

(2004) 06 PAT CK 0008

In the Patna High Court

Case No : Criminal Appeal (S.J.) No. 196 of 2002

Bijendra Kumar Sinha @ Tutu and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2005) 1 DMC 290

Hon'ble Judges : Chandra Mohan Prasad, J

Bench : Single Bench

Advocate : Kamal Nayan Chaubey, Anjana Prakash, Vivek Prasad and Tuhin Shankar, for the Appellant; S.K.P. Sinha, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Chandra Mohan Prasad, J.—This appeal is directed against the judgment of conviction and order of sentence respectively dated 12th April, 2002 and 16th April, 2002 of the 5th Additional Sessions Judge, Darbhanga passed in Sessions Trial No. 103 of 2000 whereby and wherunder appellant Dr. Bijendra Kumar Sinha @ Tutu, the husband of the deceased has been convicted under Sections 304B and 498A of the Indian Penal Code and respectively sentenced to undergo rigorous imprisonment for ten years and rigorous imprisonment for two years and also a fine of Rs. 500/- (five hundred) and, in default of payment of five, rigorous imprisonment for one month. The remaining three appellants, namely, Dr Birendra Kumar Sinha, the father-in-law, Smt. Kalyanibala Sinha, the mother-in-law and Nandini Sinha @ Mona, the sister-in-law (Nanad) of the deceased have been convicted under Sections 304B and 498A of the Indian Penal Code and respectively sentenced to undergo rigorous imprisonment for seven years and two years and also a fine of Rs. 500/- (Rupees five hundred) and, in default of payment of fine, to suffer rigorous imprisonment for one month each.

2. It was on 6th December, 1999 that the Police of Laheriasarai Police Station

arrived at the house of appellant Dr. Birendra Kumar Sinha and that day at 3.00 p.m. recorded his statement wherein Dr Birendra Kumar Sinha stated that day at 11.00 a.m. he had gone to attend his duties at Primary Health Centre, Sonki. At about 1.00 p.m. he was informed on telephone there by his son-in-law's compounder who asked him to go to his house immediately and, thereafter, the phone call ended. On this information, he came to his house at Molaganj Mohalla where his wife and daughter (appellants Kalyanibala and Nandini) told him that at about 12.30 p.m., while they were sitting on the eastern Verandah of the house, they felt that smell of burning was coming from the closed room of the house in which his daughter-in-law (Putohu) was living. At this, his wife and daughter pushed the door and tried to open it but it could not be opened. Then they raised India and called neighbours tailor Md. Azad and Md. Tahir (P.Ws. 2 and 3 respectively) who came into the angan and they struck on the door by means of khanti lying in the angan as a result of which the inside upper latch of the door was broken and then they saw that his putohu (the deceased) was lying dead on the ground in burnt condition. One 5 litres kerosene oil can and a match box were also lying there. On hearing such statement from his wife, he (the informant) went into the room of his Putohu (the deceased) and found her lying there dead in burnt condition. Then he telephonically informed the police, the parents of the deceased and their son (the husband) and others. His son Dr. Bijendra Kumar Sinha (the appellant husband) was prosecuting his studies in Master of Surgery Course at Patna. He had married his son to Ekta Sinha @ Moni (the deceased) daughter of Shashi Bhushan Sinha, Superintending Engineer in C.C.L. in Madhya Pradesh on 18th June, 1999. He claimed that his daughter-in-law (the deceased) had committed suicide. His statement was recorded by S.I., J.P. Yadav of Laheriasarai Police Station who also seized the kerosene oil can, match box and one diary containing the suicide notes written by the deceased. On the basis of the statement of Dr. Birendra Kumar Sinha, U.D. Case No. 20 of 1999 dated 6th December, 1999 was registered and the investigation was taken up in course of which the place of occurrence was inspected by the I.O. of that case.

3. Now, the second chapter of the case begins with the written statement of the informant Shashi Bhushan Kumar Sinha filed before the O.C. Laheriasarai Police Station on 8th December, 1999 at about 1.45 p.m. alleging that his son-in-law Dr. Bijendra Kumar Sinha (the appellant) telephoned him asking him to come immediately and on his enquiry, he simply repeated the request to come immediately. At that time, he was at his residence at Gohra, Korwa (M.P.). Receiving the telephone he left his residence for Darbhanga at 3.00 p.m. He further stated that he had married his daughter Ekta (the deceased) to Dr. Bijendra Kumar Sinha (the appellant) on 18th June, 1999. Regarding the death of Ekta he stated that after marriage, the deceased's sasuril people had not allowed her to come to him. For bringing his daughter, he got the railway reservation ticket booked twice, but his son-in-law Bijendra (the appellant) forbade him saying that he would himself take her to him (the informant). Once

he had secretly learnt through telephone from Moni (the deceased) that the appellants were telling that Her father was an Engineer and for opening a Nursing Home for appellant Bijendra, they were demanding money as dowry and they were also torturing her and not letting her to go to her parents. He claimed that the appellants killed his daughter for dowry or compelled her to commit suicide. On the basis of his written statement, Laheriasarai P.S. Case No. 427 of 1999 was instituted and on investigation, charge- sheet was submitted and then the appellants were tried and convicted as above.

4. As many as thirteen witnesses were examined by the prosecution. The accused-appellants also examined four defence witnesses. P.W. 1 Ashok Kumar is the younger Bahnoi of the informant. P.W. 2 Md. Azad and P.W. 3 Md. Tahir are the neighbour tailors who are said to have come to the P.O. during the occurrence. P.W. 4 Dr. D.K. Dhiraj held the P.M. Examination on the deceased. P.W. 5 Surendra Kumar Sinha is the younger brother of the informant. P.W. 6 Shashi Bhushan Kumar Sinha is the informant himself. P.W. 7 Babulal Sharma is the informant's neighbour and he is a hearsay witness. P.W. 8 Kartikey Kumar and P.W. 9 Bikas Kumar Gupta are the witnesses on the point of preparation of inquest report of the deceased. P.W. 10 Hemendra Kumar is a witness on the point of seizure of articles from deceased's room. P.W. 11 Jagdish Prasad Yadav, S.I. is the Police Officer who had recorded the statement of appellant Dr. Birendra Kumar Sinha on the basis of which said U.D. case was registered and this police witness had also inspected the P.O. and investigated the U.D. case. P.W. 12 Sevanand Singh is a formal witness who has proved the S.D. Entry Nos. 150 and 156 both dated 6th December, 1999 and S.D. Entry No. 186 dated 8th December, 1999 regarding the information received at the Police Station regarding the occurrence. He has also proved seven photographs of the deceased and its negatives marked material Exts. II to II-6 and V to V/6. He further proved the container and the matches marked Exts. III and IV. P.W. 13 Anil Kumar Sinha is the I.O. of the case and P.W. 12 Girindra Kumar Sharan, S.I. took charge of investigation from P.W. 13 on 10th January, 2000 and he simply submitted the charge-sheet against the accused-appellants.

5. D.W. 1 Mahadeo Mahto is a medicine shopkeeper who deposed that he had telephone connection bearing Tel. No. 89207 at his shop situated near the Primary Health Centre, Sonki and that there was no telephone connection in the Health Centre. He further deposed that on 6th December, 1999 at about 1.00 p.m., one telephone call of Dr. Birendra Kumar Sinha had come and that he had called Dr. Birendra Kumar Sinha from the Health Centre who had talked on telephone.

6. D.W. 2 Dr. Upendra Paswan has deposed that since January 1998, he was posted as Assistant Professor, Psychiatric Department at Muzaffarpur Hospital. Prior to that, in the year 1999, he was waiting for posting at Patna and at that time, he had got the same designation and during that period, he was running two private clinics, one at Bahadurpur Housing Colony, Patna and the other at

Khudabux Library, Patna. He further deposed that on 27th December, 1997 he had examined Ekta Sinha (the deceased) aged 22 years, daughter of Shashi Bhushan Kumar Sinha as a patient and he had written prescription (Ext-K) and on examining her, he had found that she was suffering from depression. He further deposed that he had asked the patient (the deceased) to come for further examination after one month and that he had examined her again on 25th January, 1998 and 21st June, 1998 and he had also written separate prescription (Ext-K/ 1). He has also deposed that he had examined the patient on 20th February, 1998. Learned Sessions Judge has disbelieved the evidence of this Doctor on the ground that when he was posted at Muizaffarpur since January, 1998, how he could examine the patient on 21st June, 1998 and 20th December, 1998 at Patna. The Doctor has used private pad with his address and posting at Patna while examining the patient on 21st June, 1998 and 20th December, 1998 and it appears that on this ground only, his evidence was disbelieved by the learned Sessions Judge. But while examining on 21st June, 1998 and 20th December, 1998, the Doctor has mentioned that it was an old case. There is nothing in his evidence that he had examined the patient at Patna. Therefore, only due to the use of the different pad, containing Doctor's address at Patna, the learned Sessions Judge was not justified in disbelieving the evidence of the doctor who was examined as a defence witness.

6-A. D.W. 3 Bijay Kumar Sinha is a resident of Muzaffarpur who has deposed that on 6th December, 1999 at about 11.30 p.m. Bijendra (husband of the deceased) had come to his house and he had told him that a phone call had been received that some mishap had taken place at his house at Darbhanga and hence, he was going to Darbhanga and that he would also intimate his father-in-law in the way. This witness has stated that he had got telephone connection in his house, but it does not have S.T.D. facilities. This witness has been examined on the point that during the relevant time, appellant Bijendra Kumar Sinha (the husband) was not at the P.O. and that he was on his way from Patna to Darbhanga on receiving telephone message about the mishap taking place at his house at Darbhanga.

7. D.W. 4 Shashi Thakur has deposed that Dr. Birendra is the father-in-law of Professor Dharendra Srivastava and that on the day of occurrence, the wife and daughter of Dr. Birendra had gone to see the ailing mother of Professor Dharendra at 10-11.00 a.m. and returned at 12/12.30 p.m. This witness has been examined on the point that at the relevant time of occurrence, the mother-in-law and the sister-in-law were not in the house and they had gone to see the ailing mother of Professor Dharendra Kumar Srivastava.

8. Before discussing the oral evidence of the prosecution witnesses, it is proper to discuss the evidence of the doctor who held the post-mortem examination and the I.O. who examined the P.O. and seized some articles from there. It would also be relevant to discuss some letters written by the informant to his daughter which have been proved as Ext.-B Series. Material Ext.-I is the deceased's diary containing some suicide notes marked as Exts. 1-1 and 1-2. The deceased has

also written a single sentence note on a separate paper proved as Ext.-F.

9. The Doctor (P.W. 4) who held the P.M. examination on the dead body of the deceased on 7th December, 1999 at 11.00 a.m. testified that on examination he found is follows :

(i) Smell of kerosene oil was perceived from scalp hair and portion of leftover clothes. Tongue was protruding between the teeth. Dermo epidermal burn injuries sooty appearance, raw surface few fluid fill plebs and line of redness were seen over hand, neck, face, front of trunk, private part, thigh, shoulder blade area, buttocks upper limbs and back of legs, sticky material with soot was seen inside nostrils as well.

(ii) On dissection, respiratory passage was found congested with presence of soot over its inner walls. Viscera in general were also found congested. Both sides of the heart were partially full. Stomach and urinary bladder were found empty. Uterus was non-pregnant. Skull bore no injury and the brain was found congested. Neck did not reveal evidence of any injury.

Time elapsed since death was within 36 hours.

The doctor opined that death had resulted from the shock due to burn injuries. He proved the p.m. Exam report in his writing and signature marked Ext.-1.

In the cross-examination, the doctor deposed that except burn injuries, he did not find any external or internal injuries on the person of the deceased. He also deposed that such injuries, as mentioned above were possible to be caused in case of suicidal burn injuries.

10. P.W. 11 S.I. Jagdish Prasad Yadav is the I.O. who had gone to the P.O. on receiving information and who had recorded the statement of the father-in-law Dr. Birendra Kumar Sinha (the appellant) at the P.O. which had formed the basis for U.D. case No. 20 of 1999 dated 6th December, 1999 of Laheriasarai Police Station. He deposed that he had received information through telephone that the Putohu of Dr. Birendra Kumar Sinha had committed suicide by setting her on fire and that on this information, he recorded the S.D. entry at the Police Station and came to the P.O. and found the deceased lying in burnt condition. He prepared the inquest report (Ext. 13). He further deposed that he also inspected the P.O. house which was pucca house of Dr. Birendra Kumar Sinha (the appellant) and the dead body was lying in the room situated in south-west of the angan of the house. The dead body was lying on the ground. Some books, one Magazine and one diary, containing some writings of the deceased was lying on the bed (Palang) in the room. Towards east of the Palang, one 5 litre oil can and match box were also lying. He also found that the latch on the door used for closing the door from inside was found broken and it looked like freshly broken. He also found that on the shutter of the entry door of the room, there were 4-5 marks of striking by hum on the outside portion of the door plank. He further deposed that he seized the oil can, matches and the diary by preparing a seizure list (Ext. 14).

He further deposed that on the basis of the statement of Dr. Birendra Kumar Sinha (appellant) he had instituted a U.D. case and had conducted the investigation, found the aforesaid facts, but subsequently the U.D. case was converted into a dowry death case, hence, he handed over the investigation to S.I. Anil Kumar Singh, the I.O. of the case.

11. The P.W. 13 who is the I.O. of the case deposed that on 7/8th January, 2000 in the night at about 11 O'clock the informant gave a written report (Ext. 3) and on the basis of that report, Laheriasarai P.S. case No. 427 of 1999 was instituted and the investigation commenced. He further deposed that the initial investigation of the case had already been done by P.W. 11 under the U.D. case. He also deposed that the appellants of the case who had been brought at the P.S. for interrogation in connection with U.D. case were taken into custody after institution of this case. He further deposed that he recorded the statement of Md. Tahir, Md. Azad, Babulal Sharma and Pitambar Choudhary. At Parall of his evidence, he stated that witness Md. Azad (P.W. 2) had stated before him that Nandini Sinha (appellant) had given him an iron sabal for breaking the door but. he and his brother could not be able to break the door. At Para 18 of his evidence, he deposed that he himself did not inspect the P.O. This has to be mentioned here that the P.O. had already been inspected by P.W. 11 who had prepared the inquest report of the dead body and had also seized some articles as detailed in his evidence.

12. P.W. 12 has proved the S.D Entry Nos. 115 and 116 both dated 6th December, 1999 and S.D. Entry No. 187 dated 8th December, 1999 regarding information received at the Police Station regarding the occurrence. He also proved seven photographs of the deceased and its negatives taken at the P.O. respectively marked Material Exts. II to II/6 and V to V/6. He further proved the container and matches marked Exts. III and IV. In this case, there are some letters which were written by the father (the informant) to his daughter (the deceased) living at her sasural and there are also some notes in the form of suicide notes written by the deceased. The letters written by the informant are Ext. B Series and the notes written by the deceased are Ext. I Series and F.

13. Ext. B is an Inland letter written by the informant to his daughter, but this was not written to the deceased at her sasural but at some other address at Patna. The letter Ext. B /1 and further letters had been written to the deceased, while she was at her sasural. Ext. B/I is the letter through which the informant sent Rs. 2,100/- (two thousand one hundred) for TIJ ceremony asking his daughter (the deceased) not to take the money herself and spend it according to her like, but to hand over it to her mother-in-law who will spend it as she liked. He has also written his daughter to make efforts to keep her in laws happy and that he would be happy to learn from them that they loved her and are satisfied with her behaviour. There is nothing in this letter against the sasural people.

14. Ext. B/2 is the letter of the informant to the deceased's father-in-law and mother-in-law regarding sending of Rs. 2,100/- for TIJ. There is nothing in this

letter against any member of deceased's sasural family. Ext. B/3 is letter dated 26th September, 1999 of the informant to the deceased. In this letter, the informant says to his daughter. "On your asking, I got reservation from Champa to Samastipur for 23rd September, 1999 and from Samastipur to Champa on 25th September, 1999 but on your further request I got it cancelled. Again I have got reservation for 8th October, 1999. I would also write to your father-in-law for bidagari. If you want to come earlier, you intimate me." The informant further writes to his daughter (the deceased): "You should try to spend lesser on you. Try to spend only the necessary on your make-up. Try to understand the situation and after some time, everything will be O.K. Try to find good in all then all will look good. Keep patience and you will be loved by all. Your position is like juniors who are subjected to ragging by seniors in the Colleges, but future is yours."

15. Thus there is nothing against any person in the deceased's sasural family. The informant has given saner advice to his daughter to keep adjustment in the changed environment in the sasural.

16. Ext. B/4 is the letter dated 21st September, 1999 of the informant addressed to his daughter (the deceased) wherein he says:

"We are a bit perturbed to note that you tried to commit suicide. By grace of God, there are limited members in your family and there is no financial problem. By the way, you have mentioned that due to lack of money, you could not phone to us. If you need some money, you ask from your mother-in-law. If you need something, you must disclose it to your mother-in-law. You have written that "Tutu" (nickname of husband Bijendra) will not allow you to live at Gebra for longer period. I liked it. But the incident which took place after a few days is distressing. My daughter, when a daughter is married, she dedicates herself to her husband and takes care of his needs. The son who used to depend on his mother and sister, suddenly becomes attracted to his wife. Think of the mother. What she gets. The son who used to chant "Mummy-Mummy" hundreds of times, now does not do so. But the arrival of the daughter-in-law, family expenses go up and she becomes loser. If the daughter-in-law does not pay respect to her, why she will love her. Therefore, the responsibility of the daughter-in-law goes up. She is required to take care of her in-laws. You are supposed to treat everybody well. There is no practice of changing husband in our family."

Again the informant writes:

"My daughter, you are living at a distant place. God forbid, if anything untoward happens to you, I will not be able to see you. It is good to protest unjust but in doing so, there should not be play of ego, retaliation or intend to harm others. If you have any problem with any member of the family, you should talk it openly and solve it. If you think that "Tutu" will help you. in such affairs, it is your mistake. Anybody in the position of "Tutu" will not be able to take side of his wife in such matters."

The informant continues to write:

"My daughter, if something happens to you, two families will be ruined. Perhaps, you are not aware of this. Try to find out your mother and father in your mother-in-law and father-in-law."

Thus, there is nothing in this letter to show any kind of torture or harassment to the deceased or demand of dowry money but it says about the common problems faced by a bride in the early period at sasural and the informant gives advice to his daughter to take care of sasural people instead of offending them with her any activity.

17. Ext. B/5 is an undated letter of the informant addressed to his daughter. The informant says:

"Whatever happened to you, it was anticipated and I had already cautioned you about it and you had expressed confidence that you will overcome such problems. Now what special has happened to you that you have become bent upon to end our life. Tutu is your husband and you have full right over him but your life has been given by me and you have no right over it. Tutu is an ideal boy in true sense of the term and both of you are A-grade couple. When there are two, there also remains scope of controversy. But it also requires reasonable approach. It is not good to use might. To speak loudly, to show anger and to think committing suicide is still approach of wrong persons. The wife of only son has to face some problems unless the son becomes a father and these were already disclosed to you beforehand. Try to hold yourself. The mother-in-law, husband and sister-in-law (Nanad) all are your own. They look different only when you consider them with a different understanding or approach. The boy (the husband) who was theirs, is now yours. Therefore, some problems will remain for some time but by passage of time, everything will improve. The wife and the husband have got equal status but the husband is older than wife. Therefore, he is equal to elder brother. Hence, his sentiments have to be honoured. I have full confidence in you."

18. Thus, this letter which is though undated, but it is contemporaneous. There is nothing in this letter to show any specific grievance against any conduct or behaviour of any sasural people; rather it shows that the deceased was facing normal problems, a newly wedded wife is put to but the deceased had a different psychology making it difficult to make adjustment with such problems and in disgust and frustration, she even thought and attempted to commit suicide prior to the incident which took her life.

19. The material Ext. I is the deceased's diary containing suicide notes in the writing of the deceased. Ext. 1/1 is the suicide note with initial dated 11th September, which reads : Nobody should be interrogated, if anything happens to me. I do not want to live and that is all and there is no other reason for my death.

20. This note shows frustration and ending of her life due to frustration. The frustration may be due to depression or any other reason but definitely there is no indication of any reason like torture or harassment or demand of dowry of rupees two lacs by the sasural people. There is nothing that the husband or any other member of the sasural people of the deceased had expressed any kind of demand of money to the deceased.

21. Ext. 1/2 is another note dated 11th September, 1999 written by the deceased with her initials. It reads:

"If something happens to me, nobody is responsible for it". This note also excludes from any kind of allegation of demand of money or any sort of cruelty or harassment due to non-fulfilment of any demand.

22. The last note (Ext. 1/3) is in the writing of the deceased bearing her signature but without any date. This note reads,

"If anything happens to me, I should be handed over to my parents". Though this note does not bear any date but it is contemporaneous. It was found on the bed of the deceased. This note is in furtherance with other notes without any kind of allegation against the sasural people.

Ext. F is a single sentence note written by the deceased with her initials. The note reads :

"I will not live with Tutu (nickname of the husband), if I am unable to pass B.E."

23. This note depicts a frustration in the deceased showing her intention to desert or go away from the life of the husband, if she is unable to pass the B.E. Exam. This is a very important circumstance which would be discussed later with relevance to connected evidence about the deceased's failure in one paper in B.E. 1st Part Examination and publication of her result, after her death and passing the examination with grace marks.

24. As to the oral evidence, the informant (P.W. 6) deposed that he had married his daughter (the deceased) to appellant Bijendra Kumar Sinha on 18th June, 1999 and the marriage ceremony was performed in Hotel Ashoka at Patna. He says that he had given Rs. 8,09,000/- (Rupees eight lacs nine thousand) through draft and Rs. 1,000/- (Rupees one thousand) in cash in marriage. After the marriage, the deceased went to her sasural on 19th June, 1999. In the beginning, the sasural people treated the deceased with good behaviour. On 27th/28th June, 1999, the deceased along with her husband had gone to Gwalior for filling in Examination Form for computer science and while on return journey from there, they had gone to him at Gebra and had remained there for two days and then they had returned to deceased's sasural and thereafter the deceased remained there till death. He further deposed at para 10 that on 12th/13th September when he talked his daughter on telephone he became happy to learn that the deceased was pregnant. 6-7 days after that on one Sunday when he again telephoned to deceased's sasural, the husband Bijendra picked up the

phone and he informed him that the deceased was threatening him that she would divorce him. The informant says that he understood that it was result of tit-bit between them but Bijendra further informed that the matter was serious. Then the informant talked with his daughter (the deceased) who disclosed that her sasural people were always taunting her and that Bijendra was repeatedly asking her to abort the pregnancy. The informant further says that 3/4 days after, he learnt that abortion was caused to the deceased. Again after 2-4 days the informant further says to have learnt from the deceased on telephone that her sasural people were asking for Rupees two lacs for opening a clinic. At page 13 of his evidence he deposed that after learning about the said threat of divorce he planned to visit deceased's sasural and he also got reservation for it, but on being asked by the deceased and her husband, he got the reservation cancelled. He says that he again booked reservation ticket in the month of October but again on being asked by them he got the reservation cancelled. At para 14 he says that after cancellation, his son-in-law had not come to him with his daughter. He further deposed at para 15 that on 6th December, 1999 Bijendra (son-in-law) phoned him saying "Papa come soon". One hour after receiving the phone he caught the train and in the night of 7th/8th December, 1999 at 11-11.30 p.m., he reached Darbhanga. Then he straight went to deceased's sasural but the house was locked and nobody was there. He says that the Mohalla people informed him that the sasural people had killed his daughter and that the inmates of the house had gone to the Police Station. He further says that he went to Laheriasarai Police Station and submitted a written report (Ext. 3). At para 118 of his evidence, the informant deposed that there was telephone connection at the deceased's sasural house bearing Telephone No. 33212 but it had no S.T.D. facility. He also deposed at para 27 that his daughter had been admitted into computer degree course. He also deposed that after marriage, his daughter (the deceased) had gone to Gwalior in the month of July for appearing at the examination in one paper and that subsequently she also passed that examination. The mark-sheet had been filed which has been marked as Ext. Z/a-1. The mark-sheet shows that the deceased had passed with grace marks in that paper. At para 19 the informant deposed that the deceased had already cleared three papers of the 1st year, B.E. course and in the month of July she had gone for appearing at the 4th paper examination. He also deposed that she had passed in the 4th paper, but the result had been published 6-7 days after her death. At para 91 he deposed that in Computer Science, the pass marks is 35 and his daughter had obtained only 30 marks but 5 marks had been given to her as grace and that she had passed in that paper with the grace marks. At para 111 of his evidence, the informant deposed that he had no personal knowledge about the taunting and torture to the deceased, demanding rupees two lacs and causing of abortion, but he had learnt all these facts from the deceased on telephone.

25. P.W. 5 Suresh Kumar Sinha is the younger brother of the informant. He deposed that he had learnt from his brother (informant) that the sasural people

were demanding rupees two lacs for opening a clinic. He also deposed that, when the money was not paid, the sasural people caused her abortion. He further deposed that the informant had got reservation twice for going to the deceased but the sasural people did not permit him to come and that they caused deceased's dowry death. He further deposed that on getting information, he went to deceased's sasural where some Mohalla people disclosed to him that the sasural people of the deceased had killed her by burning her. Thus, this witness had no personal knowledge about the demand or harassment but he learnt it from the informant.

26. P.W. 1 Ashok Kumar is the younger Bahnoi of the informant who deposed that the informant had conveyed him 011 telephone that the sasural people of the deceased was not treating the deceased well and they were demanding money for opening a clinic. He also deposed that the informant got reservation twice once in September and next in October 1999, but he could not bring his daughter from the sasural. He says that he tried to meet Ekta (the deceased) but he could not meet her. Thus, this witness has no personal knowledge and he learnt it on being conveyed by the informant on telephone.

27. P.W. 2 Md. Azad is a tailor neighbour of deceased's sasural house and he deposed that deceased's sasural house situates in his Mohalla and at the time of occurrence Mona (the appellant) called him saying that her Bhabhi (the deceased) was burning inside the room. Learning this, he went inside the house and saw that Kalyani Devi (the appellant) was weeping and she disclosed that her daughter-in-law (the deceased) was burning and she requested him to open the door of the room. Then P.W. 2 further deposes that he took a Khanti and broke open the door and on opening the door, he found the deceased lying on a chauki but in cross-examination, he further said that the deceased was lying on the ground by the side of chauki. He also deposed that on being asked by Kalyani Devi (the appellant) he had gone to call her elder daughter from Holi-Cross School. This witness has been declared hostile by the prosecution and the material portion of previous police statement sought to be used for contradicting evidence of this witness is only this much that on being called by Mona (the appellant) he had gone inside the house and he had tried to break open the door but he and his brother (P.W. 3) could not be able to break open the door. Anyway, even according to the statement of this witness before police, the deceased had closed herself into the room and had burnt herself.

28. P.W. 3 Md. Tahir, a tailor who is brother of P.W. 2 is also a neighbour who deposed that at about 12.30 p.m. while he was at his tailoring shop, he saw that Mona and her mother (the appellants) came on a rickshaw and went inside the room but they immediately came out and said that there was fire inside the house and they called him. He further deposed that when he went inside the house, he saw that one room was closed from inside and smoke was coming out of that room. He further deposed that Mona and her mother gave a khanti to his brother (P.W. 2) who broke the door with the same. At page 6 of his cross-

examination, he deposed that his house is adjacent to deceased's sasural house intervened by a narrow lane only. Thus, this witness is a close door neighbour and he had gone to the P.O. house at the time of occurrence. This witness was also declared hostile by the prosecution but this witness's police statement sought to contradict him is only this much that the younger daughter of Dr. Sahib had come to him asking for help saying that her mother had jawlocked. Hence, he went into the house and saw that the mother had not jawlocked but she was walking in the house. Thus, even according to the previous police statement, there is no material contradiction to discredit the witness on the material portion of his evidence that he had found the deceased burning herself by closing her in a room from inside and that P.W. 2 had broken the door with khanti. Thus, on analysing the evidence of the material witnesses, namely, the informant (P.W. 6), informant's brother (P.W. 5) and informant's behnoi (PW 1) it appears that the informant alleges that he had learnt on telephone from the deceased that the sasural people of the deceased were taunting her and that Bijendra (the husband) was asking her to abort pregnancy and also that a sum of rupees two lacs was being demanded for opening a clinic. The informant himself says at para 111 of his evidence that he had no person knowledge about the taunting, torture and demanding of money and that he learnt it from the informant on telephone. P.Ws. 1 and 5 who have come to say about these things, have also no personal knowledge about it and they admitted in their evidence that they had learnt from the informant. The informant does not say anywhere in his evidence that the husband or any other sasural people had himself expressed any demand to him. Thus, the allegation of demand or torture or insistence for causing abortion is a matter which the informant learnt from the deceased on telephone. The informant had written letters under Ext. B series to his daughter (the deceased) discussing many family problems and they show altogether a different picture. The letters are contemporaneous and in none of the letters, the informant has even whispered about any kind of demand or any kind of torture or harassment meted out to the deceased due to non-fulfilment of demand. Thus, the letters Ext. B series do not corroborate the informant's evidence with regard to the allegations put forth by him.

29. The informant has alleged in his First Information Report that the appellants were not letting the deceased to go to her parents. But the informant has himself deposed in his evidence that he had got reservation made twice but he got it cancelled on being asked by the deceased and her husband. There was nothing to prevent the informant from going to deceased's sasural, if he had definite idea to go there. The informant himself chose not to go to deceased's sasural on being asked by the deceased and her husband. In his letter (Ext B Series) he has even expressed his happiness on learning from the deceased that Tutu (nickname of the husband) would not allow her (the deceased) to live at Gebra for longer period. Naturally, the informant's happiness over it appears to be due to the fact that the husband had attachment for his wife (the deceased), hence he was not allowing her to live at Gebra for longer period. These circumstances

do not support informant's allegation of not allowing the deceased to go, to her parents was an act as a result of or in furtherance of any kind of torture or harassment to the deceased.

30. It is admitted case of prosecution and also indicated in informant's letter Ext. B series that at the time of occurrence, the husband Bijendra (the appellant) was a student studying in P.G. Class in Medical Science. It was argued by the appellants' Counsel that there is no cogent evidence to show the demand of rupees two lacs made by the husband or other in laws for opening a clinic and that the allegation of this demand is also unnatural under the circumstances that when the husband was himself a student, there was no question for opening a clinic for him for any medical practice. These submissions of the appellants' Counsel appear to carry substantial reasons and it has to be accepted. Excepting the informant's evidence that he secretly learnt on telephone from his daughter that the appellants were demanding rupees two lacs, there is no other evidence that any of the appellants expressed any demand of money before the informant or even in the letters (Ext. B series) written by the informant to his daughter there is no whisper about it.

31. The appellant's Counsel argued that the deceased was suffering from depression and due to depression, she had no normal patience to bear with the normal problems faced by a newly wedded wife in her sasural house and that she lacked quality of adjustment and she had also tendency to commit suicide even on a slight frustration and disgust when the circumstances were even slightly against her will. In this context the learned Counsel pointed out the evidence of the informant and his letters Ext. B series showing that in the month of September prior to the occurrence, the deceased had even tried to commit suicide, without any cogent reasons for the same. The learned Counsel also referred to the deceased's suicide note Ext. 1 series which mention that the deceased did not want to remain alive without expressing any reason for the same and at the same time, she also expressed that nobody was responsible for her death.

32. Appellants' Counsel further referred to the evidence of D.W. 2 Dr. Upendra Paswan, a Psychiatrist who had treated the deceased writing his prescriptions dated 27.12.1995, 24.1.1998 and 21.6.1998 for the ailment of depression. The learned APP argued that the prescriptions are of the period before the date of marriage. No doubt, the prescriptions relating to treatment refer to the period prior to marriage, but it shows deceased's treatment for the ailment of depression. The learned Counsel for the appellant argued that though the prescriptions relate to a period prior to marriage but the deceased was taking medicine after the marriage also and she had brought the prescriptions to the sasural and the prescriptions have been produced before the appellants on obtaining it from deceased's articles at her sasural. The appellant's Counsel specifically referred to Ext. F which is a single sentence note written by the deceased who says in the note that she will not remain with Tutu, if she is unable

to pass B.E. After Ext. F, learned Counsel further referred to Ext. Z/A-I which is deceased's mark-sheet prepared with official initial and date 6th May, 2000 and it shows that the deceased had passed B.E. Exam, with grace marks in the 4th paper. Appellants' Counsel argued that the informant has also admitted in his evidence that deceased's result was published after her death. Learned Counsel continued to argue that the deceased had appeared in the B.E. Examination shortly after her marriage, but she could not pass the B.E. Examination in general result and the matter of getting her passed by giving grace marks remained pending and she always entertained apprehension whether she will be able to pass or not which was a cause for her frustration as a result of which she committed suicide in disgust and depression. It was also argued that the deceased's note (Ext. F) also indicates the frustration in the deceased that she will not remain with Tutu if she is unable to pass the B.E. Examination. Considering the above materials and the circumstances, I find that there are circumstances to show that due to the deceased, having not passed in general result, she was running under depression and frustration and the deceased's note Ext. F further indicates that due to such depression and frustration, she was running under a thinking to commit suicide.

33. The defence case, as would appear from the defence evidence and also the lodging of the U.D. case on the statement of appellant Birendra Kumar Sinha, the father-in-law is that the deceased herself committed suicide and that the appellants did not make any demand or cause any torture or harassment to the deceased for non-fulfilment of any such demand. In this context, it is relevant to consider here that in this case none of the appellants tried to conceal anything from police or the informant. It is on the record that on receiving information through telephone, the police officials of local police arrived at the P.O. house and the appellants were there at the house and that the statement of Bijendra Kumar Sinha was also recorded by police which became the basis for U.D. case and the police seized the oil can, match box and deceased's diary containing suicide notes from the P.O. and other formalities regarding investigation of that U.D. Case was performed by police and the appellants came to the Police Station where they were subsequently arrested on filing of the written report by the informant, the deceased's father. It is also in evidence of the informant (P.W. 6 para 15) that on the date of occurrence, his son-in-law Bijendra had telephoned him saying "Papa, come soon". This shows that even the informant was also informed by his son-in-law immediately after the incident asking him to come soon and that on such telephone, the informant Md proceeded and had reached at the P.O. and then to the Police Station. Besides this, there is evidence of P.Ws. 2 and 3 itself which goes to show circumstances in support of the defence story. P.Ws. 2 and 3 who are the next door neighbours of deceased's sasural house have deposed that on being called by Mona (Nandini Sinha appellant), they had gone to the P.O. house where they saw that the door of the deceased's room was closed from inside and smoke was coming out of the room and they had attempted to break the door of the room with a khanti and that after breaking

open the door, they had found the deceased lying burnt and dead. P.W. 11 who had come to the P.O. and had conducted the investigation after lodging of U.D. case has testified that he had found that there were 4-5 striking marks on the outside of the door of the room and the inside latch (latch) of the door was found freshly broken. Thus, the I.O. who visited the P.O. shortly after the occurrence also found that the door of the deceased's room had been opened by striking the door from outside breaking the inside latch. The evidence of the I.O. coupled with the evidence of P.Ws. 2 and 3 is sufficient to show that the deceased had closed herself in her room by bolting the room from inside at the time while she burnt to death. Besides this, there is also evidence as adduced by P.Ws. 2 and 3 that at the time of occurrence, when they were called inside the house, the appellants Kalanibala Sinha and Mona had come to the house from outside. D.W. 1 Mahadeo Mahto who had got a medicine shop near Sonki Primary Health Centre has deposed that on 6th December, 1999 at about 1.00 p.m. one telephone call of Dr. Birendra Kumar Sinha had come to his shop and he had called him from the Primary Health Centre and then he (appellant Birendra Kumar Sinha) had attended the phone. The defence case as also mentioned in the statement of Birendra Kumar Sinha on the basis of which the U.D. case was lodged is that at the time of occurrence, he was on his duty at Primary Health Centre, Sonki and that on receiving information through telephone he had come to the P.O. Thus, there is evidence to show that at the time of occurrence, the appellant Birendra Kumar Sinha was not at the P.O. but he was at Primary Health Centre, and appellant Bijendra Kumar Sinha, the husband was admittedly a P.G. Medical student studying at Patna. D.W. 3 has deposed that on the date of occurrence, i.e. 6th December, 1999 at 1-1.30 p.m. Bijendra had come to his house at Muzaffarpur and had told him that some mishap had taken place at Darbhanga, hence he was going to Darbhanga. Thus, there is evidence to show that at the relevant time of occurrence, the appellants were not present at the house and that they came to the house at the time of occurrence or shortly thereafter or some time after on receiving information about the occurrence. Hence, these facts and circumstances do not indicate the possibility of any of the appellants participating in the occurrence of setting the deceased on fire or compelling her to commit suicide, as alleged by the prosecution.

34. For holding liable for commission of the offence u/s 304B of the Indian Penal Code, the prosecution has to prove it beyond doubt that before the death of the deceased, the accused had demanded dowry and that due to non-fulfilment of the demand, the deceased was subjected to harassment and cruelty. As to the allegation of demand of dowry, it has already been found earlier that there is no cogent and reliable evidence to show that there has been any kind of demand of dowry by any of the appellants before the deceased's death. So far as the question of causing harassment or torture to the deceased is concerned, it has also been found that there is no reliable material to hold that the appellants had subjected the deceased to any sort of cruelty or harassment shortly before her

death; rather the evidence indicates that the deceased was living dissatisfied life finding herself unable to adjust to the family environment of sasural and that she had even threatened her husband to divorce him and that due to frustration and disgust, she had also, prior to the occurrence, once attempted to commit suicide for which the informant had expressed his concern in his letters Ext. B Series, written to the deceased. In the letters Ext. B Series, the informant has discussed many things about the family matters giving several saner advice to his daughter, but he has nowhere discussed or even whispered any kind of demand by the appellants or any kind of harassment or torture to the deceased at the hands of appellants. The letters written by the informant are contemporaneous. Besides this, the suicide date (Ext. I Series) as written by the deceased also do not level any kind of allegation on any of the appellants; rather it mentions that nobody is responsible for her death and that she (the deceased) did not want to remain alive and that was all. Thus, under these facts and circumstances, there is no ground to think that the appellants had made any demand and that they subjected the deceased to any kind of torture or harassment for non fulfilment of the demand.

35. In view of the facts and circumstances as discussed above, I find and hold that the prosecution has not been able to prove the charges beyond shadows of reasonable doubt.

36. In the result, this appeal is allowed and consequently, the order of conviction and sentence as passed by the Trial Court is hereby set aside. Each of the appellants is held not guilty and is acquitted of the charges levelled against him/her. It appears that appellant Bijendra Kumar Sinha (appellant No. 1) is in jail. He is ordered to be released forthwith, if not wanted to be detained in any other case. The appellants are discharged from the liability of bail bonds.