

(2007) 05 JH CK 0015

In the Jharkhand High Court

Case No : Criminal Appeal No. 345 of 1999 (R)

Ram Sahay Mahto, Nema Mahto and Parvati Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 304B, 34

Citation : (2007) 4 Crimes 101 : (2007) 2 BLJR 1779 : (2007) 2 DMC 494 :
(2007) 4 JCR 536

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : S.K. Ughal, for the Appellant; A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Kumar Sinha, J.—The present appeal is directed against the judgment of conviction u/s 304B and 201/34 I.P.C. passed by the 5th Additional Sessions Judge, Giridih in Sessions Trial No. 51/98 whereby the appellants have been sentenced to undergo rigorous imprisonment for 10 years and rigorous imprisonment for 3 years in each count with direction that both the sentences shall run concurrently against the appellants.

2. The prosecution story as it stands narrated in the written report presented by the informant Bodhi Mahto (P.W. 3) that he had married his daughter Fula Devi in the year 1997 with the appellant No. 1 Ram Sahay Mahto. After marriage all the three appellants viz. son-in-law Ram Sahay Mahto, father-in-law Nema Mahto and the mother-in-law Parvati Devi of Fula Devi (since deceased) started perpetrating torture to her by raising demand of Rs. 20,000/- in cash and Rajdoot motorcycle to be brought from her parental home. When she expressed inability of the people of her parental home on account of their poverty, she was brutally assaulted. The appellants had been threatening that they would get her

husband married to another girl. The informant, therefore, had reason to believe that the dead body of her daughter was concealed somewhere by the appellants after committing her murder. On the information there being received by the informant about the missing of his daughter when he came to the matrimonial home of his daughter at village Karri the appellants accosted him. It was further alleged that only 15 days prior to the occurrence his son-in-law and Samdhi (Appellant No. 1 & 2) had extended threat at the village home of the informant that the appellant Ram Sahay Mahto would be married to another girl deserting his first wife. It was requested by the informant to take legal action. On the written report presented by the informant, Birni P.S. Case No. 71/97 was lodged on 8.8.97 for the offence u/s 304B/201/34 I.P.C. against all the three appellants. The police after investigation submitted charge-sheet against them for the said offence as well as under Sections 3 and 4 of the Dowry Prohibition Act.

3. It is relevant to mention that the F.I.R. was lodged on 8.8.97 but skeleton was recovered on 13.8.97 from the bank of Barakar river at the distance of about 1 k.m. south of village Sirmadih, presumed to be the skeleton of the missing daughter of the informant Fula Devi.

4. The charges were framed against the appellant herein for the offence u/s 304B/34, 201/34 I.P.C and not under Dowry Prohibition Act. After framing of charge as many as 7 witnesses were produced and examined on behalf of the prosecution. Besides, the prosecution proved the postmortem report Ext. 1, the inquest report Ext. 2, the signature of the witnesses on the inquest report Ext 1/1 and 1/2 the formal F.I.R. Ext. 3 On the other hand, after statement of the appellants recorded u/s 313 Cr.P.C. 6 witnesses were produced and examined on behalf of the defence.

5. Mr. S.K Ughal, learned Counsel for the appellants submitted that the Appellant No. 1 Ram Sahay Mahto is the husband. Appellant No. 2 Nema Mahto father-in-law and the Appellant No. 3 Parvati Devi is the mother-in-law who are innocent but have been convicted and accordingly sentenced without any legal evidence on the record which is liable to be set aside.

6. Advancing his argument Mr. Ughal submitted that the appellants have been convicted only for the reasons that the death of Fula Devi took place within 7 years of her marriage without discharging the burden of proof that the death of Fula Devi occurred on account of any burn or bodily injury. The skeleton as recovered from the bank of Barakar river could not be proved that it belonged to the missing girl Fula Devi. Learned Counsel added that P.W. 1 Dr. B.P. Singh who held autopsy of skeleton on 14.8.97 at about 9 a.m. found the dead body highly decomposed, soft tissue almost over all parts of the body except left leg, left forearm and left hand. The right upper limb and right lower limb below knee joint were absent. Similarly chest cranial cavity and abdominal cavity were found exposed. No viscera was found including larynx and trachea. The Doctor did not find any violence in the nature of ante-mortem injury and some parts of Section of the body were preserved for further investigation at higher centre. The Doctor

assessed the time elapsed since death till postmortem examination about one week. In the cross-examination the Doctor clearly testified that he found the dead body totally decomposed and feature of dead body was unrecognizable. He explained that he put the name of deceased Fula Devi on the basis of the name of the victim mentioned in the inquest report.

7. Mr. Ughal added that from the deposition of the Doctor who held postmortem examination on the skeleton it could be evident that the dead body was so decomposed that its feature was unrecognizable and the prosecution failed to prove miserably that the skeleton in question belonged to none other than Fula Devi, making the prosecution case highly suspicious.

8. Mr. Ughal exhorted that none of the inquest witnesses was cited as the prosecution witness in the charge-sheet who were later on produced on behalf of the defence in the trial court and did not support that the inquest was prepared in their presence. Similarly P.W. 2 Sahdeo Mahto testified that there was black blouse and black petticoat on the dead body at the time of its recovery but he could not say as to whether any seizure list was prepared with respect to such apparel which could be an important piece of material exhibit for the identification of the body (skeleton). On the other hand D.W. 5 delivered a contradictory statement by saying that no cloth was found on the dead body and therefore, the trial court below grossly erred by recording his finding on the point of identification of the skeleton relying upon the testimonies of P.W. 2 Sahdeo Mahto and P.W. 5 Tilaki Devi. Similarly the charge that Fula Devi was first killed and then thrown in the river Barakar could not be established in the medical evidence since no ante-mortem injury was found by the Doctor (P.W.1 who held postmortem examination).

9. Advancing his argument Mr. Ughal submitted that the finding of the trial court in respect of alleged demand of dowry in cash as well as motorcycle relying upon the statements of P.W. 2 and P.W. 5 was on erroneous consideration. The witnesses are highly interested and made substantial development in their statements before the trial court beyond what they narrated u/s 161 Cr.P.C. and therefore not reliable at all. Yet no "Panchayati" was held in respect of torture or demand of dowry from Fula Devi.

10. Concluding his argument Mr. Ughal submitted that the conviction of the appellants u/s 201/34 I.P.C. is based upon erroneous consideration and there is no evidence at all on the record that the dead body was concealed by throwing it in the Barakar river after committing murder of Fula Devi. The prosecution miserably failed to discharge its burden required for the alleged charge u/s 304B I.P.C. for shifting the onus upon the appellants to prove their innocence u/s 113B of the Evidence Act.

11. As already stated as many as 7 witnesses were produced and examined on behalf of the prosecution. P.W. 1 Dr. Bhupendra Prasad Singh held the autopsy on the dead body produced before him as the dead body of Fula Devi. The Doctor

testified that the dead body was highly decomposed, soft tissues almost all over the body were found. Left leg, left forearm and left hand were absent. Similarly right upper limb and right lower limb below knee joint were absent. Chest cranial and abdominal cavity were found exposed. No viscera including larynx and trachea was found on the body.

12. Similarly the Doctor did not find the evidence of any ante-mortem injury but some parts of skeleton were preserved for further investigation at higher centre. He mentioned the parts of the body preserved referred to hereinabove:

(i) right femur bone.

(ii) Left upper limb and skull.

13. Time elapsed since death till postmortem examination was assessed about one week. The dead body was brought and identified by the constable No. 331, Choukidar 2/7 Bindeshwari Yadav, Sahdeo Yadav and Jugeshwar Mahto. He proved the postmortem report in his pen and signature-Ext. 1. In the cross-examination the Doctor admitted that the dead body was fully decomposed and the features of dead body were unrecognizable. He could not say as to whether the skeleton which was preserved were sent for examination or not. Though the Doctor admitted that by the examination of the skeleton it could be identified as to whether it was of a male or female but no specific question was put to him as to the sex of the skeleton.

14. Finally he testified that he mentioned the name of the deceased as per inquest report. From the careful scrutiny of the testimony of P.W. 1 Dr. Bhupendra Prasad Singh it is well gathered that the skeleton recovered from the bank of Barakar river and produced before him for the postmortem examination was unidentifiable since totally decomposed. Even the features of the dead body was unrecognizable. The most important thing which the Doctor disclosed was that he did not find the evidence of any ante-mortem injury on the body so as to infer that violence was caused prior to the death. The specific allegation of the prosecution was that the dead body of Fula Devi was concealed after committing her murder. The medical evidence failed to establish that the dead body belonged to Fula Devi who suffered culpable homicide. Similarly the medical evidence is further silent as to the cause of separation of all the four limbs from the trunk of the body. Whether the limbs were severed on account of violence or otherwise?

15. P.W. 2 Sahdeo Mahto is the brother-in-law of the deceased who used to live at village Manjhiladih within Birni Police Station. He testified that Fula Devi was married to the appellant Ram Sahay Mahto and after marriage when she came to her matrimonial home she was ill-treated by the appellants none other than the husband, father-in-law and mother-in-law. They were demanding Rs. 20,000/- in cash and a motorcycle. He further testified that only 15 days prior to the occurrence they had threatened that they would get Ram Sahay Mahto re-married failing to fulfill their demand of Rs. 20,000/- and would also kill the girl (Fula Devi). This fact was communicated to him by Fula Devi twice about the

demand of dowry by her in-laws. Only on 8.8.97 he came to know about the missing of Fula Devi and was further communicated that her dead body was thrown in Barakar river after committing her murder. He informed his father-in-law (P.W. 3) who enquired the matter and set out in search of his daughter on the bank of river. The police was also informed by him. The dead body which was recovered from the bank of the river was identified by him to be of Fulwa. His attention was drawn in the cross-examination to which he admitted having narrated before the police u/s 161 Cr.P.C. that he could not remember the day and the date when Fulwa twice had narrated about the demand of dowry in cash as well as in kind. He admitted that Fulwa had come once after marriage to his house and that her matrimonial home was situated at the distance of 1 k.m. He had good relation with his sister-in-law (Fulwa). Disclosing the name of resource person he testified that he came to learn from Manik Bishwakarma of village Manjhiladih that Fulwa was thrown in Barakar river after committing her murder and that Manik Bishwakarma was alive during his deposition. He testified having informed the police orally on the communication received from Manik Bishwakarma but he was advised to be sure about her missing after extensive search. He then went to his matrimonial home, informed the father-in-law (informant) and returned back. The police was informed on 8th at about 9 p.m. by presenting written report which was scribed by Deman. The police recorded the statements of the witnesses at the police station including him. He along with other witnesses searched the body of Fulwa Devi on the bank of Barakar river in the stretch of 30 k.m. since 8th. He found black blouse and black petticoat on the dead body but he could not say as to whether such clothes were seized by the police or not. He denied the suggestion that he used to roam Fula Devi on his motorcycle. He further denied that she was living with him at his home and on the date of alleged occurrence she was there with him and at the relevant time the appellant Ram Sahay Mahto was at Calcutta. He strongly contended that he never used to visit the matrimonial home of Fulwa Devi and controverted that his deposition was false.

16. The critical appreciation of the evidence of P.W. 2 indicates that he was not an eye-witness of the occurrence yet, he received communication from his co-villager Manik Bishwakarma that dead body of Fulwa Devi was thrown in Barakar river after committing her murder. Manik Bishwakarma was alive during his testimony and therefore the evidence of P.W. 2 is secondary in nature. His statement is relevant to the extent that Fulwa Devi prior to her death had conveyed him about the demand of dowry in cash as well as a motorcycle made by the appellants which is relevant. The witness though claimed to identify the dead body but the witness is silent about the source of identification but he admitted that there was petticoat and blouse on the dead body. The witness is further silent as to whether these cloths were blood stained or not.

17. P.W. 3 Bodhi Mahto is the informant as well as the father of the deceased Fulwa Devi. He testified that she died a year ago who was married to the appellant Ram Sahay Mahto. She was properly treated at her matrimonial home

for some time but thereafter all the appellants started abusing her explaining that inadequate dowry was given on the eve of her marriage and therefore, they placed the demand of Rs. 20,000/- in cash as well as a Rajdoot motorcycle failing to which they had threatened, that she would be killed. This fact was communicated by Fulwa to her mother, brother, sister-in-law and this witness. The appellants had agitated the matter of dowry before his another son-in-law of the informant Sahdeo Mahto (P.W. 2) and such demand was communicated to him by Sahdeo Mahto. He admitted that he could not fulfill their demand and when in the month of Asar when he took Fulwa Devi to her matrimonial village home, he was cautioned by the appellants that failing to fulfill their demand, second marriage of the boy (Ram Sahay Mahto) would be solemnized and that Fulwa would be thrown after committing her murder. Only 15 days after such event he received information about the missing of his daughter by his another son-in-law Sahdeo. He immediately went to the matrimonial home village of Fulwa Devi and found a number of people assembled at the turning of the road where he was communicated that his daughter died but her dead body could not be located in the evening. He presented a written report before the police by putting his thumb impression. The dead body of Fulwa Devi was recovered after 5 days and such recovery was informed to him by his son-in-law Sahdeo. On such information he with his son went to the place of recovery along with Sahdeo (P.W. 2) and identified the dead body. He identified the accused on the dock. In the cross-examination the witness affirmed that the demand of dowry as raised by appellants was communicated to him by his daughter (Fulwa) and similarly the appellant Nema Mahto has also threatened that he would occasion this witness to weep. Such threat was extended to him at two places viz. first at the parental home of Fulwa and second at the matrimonial village home Leghari when the witness had been there to take away his daughter. The appellant Nema Mahto had threatened in the month of "Jeth" and killed his daughter in the month of Sawan. Such threatening was extended by him to the witnesses in presence of the mother of the deceased. Though he was scared of such threatening but no action was taken by him. After institution of the police case on presentation of the written report he made extensive search of his daughter including on the defence of the appellant Nema Mahto that his daughter might have been washed away. After 4 days of the institution of case he came to learn that the dead body was recovered at Tunua Ghat on the bank of Barakar river. The limbs of the dead body were found eroded but her face was partly intact.

18. The critical analysis of the statement of the witness indicates that he supported the demand of dowry as made by the appellants in the near proximity of the missing of Fulwa and that she was perpetrated to ill-treatment at the hands of the appellants for dowry and that she was found missing from her matrimonial village home though the witness was not specific about the source of identification of the dead body being of Fulwa Devi but being the father and spotting the clothes he could be the best person to identify the body of his daughter as also on the ground that the face was partly intact with the body.

19. P.W. 4 Jogeshwar Mahto is the brother of deceased who testified the marriage of Fulwa with the appellant Ram Sahay Mahto and that after the marriage she had been visiting her parental home off and on. She used to complain against the appellants that she was being abused by the appellants who were demanding Rs. 20,000/- in cash as well as a Rajdoot motorcycle with ultimate threat that failing to fulfill their demand second marriage of her husband would be solemnized. Such demands were made by all the three appellants as communicated by Fulwa Devi during her visit to her parental home. The witness reiterated the statement of other two witnesses about the event of missing of his sister from her matrimonial village home and that he was apprised by women of her village that her sister was thrown after committing her murder. He accompanied his father and brother-in-law of village Majladih to the matrimonial village of Fulwa and made extensive search of her on the bank of Barakar river and in the meantime his father informed the police. After 4 days he received information about the recovery of dead body and pursuant to that he went to Nunuaghat where he identified that it belonged to his sister Fulwa. On information the police came there. He further deposed that the body was thrown in the river after committing her murder. In the cross-examination the witness testified that his sister had visited her parental home only at two occasions after her marriage and at both the occasions she had narrated her miseries about the assault inflicted to her and their demand. When the appellant Ram Sahay Mahto visited there in the month of "Asar" her Bidai was executed without any Panchayati. No information was made either to near relation or to police in this regard. He had visited her matrimonial village home. Within span of only 8 months of her marriage he had only once visited her matrimonial home where he stayed for moments and after interaction, he returned back and never visited again. To sum up this witness being the brother of fulwa reiterated the allegation of demand of dowry in cash and in kind as communicated by Fulwa during her visit to her parental home and the allegation of torture. He further corroborated that such demand was made in the near proximity of her missing from her matrimonial home.

20. P.W. 5 Tilki Devi is the wife of the brother of the deceased who testified the marriage of Fulwa Devi with the appellant Ram Sahay Mahto and that after her marriage she had visited at two occasions to her parental home. This witness also supported that during her such visit, Fulwa complained about the atrocities of her father-in-law and mother-in-law and husband who were demanding Rs. 20,000/- in cash and a Rajdoot motorcycle and that she was being tortured at their hands in various ways. The demand of dowry as such made by the appellants was conveyed to her as well as to her parents and brother. She admitted under cross-examination that she had not come across the Investigating Officer and for the first time she was deposing in the Court.

21. I find from the record that the charge-sheet submitted against the appellants by the police after investigation has got bearing of the name of this witness at sl. No. 4 which is indicative that her statement was recorded by the police u/s 161

Cr.P.C. but since in her substantive evidence before the trial court she admitted that she was delivering her statement for the first time in the Court and that she never came across the Investigating Officer her testimony is liable to be discarded.

22. P.W. 6 Suresh Prasad Singh is the Investigating Officer of the case who recorded the statement of the witnesses, prepared the inquest report of Fulwa Devi which was proved and marked Ext. 2. The dead body was sent for postmortem. He testified that there were two places of occurrence in the instant case. The first place of occurrence situated at village Karni i.e. the house of the appellants constructed with mud walls covered with tiles in which the appellants used to live with their agnates. The opening door of the house was towards north side. A room was pointed to him by disclosing that the murder of Fulwa Devi was committed in that room wherein she was living. The second place of occurrence was the bank of Barakar river where the dead body was found on the Northern bank. After investigation he submitted charge-sheet. When the attention of this witness was attracted in his cross-examination, he testified that P.W. 2 Sahdeo Mahto had not narrated before him that Fulwa had conveyed about the demand of dowry made by the appellants at two occasions. The witness further testified that the informant Bodhi Mahto had not narrated before him that his daughter had narrated to him as well as his son and daughter in law about her miseries at her matrimonial home, he admitted having instituted the case on the basis of the written report presented at the police station on 8.8.97 for the offence u/s 304B/201/34 I.P.C. and the time was mentioned 30 hours. He did not find blood stains at the place of occurrence and further admitted having not recorded the statement of the neighbours of the appellants including of Jiwan Mahto. He further admitted that though Karni village was consisting of 25 houses but did not record the statement of any witness of that village. The distance between the village Karni and Barakar river was assessed 1/2 - 1 km. without intervening village. He testified that he had recorded the statement of Bodhi Mahto, Sahdeo Mahto and Jogeshwar Mahto on 8th itself at the police station.

23. From the statement of the Investigating Officer, recorded before the Trial Court it is evident that he had examined material witnesses in course of investigation and recorded their statements u/s 161 Cr.P.C. much prior to the recovery of the dead body at the initial stage whereby only information regarding missing of Fulwa Devi was given by presenting a written report. Admittedly the written report presented by the informant Bodhi Mahto did contain the material facts of demand of dowry in cash as well as kind and the atrocities perpetrated to Fulwa Devi. It also contained threat extended by the appellants that they would re-marry Ram Sahay Mahto to another girl and therefore, the informant had reason to believe that the dead body of his daughter was concealed after committing her murder. The written report was presented on 8.8.97 at 30 hours and the witnesses are consistent that P.W. 2 Sahdeo Mahto and P.W. 4 Jogeshwar Mahto were present at the police station when the informant Bodhi Mahto had presented his written report though the statement of P.W. 2 and 4 before the

police did not contain the entire facts including demand of dowry and the torture perpetrated to Fulwa Devi in this regard and ultimately her missing from the place of occurrence. From the statement of the Investigating Officer I have no hesitation to observe that the investigation of this case was done by him in slipshod manner and he was not conscious about his duty to search out, the dead body of Fulwa Devi. The other witnesses made extensive search and ultimately the dead body was located. The Investigating Officer even did not take care to record the statement of neighbours of the appellants in their village Birni to explore the truth and the entire case is based upon circumstances as also of the brother, brother-in-law, father and sister-in-law of the deceased after recovery of her dead body.

24. There is no eye-witness of the occurrence in the instant case but the appellants have been convicted by the trial court by placing reliance upon the circumstantial evidence.

25. The appellant had produced six witnesses in their defence. D.W. 1 Manzoor Ali and D.W. 2 Khursheed Habib were the witnesses to the inquest report prepared by the Investigating Officer on the recovery of dead body on the Bank of Barakar river but none of the two witnesses was figured as prosecution witness in the charge-sheet. The defence took the advantage by producing them in the witness box on their behalf and they testified that no dead body was recovered in their presence nor any inquest was prepared of any dead body. Rather their signatures were obtained by the police.

26. D.W. 3 Babulal Yadav and D.W. 4 Basudeo Mahto were the witnesses on the alibi that at the relevant time the appellant Ram Sahay Mahto was working at Calcutta throughout, D.W. 3 admitted being the uncle of the appellant Ram Sahay Mahto that 20-25 persons were working under him but he did not maintain their attendance register. D.W. 4 happened to be the cousin of Ram Sahay Mahto and his statement also did not inspire confidence being the relation witness and no documentary evidence was produced in support of the fact that at the relevant time the appellant Ram Sahay Mahto was working at Calcutta in such and such job. D.W. 5 Bindeshwar Yadav was the Choukidar of Kapila Panchayat and he testified that he took the dead body on 14.8.97 to the Sadar Hospital. The dead body was not identifiable but it belonged to a woman he admitted that the brother and father of the girl had also come with him from Baramasia with the dead body and that the dead body was identified by the members of the family of the deceased. He further deposed that there was no cloth on the body.

27. D.W. 6 Kauleshwar Yadav has tried to establish illicit relation between the deceased Fula Devi and her brother-in-law P.W. 2 Sahdeo Mahto. However, he admitted under cross-examination that he had neither come across the wife of Ram Sahay Mahto nor any occasion to talk with her. He did not know as to how the wife of Ram Sahay Mahto died. Learned Trial Court gathered from the statements of the defence witnesses that no direct evidence was produced in

support of the cause of death of Fulwa Devi or the circumstances leading to her disappearance from her matrimonial village home rather, the defence unsuccessfully attempted to make out the case of alibi of the appellant Ram Sahay Mahto that at the relevant time he was working at Calcutta. Similarly the defence could not establish in the statement of D.W. 6 Kauleshwar Yadav that Fulwa had illicit relation with P.W. 2 Sahdeo Mahto and that she was living with him and not at her matrimonial village home.

28. It is settled law that even if the defence case fails in showing their innocence the burden is upon the prosecution to make out a full proof case against the accused/appellants

29. On the basis of the above materials the trial court below found the following as contained in paragraph 89 of the judgment:

(i) The deceased Fulwa Devi was married with Ram Sahay Mahto S/o Nem Mahto and Parwati Devi within seven years of her death.

(ii) The dead body of the deceased was found in river Barakar on 13.8.97 and there are consistent evidence that the deceased died otherwise than under normal circumstances.

(iii) The deceased was at his Sasural prior to her death.

(iv) The deceased was traceless but neither information was given to her parents nor information was given to the police.

(v) The deceased was subjected to assault and harassment by the accused persons who are husband and his other relatives.

(vi) Such cruelty and harassment was in connection with demand of dowry.

(vii) Such cruelty and harassment was made soon before her death.

30. On the basis of such finding of the trial court a presumption was raised against the appellant u/s 113B of the Indian Evidence Act which reads as follows:

113B. 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 before 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 purposes of this section, "dowry death", shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).

It is settled law that presumption u/s 113B of the Evidence Act will operate if prosecution is able to establish circumstances set out u/s 304B I.P.C. that there must be material to show that soon before her death the victim must have been subjected to cruelty or harassment and that cruelty or harassment was for or in connection with the demand for dowry.

32. From the materials collected I have no hesitation to observe that the prosecution by discharging its burden shifted the onus upon the appellants giving rise to presumption of the charge u/s 304B I.P.C. and the appellants failed to show their innocence as against such presumption u/s 113B Indian Evidence Act. Even if it is presumed that the body recovered from the bank of Barakar river was unidentifiable Fulwa Devi could not be recovered dead or alive in the case of corpus delicti. The charge u/s 304B I.P.C. is sustainable.

33. From the materials collected above I find that the body recovered from the bank of Barakar river was in a state of decomposition without limbs from its elbows and knee joints. But the father of the victim P.W.3 Bodhi Mahto is consistent that part of the face was intact and that he recognized the dead body also from the wearing clothes. Such recovery of body identified to be of Fulwa Devi gives rise to strong proof that it was thrown in the river. There is no explanation as to the missing of limbs from its joints and a reasonable presumption is attracted against the appellants u/s 113B of the Evidence Act who failed to show their innocence.

In the aforesaid premises and discussion I have no hesitation to observe that the trial court has rightly held the appellants guilty for the charges u/s 304B/201/34 I.P.C. The grounds shown and the appeal argued hereinabove does not call for interference. In the result this appeal is dismissed. The judgment of conviction and order of sentence passed against the appellants in Sessions Trial No. 51 of 1998 by the 5th Addl. Sessions Judge, Giridih is affirmed and upheld.