, his wife died in night at 2 hours on 5.4.1991. Besides the statements of both prosecution and defence witnesses and also specific defence taken by the defence that the deceased had caught accidental fire and died in the hospital there are no other facts on record which shall have to be taken into consideration before considering the statements of prosecution witnesses. It is on the record that the deceased was taken to hospital where she gave her statement to the extent that while she was cooking rice she caught fire in her polyester saree accidentally and her husband (appellant No. 2) started extinguishing fire. It further appears that Mohalla"s people had also collected there. It further appears that on the basis of the statement of the deceased herself U.D. case was registered but later on that too after eight days of the alleged burning on the basis of statement of mother of the deceased the instant case was instituted.

15. Learned Counsel, Mr. Ajay Kumar Thakur, appearing for the appellants submitted and contended that the prosecution has filed to prove and establish the charge levelled against the appellants beyond shadow of reasonable doubt and in the manner, as alleged. Learned Counsel for the appellants pointed out that no independent witness in this case has been examined and it also appears from FIR and the statements of related witnesses that they had not seen the occurrence of burning and their statements on the point of cruelty soon before death of the deceased is not only general and omnibus but vague also. Learned Counsel for the appellants further submitted and contended that the deceased died in accidental fire, which was admitted by the deceased and so on the basis of statement of deceased U.D. case was registered and the learned Trial Court failed to scrutinize and appreciate the evidences on record in the background of

facts in which death of deceased occurred and so came to wrong conclusion and recorded order of conviction. Further contention of the learned Counsel for the appellants is that in a criminal case charge made against an accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. Learned Counsel for the appellants further pointed out that the prosecution story itself indicates that the deceased caught accidental fire on " 2.4.1991 and thereafter she was taken to Sadar Hospital at Munger and died in course of her treatment on 5.4.1991. The brother of the deceased had gone to hospital but he never reported the matter to the police. Learned Counsel for the appellants also pointed out that though appellant No. 2 (husband) including in-laws made accused, police after investigation submitted charge-sheet against appellant No. 2 Inderdeo Choudhary only. Learned Magistrate also took cognizance against appellant No. 2 Inderdeo Choudhary only. u/s 319, IPC in course of trial the other accused were summoned and tried together. The contention of the learned Counsel for the appellants is that submission of charge-sheet against only one accused i.e., Inderdeo Choudhary is itself a circumstance to create doubt whether the prosecution story disclosed by the informant was true narration of facts and the manner in which the occurrence had taken place. Learned Counsel for the appellants further submitted and contended that most of witnesses examined by the prosecution are relation witnesses and their statements are similar in nature and not supported by independent witnesses and so the learned Trial Court should not have relied upon the statements of such relation witnesses and there was no torture for demand of dowry and so charge either u/s 304B, IPC or Section 498A, IPC cannot be held to be proved. The contention of the learned Counsel for the appellants was that the learned Trial Court failed to appreciate the evidence and so came to a wrong conclusion.

16. On the other hand learned Counsel for the respondent submitted that the prosecution has been able to prove and establish the charges levelled against the appellants beyond shadow of reasonable doubt and in the manner as alleged.

17. On a careful consideration of the evidences on record it is evident that almost all the witnesses examined by the prosecution are relations and so highly interested. It is well settled principle of law that the statements of such relations and highly interested witnesses are to be taken into consideration with great care and caution.

18. On a plain reading of statements of the material witnesses it would appear that their statements on the point of cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry is not only general and omnibus but the same are vague also and there is no independent witnesses so as to support and corroborate the prosecution story. Besides this Investigating Officer of this case has also not been examined so as to explain the place of occurrence and the manner in which occurrence took place. It also appears on record that on the basis of statement of deceased

herself U.D. case was registered and after inordinate delay of about eight days the mother of the deceased lodged the FIR.

19. The witnesses examined by the defence supported the defence case that the deceased had caught accidental fire and taken hospital where she died in course of her treatment.

20. As discussed in foregoing paragraphs it is evidently clear that almost all the witnesses examined by the prosecution are related and so highly interested. The statements of the prosecution witnesses on the point of cruelty or harassment by husband or in-laws soon before her death is also not only general but vague but their statements do not find support and corroboration from any independent witnesses.

21. On the other hand, statements of defence witnesses support and corroborate the fact that the deceased had caught accidental fire and died in course of treatment. There is also inordinate delay in lodging FIR. In the background it does not appears safe to rely upon unsupported and uncorroborated statements of highly interested witnesses so as to prove and establish the charges either u/s 304B, IPC or u/s 498A, IPC against any of the appellants.

22. Taking into consideration the prosecution case and defence taken by the defence that deceased had caught accidental fire and died in hospital in course of her treatment, the fact that initially on the basis of statement of deceased herself U.D. case was registered, the brother of the deceased had knowledge of burning of her sister but did not care to inform the police immediately and the mother of the deceased lodged FIR after inordinate delay of eight days. I come to the conclusion and find that the prosecution has failed to prove and establish the charges leveled against the appellants beyond shadow of reasonable doubt and in the manner as alleged.

23. In the background, this appeal is allowed and judgment and order of conviction dated 23.12.2002 passed by Shri Gopal Krishna Jha, Additional Sessions Judge, IXth, Munger in S.C. No. 55 of 1992/Tr. No. 25 of 2002 is hereby set aside. Since appellant No. 2 Inderdeo Choudhary appears to be in jail custody he is directed to be released forthwith if not required in any other case and also discharged from the liability of his bail bond. Appellant No. 1, Bhudeo Choudhary @ Bhudeo Kumar Choudhary who is on bail is also discharged from the liability of his bail bound.