
(2013) 09 PAT CK 0093

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 79 of 1995

Subh Kant Jha, Jay Shankar Jha @ Deepak and Manorama
Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113(b), 113B
Penal Code, 1860 (IPC) — Section 304(B), 304B, 34, 498(A), 498A

Citation : (2013) 09 PAT CK 0093

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

**Advocate : Krishna Prakash, for the Appellant; Sujeet Kumar Singh, Addl. P.P.,
for the Respondent**

Final Decision : Allowed

Judgement

Hemant Kumar Srivastava, J.—This Criminal Appeal has been directed against the judgment of conviction and order of sentence dated 24-05-1995 passed by learned IInd Additional Sessions Judge, Begusarai in Sessions Trial No. 450 of 1991 by which and whereunder, he convicted the appellants for the offences punishable under Sections- 304(B), 498A of the Indian Penal Code and Section-4 of Dowry Prohibition Act and accordingly, all the appellants were sentenced to undergo rigorous imprisonment for 10 years for commission of the offence punishable under Section- 304(B) /34 of the Indian Penal Code, to undergo rigorous imprisonment for two years for commission of the offence punishable under Section-498A /34 of the Indian Penal Code, to undergo rigorous imprisonment for one year for commission of the offence, punishable under Section- 4 of Dowry Prohibition Act. However, all the sentences were ordered to run concurrently. In brief, prosecution case is that P.W. 12 namely, Rajendra Jha gave a written report to Officer-in-charge, Neema Chandpura Police Station,

Begusarai on 04-04-1991 to this effect that marriage of his daughter namely, Babita Devi @ Nutan was solemnized with appellant No. 2 and the appellant No. 2 started demanding motorcycle, ear ring and Rs. 6,000/- cash but he was unable to fulfill the aforesaid demand. He further stated in his written report that whenever he went to take Bidai of his daughter, she was not allowed to go to her parental home and the appellants were openly saying that they would not allow his daughter to go to her parental home, unless their demand is fulfilled and appellants were giving threatening to kill her. He further stated that on 04-03-1001 at about 1.00 p.m. Bishundeo Mishra (P.W. 10) came to his house and informed him that appellants put his daughter on fire, as a result of which, she sustained severe burn injuries. Having got the aforesaid information, he was going to Chandpura to see his daughter but he came to know at Begusarai that his daughter died of her injuries and then, he went to hospital where the postmortem of dead body of his daughter had already been done. He claimed that his daughter was burnt to death by the appellants due to non-fulfillment of dowry demand.

2. On the basis of aforesaid written report, Neema Chandpura P.S. Case No. 20 of 1991 under Sections- 304(B), 498A of the Indian Penal Code and 3 /4 of Dowry Prohibition Act was registered and, accordingly, formal FIR for the above-said offences against the appellants was drawn up. The matter was investigated by the I.O. and after completion of investigation, police submitted charge sheet for the above-said offences. The cognizance of the above-said offences was taken and the case was committed to the court of sessions, in usual way.

3. All the appellants were put on trial and they were charged for the offences punishable under Sections- 304(B), 498(A) /34 of the Indian Penal Code as well as Section- 4 of Dowry Prohibition Act. Appellants denied the charges and claimed to be tried.

4. In course of trial, prosecution examined, altogether, 14 witnesses and also got exhibited signature of Shyam Kishore Singh (P.W. 7) as Ext-1, signature of Sushil Kumar Singh on seizure list as Ext. 1/1, postmortem report of deceased as Ext-2, Fardbeyan as Ext. 3, formal FIR as Ext. 4 and sanction order as Ext. 5. The statements of appellants were recorded under Section- 313 of the Cr.P.C. in which, they reiterated their innocence and stated that the deceased died accidentally. No evidence was adduced by the appellants in support of their defence but from perusal of statements recorded u/s. 313 of the Cr.P.C. as well as trends of cross-examination of prosecution witnesses, it would appear that the defence of the appellants was total denial of the prosecution story and the specific stand of the appellants before the trial court, was that the deceased died accidentally.

5. The learned trial court, having considered the materials available on the record, convicted and sentenced the appellants in the manner as stated above, passing the impugned judgment of conviction and order of sentence.

6. During pendency of this appeal, the appellant No. 1 namely, Shubhkant Jha died and, accordingly, his appeal was abated.

7. Learned counsel appearing for the appellants challenged the impugned judgment of conviction and order of sentence arguing that the prosecution could not succeed to prove all the ingredients of Section- 304(B) of the Indian Penal Code and as a matter of fact, there was nothing before the learned trial court to come to the conclusion that appellants have demanded dowry and the deceased was subjected to cruelty by the appellants, soon before her death and, therefore, the above-stated important ingredients of Section- 304(B) of the Indian Penal Code were lacking but in spite of that, learned trial court convicted and sentenced the appellants passing the impugned judgment of conviction and order of sentence. In support of his contention, he referred a decision reported in Harjit Singh Vs. State of Punjab, in which, it has been held by the Apex Court of this country that very conjoint reading of Section- 304(B) of the IPC and Section- 113(b) of the Evidence Act, it will be apparent that the presumption arising thereunder, will operate if, the prosecution is able to establish the circumstances as set out in Section- 304(B) of the Indian Penal Code. Learned counsel for the appellants also relied on a decision reported in (2003) 8 SCC (Heeralal & Ors. v. The State (Government of NCI), Delhi in which, it has been held by Apex Court of this country that prosecution must show that soon before the occurrence, the victim was subjected to cruelty or harassment and no straitjacket formula can be laid down as to what would constitute a period of "soon before" the occurrence and it has to be determined by the courts, depending upon the facts and circumstances of each case and existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. It has also been held in the above-said decision that if, the alleged incident of cruelty is remote in time, and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

8. Learned counsel for the appellants, further submitted that very vague allegation of demand of dowry as well as torturing has been made in this case and it has not been disclosed by the prosecution as to when the aforesaid demand was made and, furthermore, prosecution failed to prove this fact that the deceased was subjected to cruelty or harassment in connection with demand of dowry, soon before her death and therefore, learned trial court, wrongly, presumed the death of the deceased as dowry death. Learned counsel for the appellants further submitted that no smell of Kerosene oil was found on the dead body of the deceased at the time of postmortem examination and, therefore, the story of putting the deceased on fire was doubtful and, moreover, in course of trial, it came to light that the information regarding the incident was immediately, given to concerned police station and the appellants also called a doctor who examined the deceased and, thereafter, she was taken to hospital, where she died and furthermore, some witnesses specifically, stated that the deceased was caught in fire accidentally. Therefore, the above-said circumstances, clearly, indicate that appellants tried to save the life of the

deceased but learned trial court ignored the aforesaid circumstances and came on wrong conclusion.

9. On the other hand, learned Additional Public Prosecutor appearing for the state supported the impugned judgment of conviction and order of sentence arguing that admittedly, the marriage of deceased was solemnized with the appellant No. 2 on 31-05-1990 and the deceased died on 04-03-1991 i.e. less than one year of her marriage and, furthermore, the death of deceased was not natural and so far as demand of dowry as well as torturing is concerned, the witnesses including the informant, specifically, stated that the deceased was subjected to cruelty and harassment due to non fulfillment of demand of dowry and, therefore, the prosecution successfully, proved all the ingredients of Section- 304(B) of the IPC and, therefore, learned trial court, rightly, convicted and sentenced the appellants in the manner as stated above.

10. P.W. 1 Damodar Jha is a neighbour of the appellants and stated that having heard noise, he went to the house of the appellants and saw that appellants and several villagers were pushing the door of a room from outside and some smell was coming out from the aforesaid room. This witness further stated that after breaking the door of aforesaid room, the deceased was taken out in burn condition and at that time, she was crying for water. This witness further stated that one doctor namely, Ram Narayan Mishra (P.W. 9) was called and he gave some treatment to the deceased and while the treatment was being given to the deceased by P.W. 9 Dr. Ram Narayan Mishra, he went to his home and later on, he came to know that while the deceased was being taken to Begusarai for treatment, she died on her way. He admitted in his cross-examination that when he came at the house of appellants, he found the room, in which, the deceased was burning, was closed from inside and the appellants and several other villagers were trying to break the door of the aforesaid room. He also admitted that he had never seen the appellants torturing the deceased.

11. P.W. 2 Angira Prasad Singh is also a neighbour of the appellants and he stated almost similar story, which has been stated by P.W. 1. He added in his statement that one ASI came to his village and after death of the deceased; she was cremated in the village. P.W. 3 Neelanand Singh has been tendered by the prosecution and on being cross-examined by the defence, this witness stated that the relation of the deceased with her in laws was cordial and there was no dispute between the appellants and deceased on the point of dowry nor the deceased was ever subjected to cruelty and harassment by the appellants.

12. P.W. 4 Tulsi Das is an another co-villager of the appellants and stated that having heard the noise, when he came at the house of the appellants, he saw that the deceased was taken out from a room in burn condition and several persons were present there. This witness also stated that P.W. 9 Dr. Ram Narayan Mishra attended the deceased but expressed his inability to give any treatment to the deceased and advised the appellants and others to take the deceased to Begusarai but later on, he heard that while the deceased was being taken to

Begusarai, she died on her way. This witness also stated that one ASI came in the village.

13. P.W. 5 Chhathu Sah also stated the same fact and stated that the deceased was taken to Begusarai hospital by a vehicle.

14. P.W. 6 Manohar Prasad Singh has been tendered by the prosecution and in cross-examination, this witness stated that the deceased was taken out from a room and at that time, she was alive.

15. P.W. 7 is a witness on seizure list and this witness stated that in course of investigation, Daroga came at the place of occurrence and seized one Dhenki as well as flying shirt and prepared seizure list in his presence. He as well as witness Sushil Kumar Singh put their signatures on seizure list. The signatures of this witness as well as Sushil Kumar Singh have been marked as Exts. 1 & 1/1 respectively. This witness stated that he had seen the deceased in burn condition and when she was asked by the villagers, she disclosed that she was caught in fire accidentally, due to falling of "CHIRAL". P.W. 9 Ram Narayan Mishra is a co-villager of appellants and stated that at about 6.00 a.m. someone gave information to him that the deceased had been caught in fire and having got the aforesaid information, he went to the place of occurrence and saw that the deceased was being taken on a cot to his home but he directed those persons, who were carrying the deceased on the cot, to take back her to the house of her in-laws and he also accompanied the aforesaid persons. He noticed that the whole body of deceased was burnt and she was crying. He further stated that he advised the people to take the deceased to Sadar hospital by a fast vehicle as he was incapable to provide any treatment to the deceased. He further stated that he informed the police about the above-said incident and one ASI came and in his presence, the aforesaid ASI started verifying the incident and this witness left the place of occurrence. He further stated that when he attended the deceased, her in laws including her husband as well as several other villagers were present there. This witness further stated in his cross-examination that the husband and father-in-law of the deceased requested him to give some treatment to the deceased but at that time, the deceased was not in conscious state. This witness also stated that ASI inquired from the deceased and the deceased replied to the queries of ASI and at that time, several villagers were present there.

16. P.W. 10 Vishundeo Mishra is Fufa of the deceased and stated that he was mediator of the marriage of the deceased and appellant No. 2. He stated that at the time of marriage of deceased with appellant No. 2, there was no demand of dowry and the marriage of deceased had taken place one year prior to the alleged occurrence. This witness further stated that prior to death of the deceased, P.W. 12 had come to his house to take back the deceased and he along with P.W. 12 had gone to the house of appellants and requested them to send the deceased to her parental home but appellant, Shubhkant Jha (since deceased) stated that he would consider the Bidai of the deceased tomorrow and requested him as well as P.W. 12 to come tomorrow and after that, he as well as

P.W. 12 returned to the home of this witness. He further stated that again on the next day, he alongwith P.W. 12 went to the house of appellant, Shubhkant Jha and asked for Bidagiri but the appellant Shubhkant Jha refused the Bidai saying that demand of motorcycle and Rs. 6,000/- in cash had not been fulfilled and then he along with P.W. 12 returned and P.W. 12 went to his home. This witness further stated that after 3-4 days, he heard that the deceased Nutan Devi had set herself on fire and then, he went to the house of appellants, where he saw the deceased in burn condition but she was alive at that time and P.W. 9 was giving treatment to her. He further stated that one ASI of the local police station also came there and inquired about the matter. He further stated that P.W. 9 advised the in laws of the deceased to take her to hospital as he was incapable to provide treatment to the deceased. He further stated that he got sent the deceased to hospital and went to the village of P.W. 12 for giving information in respect of the aforesaid incident. He further stated that he narrated the entire incident to P.W. 12 but unfortunately, the deceased died in hospital and after that, P.W. 12 gave information to the police station. On being cross-examined by the defence, this witness admitted that he got information about the death of deceased at about 12.30 p.m. in Begusarai hospital. At paragraph-7 of his cross-examination, he admitted that he left Chandpura village while the arrangements were being made to take the deceased to Begusarai hospital. At paragraph-8 of his cross-examination, he expressed his inability to say as to whether there was any quarrel between the deceased and her in laws or not. He also admitted in the same paragraph that the marriage of deceased with the appellant No. 2 was settled in his presence as he was mediator of the aforesaid marriage but appellants had not made any demand at the time of settlement of the marriage. He also admitted that after marriage, the deceased came to her Sasural and after some days, she went to her parental home, where she stayed for near about 10 days. He also stated that P.W. 12 came to his village three to four times after solemnization of marriage of deceased but he could not disclose the month of last visit of P.W. 12 to his village. He also admitted that the appellants never misbehaved with P.W. 12. At paragraph-9 of his cross-examination, he stated that P.W. 12 had never discussed about the dowry in his presence but the deceased had discussed about dowry with him at her matrimonial home and the aforesaid discussion was made after 8-9 months of the marriage and he told the deceased that there was no discussion about the dowry between the P.W. 12 and the appellants and after that, the deceased never discussed with him about the dowry. At paragraph-11 of his cross-examination, this witness admitted that on the alleged date of occurrence, when he met the deceased, she was not in conscious state and after the alleged occurrence and before her death, the deceased stated nothing to him.

17. P.W. 11 is brother of P.W. 10. This witness stated that on the alleged date of occurrence, he got information about the occurrence and went to the house of appellants, where he saw the deceased in burn condition and also saw that P.W. 9 was giving treatment to the deceased. This witness further stated that P.W. 9

advised to take the deceased to Begusarai and after that, the in laws of deceased took her to Begusarai by a vehicle. This witness admitted in his cross-examination that P.W. 10 gave information to him about the occurrence but P.W. 10 stated nothing to him except the information in respect of the alleged occurrence. He also admitted that when he went to the house of appellants, the deceased was in conscious state and the police also came there. This witness stated that he stayed at the house of appellants for 10-15 months and when he returned to his home, he came to know that the deceased was taken to Begusarai.

18. P.W. 12 Rajendra Jha is the informant of this case. He stated that marriage of his daughter was solemnized on 31-05-1990 with Jai Shankar Jha @ Deepak and after solemnization of the marriage, his daughter went to her in-laws house where she stayed for near about one month and after that, he brought his daughter to his home, where she stayed for near about one month and after that, she was taken to her matrimonial home by her husband, appellant, Jai Shankar Jha. He further stated that he came to know that his daughter was pregnant and he went 4-5 times to matrimonial home of his daughter with intent to take her Bidagiri but the appellant, Shubhkant Jha refused to send the deceased to her parental home, unless the demand of Rs. 6,000/-one Rajdoot Motorcycle and gold ear ring is fulfilled. This witness stated that his last visit to the house of appellants was on 30-03-1991 and on that date, all the appellants repeated the aforesaid demand and asked him to leave their house and also threatened to kill the deceased. He further stated that he narrated the above-said incident to P.W. 10 because he was mediator of the marriage of the deceased and again, on the same night, he met the appellant, Shubhkant Jha and requested for Bidai of the deceased but the appellant, Shubhkant Jha told that he will consider on the aforesaid issue tomorrow. This witness further stated that again on 31-03-1991, he along with P.W. 10 went to the house of appellants and asked for Bidai of the deceased but the appellant, Shubhkant Jha became furious and refused to send the deceased to her parental house and also threatened that the deceased would be killed, if, the above-said demand is not fulfilled. He further stated that he returned to his home and on 04-04-1991, P.W. 10 came to his house at about 1.00 p.m. and informed that his daughter was burnt to death by the appellants and she had been taken to Begusarai hospital and having got the aforesaid information, he along with his son (P.W. 13) came to Begusarai hospital, where they found the deceased dead and they noticed that the whole body of the deceased was burnt. He also stated that postmortem on the dead body of the deceased was done and at that time, 25-30 co-villagers of the appellants were present and the aforesaid persons were talking that the deceased was killed by her inlaws due to non-fulfillment of dowry. He further stated that he went to Chandpura Police Station and gave a written report. On being cross-examined by the defence, this witness stated that he could not say on which date and month, he had gone to take Bidai of the deceased prior to 30-03-1991. He further stated at paragraph-6 of his cross-examination that the

demand of motorcycle, Rs. 6,000/- in cash and gold ear ring was made by his Samdhi Shubhkant Jha for the first time; when he visited the house of the appellants second time to take Badai of the deceased. He further stated that the aforesaid demand was made after two months of the marriage. He could not say the date of the aforesaid demand. This witness stated that the aforesaid demand was made in presence of P.W. 10. He also stated that the appellants had given threatening to kill the deceased, when he visited second time to the house of the appellants but he did not give any information regarding the aforesaid threatening to any court. He also stated that the aforesaid threatening was given by the appellants, when he was alone and the aforesaid threatening was not given in presence of P.W. 10. He further stated that he had made statement before the police about the aforesaid threatening. At paragraph-8 of his cross-examination, he admitted that when he reached at Begusarai hospital, the appellants Shubhkant Jha and Jay Shankar Jha were present in Begusarai hospital but he did not talk with the above-said appellants. He also stated that several persons were present in the hospital and they were talking that the deceased was killed due to non fulfillment of dowry but he did not disclose the aforesaid fact to any other person. He further stated at paragraph-9 of his cross-examination that he wanted to take the deceased to his house for delivery as she was pregnant and the deceased also wanted to deliver her baby at her parental home.

19. P.W. 13 Ajay Kumar Jha is brother of the deceased. This witness stated that after marriage, his sister went to her inlaws house and after that, he went twice to in-laws house of the deceased to take her Bidai and similarly, his father had also gone to the house of the appellants 3-4 times to take the Bidai of his sister but whenever he as well as his father visited the appellants' house to take Bidai of the deceased, the appellants used to demand motorcycle, Rs. 6,000/- in cash and ear ring and used to give threatening that they would not allow the deceased to go to her parental home if, the above-said demand is not fulfilled. This witness stated that P.W. 10 gave information regarding the occurrence and thereafter, he along with his father as well as P.W. 10 came to Begusarai hospital where he found his sister dead and her whole body was burnt. This witness further stated that he along with his father and P.W. 10 went to police, where his father gave written report to the police. He further stated that whenever, he visited to the house of appellants, his sister told him to fulfill the demand of motorcycle Rs. 6,000/- in cash and ear ring, otherwise she would be killed. On being cross-examined by the defence, this witness admitted that P.W. 10 had disclosed him as well as his father that the deceased was burnt to death by the appellants. He also admitted that when he came to Begusarai hospital, appellants, Jay Shankar Jha and Shubhkant Jha were present in the hospital but he did not have any talk with the aforesaid appellants nor he inquired from the aforesaid appellants about the alleged occurrence. He admitted at paragraph-6 of his cross-examination that his sister was literate. He expressed his inability to say as to when for the first time, appellants made the above-said demand. He also expressed his

inability as to when the appellants had given threatening to kill the deceased. He stated that he had made statement before the police about the aforesaid threatening as well as this fact that his sister had told him that she would be killed, if, the demand of the appellants is not fulfilled. This witness also admitted at paragraph-9 that whenever, he went to the house of appellants, P.W. 10 & P.W. 11 also accompanied him but appellants never met the above-said demand in presence of P.W. 10 & P.W. 11 nor his sister disclosed about the aforesaid demand before P.W. 10 & P.W. 11.

20. P.W. 13 is I.O. of this case. This witness stated that on 04-04-1991, he was posted as Officer-in-charge of Neema Chandpura police station and on the same day, P.W. 12 gave a written report to him upon which, he registered Neema Chandpura P.S. Case No. 20 of 1991 and took the charge of investigation. He further stated that local doctor had sent O.D. slip of injuries of deceased, Nutan Devi and on the basis of aforesaid O.D. slip, he had entered Sanha No. 51 dated 04-04-1991 and to make inquiry, he had sent S.I. Devendra Dwivedi. He further stated that he went to the house of the appellants and on the door of one room of the house of the appellants, he found marks of breaking of the door and he also found sign of smoke on the walls and roof of the aforesaid room but he did not find any smell of Kerosene oil in the aforesaid room. He recorded the statement of witnesses and at the order of Superintendent of Police, he handed over charge of investigation to S.I. Ram Lakhani Mehata on 10-04-1991. On being cross-examined by the defence, he admitted at paragraph-3 of his cross-examination that on 04-04-1991, at about 7.30 a.m., the information regarding the burn of the deceased was received in his police station and the aforesaid information was given by a doctor. He further admitted that having received the aforesaid information, he sent one ASI Devendra to verify the aforesaid information and the aforesaid ASI Devendra brought the statement of appellant, Jai Shankar Jha and on the basis of aforesaid statement of Jay Shankar Jha, he entered Sanha but he did not mention the aforesaid Sanha in the case diary. He further admitted that he got information about the death of deceased at about 4.00 p.m. at 04-04-1991 by informant but after death of the deceased, he did not meet the appellants though the appellants had met his superior officials. He also admitted that he found sign of breaking of the door of room of the deceased.

21. P.W. 8 Ashok Kumar Rai is doctor, who conducted postmortem examination on the dead body of deceased and found that the whole body of the deceased was burnt. He also found that the deceased was carrying pregnancy of six months. He opined that the cause of death of the deceased was due to 95% burn injuries and the time elapsed since death was within 24 hours. He proved the postmortem report.

22. On perusal of evidences available on the record, I find that P.Ws. 1, 2, 4 & 5 stated that when they reached at the house of the appellants, the deceased was burning in a room, which was closed from inside and after breaking the door of the aforesaid room, the deceased was taken out. The aforesaid witnesses also

stated that P.W. 9 came on call and some treatment was given to the deceased by P.W. 9 and one ASI also came. P.W. 9 stated that having received information, he went to the house of the appellants and found the deceased in burn condition and, thereafter, he advised to take the deceased to Sadar hospital as he was not able to provide any treatment to the deceased. This witness also admitted that he informed the police and one ASI came in village and the said ASI inquired from the deceased and the deceased replied to the queries of ASI.

23. P.W. 10 is Fufa of the deceased and this witness stated that he had played the role of mediator in the marriage of the deceased with the appellant, Shubhkant Jha and at the time of marriage, there was no demand of any dowry.

24. P.W. 12, the informant of this case stated that the demand of dowry was made by Shubhkant Jha after solemnization of marriage and on 30-03-1991, the in-laws and husband of the deceased, again made demand of dowry giving threatening that if their demand is not fulfilled, they would not allow the deceased to go to her parental home. This witness stated that he informed about the aforesaid demand to P.W. 10 and again, he along with P.W. 10 again went to the house of the appellants on the same night and asked for Bidagiri of the deceased but Shubhkant Jha told that he would consider about the Bidagiri of the deceased tomorrow and after that, on 31-03-2011, he along with P.W. 10m went to the house of the appellants and asked for Bidagiri of the deceased but Shubhkant Jha became furious and stated that if the demand of motorcycle, Rs. 6000/- cash and gold ear ring is not fulfilled, the deceased would be murdered and after that, P.W. 12 returned to his home.

25. P.W. 13 Ajay Kumar Jha, the brother of the deceased also told that whenever he went to take Bidagiri of his sister, the in laws and husband of the deceased used to demand motorcycle, Rs. 6000/- cash and gold ear ring in dowry but he failed to remember as to when for the first time, the above-said demand was made.

26. It would appear that only P.Ws. 10, 12 & 13 are the witnesses on the point of demand of dowry. P.W. 10 admitted at paragraph-2 of his examination-in-chief that he along with P.W. 12 had gone to the house of appellants to take Bidagiri of deceased, and Shubhkant Jha, the father-in-law of the deceased, told them that he would consider for Bidagiri of the deceased tomorrow and requested him as well as P.W. 12 to come tomorrow and, thereafter, he along with P.W. 12 again went to the house of the appellants on the next day and then, father in law of the deceased, namely, Shubhkant Jha refused to send the deceased to her parental home unless his demand of motorcycle, Rs. 6000/- is fulfilled. This witness admitted at paragraph-8 of his cross-examination that the in-laws and husband of the deceased never misbehaved with P.W. 12. This witness also admitted at paragraph-9 of his cross-examination that P.W. 12 had never discussed with him about the above-said demand of dowry but the deceased had discussed with him about the above-said demand of dowry just after 8-9 months of her marriage and after that, the deceased never discussed with him about the

alleged demand of dowry.

27. It would appear from perusal of the above-said evidences that P.Ws. 10 and 12 have made contradictory statements because P.W. 12 stated that on 30-03-1991, the inlaws and husband of deceased made demand and threatened him that they would not permit the deceased to go to her parental home unless their demand is fulfilled and after that, he went to the house of P.W. 10 and informed him about the above-said demand but P.W. 10 stated that P.W. 12 never discussed with him about the alleged demand. Similarly, P.W. 13 also stated that he never discussed about the alleged demand with any person except his father. P.W. 13 expressed his inability to say as to when for the first time, above-said demand was made.

28. P.W. 12 stated that the marriage of deceased was taken place on 31-05-1990 and similar statement has been made by the P.W. 13. Moreover, date of marriage has not been denied by the defence and admittedly, the deceased died on 04-03-1991 i.e. within 10 months of her marriage.

29. Almost all the prosecution witnesses stated that the deceased died at her matrimonial home due to burn injuries and P.W. 8 who conducted the postmortem on the corpus of the deceased also found burn injuries on the person of the deceased. So, it is well proved fact that the deceased died in other than normal circumstances.

30. It is well settled principle of law that in order to attract the application of Section- 304B of the Indian Penal Code, the prosecution has to prove the following ingredients:--

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstances;
- (ii) such a death should have occurred within 7 years of her marriage;
- (iii) she must be subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

31. It is also well settled principle of law that the presumption u/s. 113B of the Evidence Act shall be raised only on proof of the following essentials:--

- (i) the question before the court must be whether the accused has committed the dowry death to the woman;
- (ii) the woman was subjected to cruelty or harassment by her husband or his relatives;

(iii) such cruelty or harassment was for or in connection with any demand of dowry; &

(iv) such cruelty or harassment was soon before her death.

32. In the instant case, admittedly, the deceased died within 7 years of her marriage and her death was caused due to burn injuries but so far as torturing and harassment to the deceased are concerned; neither P.W. 10 nor P.W. 12 have stated in their depositions regarding the same. No doubt, P.W. 13 brother of the deceased stated that when he met the deceased, the deceased disclosed that her in-laws including her husband had given threatening to kill her if their demand is not fulfilled and, furthermore, P.W. 13 stated that he had disclosed the aforesaid fact to his father (P.W. 12) but P.W. 12 has, nowhere, stated that his son (P.W. 13) had disclosed before him that the deceased had made the above statement before him and, therefore, except the statement of P.W. 13, there is nothing on the record to show this fact that the deceased was subjected to cruelty and harassment by her inlaws including her husband due to non-fulfillment of above-said illegal demand. It is an admitted position that P.W. 10 is own Fufa of the P.W. 13 and he is co-villager of the appellants. Furthermore, P.W. 13 admitted that his Fufa as well as Fua oftenly used to visit the house of the appellants and they used to talk with the deceased but P.W. 10 has admitted in his deposition that except on one occasion, the deceased never talked with him about the illegal demand and moreover, P.W. 10 has, nowhere, stated that the deceased had disclosed before him that she was subjected to cruelty and harassment by her in-laws as well as her husband. The aforesaid circumstance indicates that the deceased was never subjected to cruelty and harassment by her in laws including her husband, because had she been put into harassment and cruelty due to non-fulfillment of illegal demand, she would have certainly disclosed the above-said fact before her Fua & Fufa and, therefore, in my view, the prosecution could not succeed to prove the factum of illegal demand as well as torturing to the deceased by the appellants. Apart from this, there is nothing on the entire record to show that the deceased was subjected to cruelty soon before her death and, therefore, I am of the opinion that the prosecution has failed to prove one of the above-said important ingredients of Section- 304B of the Indian Penal Code. P.W. 12 has admitted that the deceased was carrying pregnancy at the time of alleged occurrence and he wanted to take back the deceased to his home so that the deceased could deliver the baby at his home and the deceased also wanted to have deliver her baby at her parental home and furthermore, P.W. 12 admitted in his deposition that on 30-03-1991, he met the father-in-law of the deceased and requested to send the deceased to her parental home, but father-in-law of the deceased told him that he would consider the Bidagiri of the deceased tomorrow and the aforesaid fact was also admitted by P.W. 10.

33. P.W. 10 & P.W. 12 admitted in their deposition that after one month of the marriage of the deceased, the deceased returned to her parental home where she remain stayed for near about one month and after that, she was again taken

to her in-laws house by her husband. P.W. 12 stated that he went to the house of appellants to take Bidai of deceased for 4-5 times but the appellants refused to send the deceased. It is apparent from the aforesaid fact that after one month of the marriage, the deceased went to her parental home and the appellants did not create any hurdle in sending the deceased to her parental home. It is an admitted position that the deceased was carrying pregnancy at the time of alleged occurrence and the P.W. 12 wanted to take back the deceased to his home so that the deceased could deliver the baby at his home and the deceased also wanted to have deliver her baby at her parental home. It is also an admitted position that when P.w. 12 along with P.W. 10 visited the house of the appellants and requested for Bidai, the father-in-law of the deceased requested them to come on next day so that he could consider for sending the deceased to her parental home and when on the next day, P.W. 10 & P.W. 12 visited the house of the appellants, they refused to send the deceased to her parental home. The above-said circumstances go to show that the deceased was not allowed to go to her parental home as she was carrying pregnancy whereas; the P.W. 12 wanted to take back the deceased to his home.

34. The statements of P.Ws. 1, 2, 3, 4, 5, 6 & 11 go to show that the deceased committed suicide and furthermore, the statement of P.W. 14 reflects that he found sign of violence on the door of room in which, the deceased was caught in firer. Therefore, taking all the above-said circumstances together, it goes to show that the deceased committed suicide when she was not allowed to go to her parental home to have deliver baby as she also wanted to have deliver her baby to her parental home.

35. P.Ws. 2, 4, 5, 9 & 10 stated in their depositions that after the alleged occurrence, one ASI of concerned police station came in the village and inquired about the incident. P.W. 10 Vishundeo Mishra who is own Fufa of the deceased stated that when he reached on the place of occurrence, he found the deceased in burn condition and P.W. 9 was giving treatment to her and at that time, the deceased was alive. This witness stated that one ASI came and started making enquiry about the incident. P.W. 9 has admitted that he informed the local police and on his information, one ASI of local police station came there and inquired into the incident. Therefore, it is well proved that after the alleged occurrence, one, ASI of local police station came there and made inquiry in respect of the aforesaid incident. P.W. 14 admitted in his deposition that he got information about the incident and on the basis of O.D. slip of a local doctor, he entered Sanha No. 21 dated 04-04-1991 and send one ASI Devendra Dwivedi to inquire into the incident. This witness also admitted at paragraph-3 of his cross-examination that for the first time, he got information about the incident at 7.30 a.m. on 04-04-1991 and the aforesaid information was sent by a doctor and having got the aforesaid information, he sent ASI Devendra Dwivedi who returned with the statement of appellant, Jai Shankar Jha and in the aforesaid statement contained the description of place of occurrence as well as condition of the injured and on the basis of aforesaid statement, a Sanha was entered but he

did not mention the aforesaid Sanha in his case diary. Admittedly, the aforesaid Sanha has not been brought on record and the prosecution tried to suppress the aforesaid Sanha and, therefore, an adverse inference would be drawn against the prosecution.

36. Almost all the material witnesses have stated that the deceased was taken to Sadar hospital, Begusarai on the advice of P.W. 9. P.W. 12 has admitted in his deposition that when he reached at Sadar Hospital, Begusarai, he found the father-in-law and husband of the deceased present in Begusarai. Therefore, the aforesaid circumstance indicates that the in-laws as well as husband of the deceased took all possible steps to save the life of the deceased but they could not succeed to save the life of the deceased.

37. It is well settled principle of law that mere demand of dowry is not sufficient to prove the charge of Section- 304B IPC and apart from the demand of dowry, all the ingredients of Section- 304B IPC must be proved by the prosecution but in the instant case, as I have already discussed that the prosecution not only failed to prove the demand of dowry but also failed to prove this fact that the deceased ever was subjected to cruelty and harassment by her in-laws taking the entire evidences and circumstances together, I find and hold that the prosecution could not succeed to prove this fact that the appellants had made illegal demand and due to non-fulfillment of illegal demand, the deceased was subjected to cruelty and harassment and, therefore, I am of the opinion that the prosecution could not succeed to prove the charges levelled against the appellants and the learned trial court committed error in convicting and sentencing the appellants. On the basis of aforesaid discussions, this Cr. Appeal is allowed and, accordingly, the impugned judgment of conviction and order of sentence is hereby set aside. The appellants are acquitted of the charges. Appellants Jai Shankar Jha @ Deepak and Manorama Devi are on bail. They are discharged from the liabilities of their bail bonds. So far as appellant, Shubhkant Jha is concerned, he has already died.