

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.640 of 2019

Arising Out of PS. Case No.-203 Year-2009 Thana- KHAJEKALA District- Patna

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RAJIV RANJAN Son of Laxman Ram Resident of Village- Khajekala,
Ganga Ghat Road, P.S.- Khajekalan, District- Patna.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Acts/Sections/Rules:

- *Section-304B of Indian Penal Code*

Cases Referred:

- *Lahu Kamlakar Patil & Anr. Vs. State of Maharashtra, reported in
(2013) 6 SCC 417*

Appeal - against conviction

Held - There are major contradictions, inconsistencies and improvement in their depositions and the said witnesses cannot be termed as sterling witnesses. (Para 33)

Prosecution has failed to examine the Investigating Officer. - F.I.R. has also not been exhibited. - All the independent witnesses have specifically deposed that their statements have not been recorded by the Investigating Officer - In the facts and circumstances of the present case, serious prejudice has been caused to the defence (Para 33.1)

From the evidence led by the prosecution, it can be said that the prosecution has failed to prove that the appellant has subjected the deceased to cruelty in connection with demand for dowry soon before her death. (Para 37)

Appeal is allowed (Para 41)

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Shivam, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 19-09-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the judgment of conviction dated 08.04.2019 and order of sentence dated 18.04.2019 passed by learned Additional Sessions Judge-VII, Patna City, in Sessions Trial No. 403 of 2011, (arising out of Khajekala P.S. Case No. 203 of 2009), whereby the appellant/convict has been convicted for the offence punishable under Section-304B of Indian Penal Code (hereinafter referred to as I.P.C.) and sentenced to undergo rigorous imprisonment for life. The period of custody has been ordered to be treated as period of



sentence served.

2. Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant assisted by Mr. Shivam and learned APP Mr. Sujit Kumar Singh for the respondent-State.

3. The prosecution story, in brief, is as under:

“As per the F.I.R. lodged by the informant father on 17.09.2009, the daughter of the informant was married on 23.11.2005 with Rajeev Ranjan, younger son of Lakshman Ram, resident of Khajekala. After 15-20 days of the marriage, a dowry demand of Rs.2,00,000/- was made from his daughter by her father-in-law (Lakshman), mother-in-law, Ravi Ranjan and her husband (Rajeev Ranjan). The informant managed to fulfil the demand to the best of his capacity. His daughter was several times beaten and sent back to his house. For last few days, a refrigerator was being demanded which was given by the informant. The informant was informed by his daughter that the situation was tense for some days upon which he assured her to go to her soon. Last evening, he had a talk with his daughter when she wished happy birthday to his grandson. The situation at that time was quite normal. Last day i.e. on 16.09.2009, at 08:30 at night the informant was informed on telephone that his daughter has committed suicide by hanging herself. At once, he



reached Patna City with his family members at 11:00 hours in the night and he found his daughter lying dead on the ground. When he enquired as to how all this happened, Rajeev Ranjan, son-in-law, informed that she was wearing half of the sari and she used half of the sari to hang herself, which explanation did not inspire confidence. Her neck was injured with bleeding and deeply pressed from the front side and there was no injury on the back portion of the neck. The tongue of his daughter was not protruded. For the aforesaid reasons, the informant has apprehension that his daughter Deepa Rani was done to death by the appellant and other co-accused under a criminal conspiracy.”

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 403 of 2011.

5. Learned counsel for the appellant Mr. Ajay Kumar Thakur, at the outset, submits that there is a delay in



lodging the FIR in which, with *mala fide* intention, the present appellant has been implicated. It is contended that, as per the case of the informant, he got the information that his daughter has committed suicide. Such information was received by him on 16-09-2009 at about 8.30 p.m. on telephone and he reached at 11:00 p.m. to the house of his daughter. However, the police came at the place of incident. Despite the presence of the police at the place, FIR was not filed by him immediately. It is further submitted that the written complaint was given on the next day, i.e. after funeral of his daughter, at about 2:00 p.m. on 17-09-2009. Learned counsel would further submit that, in the written complaint given by the informant, he had stated about the telephone call from his daughter at 6:30 p.m. on the date prior to the incident when she conveyed happy wishes. The situation at that time was quite normal. However, the informant, P.W. 11, had, for the first time, deposed before the court during the course of his deposition that his daughter informed him about the cruelty meted out to her for demand of dowry. Thus, it is contended that the informant has improved his version before the court and there are major contradictions, inconsistencies and improvement in the deposition of the informant.

5.1. Learned counsel for the appellant thereafter



submitted that, even as per the case of the prosecution, the so-called demand of dowry was last made in the year 2006 and in January 2007. However, thereafter, the alleged incident took place after a long gap in September 2009. The prosecution has even failed to prove the cruelty meted out to the deceased by the appellant herein. Thus, the prosecution has failed to prove the ingredients of Section 304B IPC. Learned counsel Mr. Thakur further submits that, in the present case, the investigating officer has not been examined by the prosecution, as a result of which serious prejudice has been caused to the defense. It is submitted that because of the non-examination of the investigating officer, the defense had lost the opportunity to cross-examine the investigating officer. In fact, all the independent witnesses, i.e. PW-5, PW-6, and PW-7, have specifically deposed before the court about the cordial relationship between the appellant and his deceased wife. It is also submitted that P.W.1, P.W. 2 and PW-8 have turned hostile. At this stage, it has been pointed out by the learned counsel that some of the defense witnesses have specifically deposed before the court that their statements were recorded by the police during the course of investigation. However, the prosecution has failed to examine the said witnesses and, therefore, the



informant has examined them as defense witnesses. The investigating officer has not been examined by the prosecution. The defense has lost the opportunity to cross-examine him and thereby great prejudice has been caused to the appellant. In the facts of the present case, such non-examination is fatal to the prosecution.

6. Learned Counsel has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in the case of **Lahu Kamlakar Patil & Anr. Vs. State of Maharashtra**, reported in **(2013) 6 SCC 417** in support of the aforesaid contention.

7. Learned counsel thereafter referred the trial court record and pointed out the photographs which have been exhibited. It is contended from the photographs produced by the defense that it can be said that the relationship between the appellant and his deceased wife as well as the informant were cordial. It is further submitted that the appellant has invested amount in Kishan Vikas Patra in the name of him and his wife from time to time. It is also submitted that the FIR is also not exhibited. Learned counsel, therefore, urged that the prosecution has failed to prove the case against the appellant beyond reasonable doubt, despite which the trial court has



passed the impugned judgment and order and, therefore, the same be quashed and set aside.

8. On the other hand, learned Additional Public Prosecutor Mr. Sujit Kumar Singh has opposed the present appeal. Learned APP submits that the prosecution has proved the ingredients of Section 304B of IPC by leading cogent evidence, i.e. through prosecution witnesses P.W. 11, informant, P.W. 9 Sunita Devi, wife of the informant, P.W. 3 Ritesh Kumar, son of the informant, and P.W. 4 Md. Arif Hussain, a staff member of the informant. Learned APP, at this stage, has also referred the deposition of P.W. 10 Dr. Ashok Kumar who had conducted the *post mortem* of the dead body of the deceased. It is submitted that from the deposition of the said witness, it is revealed that the cause of death is due to asphyxia caused by pressure over the neck. Thus, the death of the deceased was unnatural. Learned APP, therefore, urged that when the deceased died because of an unnatural reason within a period of four years from marriage, presumption under Section 113B of the Evidence Act is attracted. Learned APP further submits that even after the death of the deceased, the appellant married second time and thereafter the appellant tried to kill his second wife also. However, she survived and thereafter an FIR



has been filed against the appellant and his anticipatory bail application also came to be dismissed.

9. Learned APP, therefore, urged that when the prosecution has proved the case against the appellant beyond reasonable doubt, no error has been committed by the trial court while passing the impugned judgment. He, therefore, urged that the present appeal be dismissed.

10. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

11. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

12. Before the Trial Court, prosecution examined 11 witnesses. Defence has also examined 6 witnesses.

13. P.W. 1 Ramnath Prasad Yadav, P.W. 2 Ajay Kumar and P.W. 8 Shiv Narayan Prasad have not supported the prosecution case and they have been declared hostile by the prosecution.

14. P.W. 3 Ritesh Kumar has stated in his examination-in-chief that Deepa Rani @ Joolie was his



younger sister. Her marriage was solemnized with Rajeev Ranjan on 23.11.2005. On that occasion, 13 *bhar* Gold and other household items were given. She went to her in-laws' place and for 20-25 days she remained there happily and with dignity. Thereafter, on the pretext of raising capital (in the shop), a demand of Rs.2,00,000/- was made from his father by Rajeev Ranjan, Ravi Ranjan, Tara Devi and Lakshman Ram. They began to torture his sister to get the demand fulfilled and after 20-25 days, they sent his sister back to Barh. His father, with two other persons, namely Shri Sant Singh and Mannu Singh, consoled her and brought back to her in-laws' house and gave Rs.1,00,000/- to the accused in presence of all the accused. For some time, everything was fine with his sister, but again the accused started torturing her. On 06.03.2006, the deponent with Arif Hussain went to the in-laws' place of his sister and paid Rs.50,000/- to accused Rajeev Ranjan in presence of all the accused persons. In July, 2006, his sister was again sent to Barh where she gave birth to a male child in Majholia Hospital, Patna City. Total cost of treatment was borne by his father and nobody from the accused side came to see his sister. Rajeev Ranjan took his sister to his own house along with younger sister Sweety who returned the same day.



On 06.09.2009, at 08:30 p.m., he received the information on telephone that his sister has committed suicide. He had talked with his sister two hours before that, when everything was normal. On such information, they reached the in-laws' house of his sister. One of his sister's slippers was lying at the door and worshipping items were scattered in the house. On going upstairs, it was found that the dead body of his sister was lying on the floor. Her clothes were not in order. There was a ligature mark caused by a wire. Her mouth was closed. Only Rajeev Ranjan was present there and none else was present. He has stated that the police had recorded his statement. He identifies accused Rajeev Ranjan present in court.

14.1. In his cross-examination, he has supported his statements given in the examination-in-chief regarding dowry demand, fulfilment of the said demand and the torture meted out to his sister. He has further stated that Sweety returned from the in-laws' house of her sister after 20-25 days. He has denied to have stated before the police that Sweety returned the same day. He has denied the suggestion to have given false deposition. He has denied the suggestion that the allegation of demand of dowry is false. He has also denied the suggestion that the incident had not taken place due to non-



fulfilment of the demand of dowry.

15. P.W. 4 Md. Arif Hussain has stated in his examination-in-chief that Deepa Rani was married to Rajeev Ranjan on 23.11.2005. He has also supported the sequence of events as stated by P.W. 3 such as demand of dowry, torture meted out to Deepa Rani, birth of a male child to Deepa Rani in 2006. He has further added that on 16.09.2006 he had gone to Rajeev Ranjan's house with 7-8 persons and he saw that Deepa Rani was strangled to death and her dead body was lying on the verandah. Her mouth and eyes were closed. They guessed that accused Rajeev Ranjan, Ravi Ranjan, Lakshman Ram and Tara Devi had together committed the murder. He has stated that the police had taken his statement. He identifies Rajeev Ranjan, present in court.

15.1. In his cross-examination, he has stated that his statement was taken 2-3 days after the incident. He has further stated that he has given his statement as overheard by him while Deepa Rani used to talk to Vijay Kumar Bhagat on telephone. He is a staff of Vijay Kumar Bhagat. He was not with Vijay Kumar Bhagat when he withdrew money from the post office. He has denied the suggestion that no money was given to the accused 06.03.2006. He has also stated that no sign



of assault was seen in the *puja* room and no blood was seen anywhere. He did not see any broken bangles in the *puja* room. He has denied the suggestion that he has given false deposition in collusion with Vijay Bhagat being his staff.

16. P.W. 5 Susmita Devi is an independent witness. She has stated in her examination-in-chief that the incident took place in the month of September, 2009. Rajeev Ranjan was married to Joolie Devi who died. She does not know as to how she died. She has further stated that she put her signature on the inquest report prepared by the S.I. She has claimed to identify Rajeev Ranjan.

16.1. In her cross-examination, she has stated that there was cordial relationship between Rajeev Ranjan and his wife. Rajeev Ranjan used to live with his parents and brothers. The police had never interrogated her.

17. P.W. 6 Jitendra Singh is also an independent witness. He has deposed that he knows accused Rajeev Ranjan who is from his locality. He was married to Deepa Rani. He had a child also from her. Deepa Rani died at Khajekala.

17.1. In his cross-examination, he has stated that Rajeev Ranjan was separate from his parents and brothers. Partition took place in 2007. The police had never interrogated



him.

18. P.W. 7 Shankar Prasad Chaurasia is also an independent witness. He has not supported the case of the prosecution. He has stated in his examination-in-chief that he had not given statement before the police. He knows accused Rajeev Ranjan who was married to Deepa Rani. The couple lived together. He is not aware about any difference between them. Deepa Rani is dead. Some incident had taken place between them but he does not know the actual incident. He has further stated that Rajeev Ranjan lived separate from his brothers.

18.1. In his cross-examination, he has stated that Rajeev Ranjan separated from his parents and brothers before the incident. He has also stated that the accused had a good relation with his wife. He had not heard about the demand of Tilak-Dowry etc. being made. Police had not taken his statement ever. Local people said that she herself committed suicide.

19. P.W. 8 Shiv Narayan Prasad has not supported the case of the prosecution and has been declared hostile by the prosecution. He has stated in his examination-in-chief that he put his signature on the inquest report of Deepika Rani



prepared by the S.I. He has denied the suggestion that Deepika Rani and Rajeev Ranjan used to quarrel frequently.

19.1. In his cross-examination, he has stated that it is true that Rajeev Ranjan's wife Deepika Rani had once tried to set herself on fire by pouring oil on her body for partition of property. He has denied the suggestion to have stated half truth.

19.2. In his cross-examination on behalf of the defence, he has stated that accused lives separate from his parents and brothers. Partition among the accused persons had taken place before filing of this case in which he was also an arbitrator. He had not seen any fight between the husband and wife. He has further stated that the deceased had a child from the accused who is at his maternal house. He has denied the suggestion to have concealed any aspect. He has also denied the suggestion that the accused had made any demand of Tilak or dowry.

20. P.W. 9 Sunita Devi has deposed in her examination-in-chief that the informant Mr. Vijay Kumar Bhagat is her husband. Her daughter Deepa Devi (deceased) was married to accused Rajeev Ranjan on 23rd November, 2005. She lived with the accused in her in-laws' place peacefully for ten days, but thereafter the accused started



demanding Rs.2,00,000/- from Deepa and sent her back. In December, 2006 Rs. 1,00,000/- was paid to the accused in cash through her sister-in-law in presence of Ritesh and Arif which did not satisfy the accused. On December 16, 2009 at 08:30 p.m., Rajeev Ranjan informed her husband on telephone that Deepa has committed suicide. On such information, her husband, she, Shrikant Singh, Mannu Singh, Ramagya Yadav, Santosh Kumar, Raju Bhagat, Sanjay Kumar, Ritesh Kumar and Arif Hussain reached the in-laws' house of Deepa at 11 O'clock at night. They saw that one of Deepa's slippers was lying at the door and the other on the stairs. Her dead body was lying below the almirah (worshiping place). Except her son-in-law, no other family member was present in the house. There was a mark on Deepa's neck. Deepa's broken bangles were found beneath the bed. Police had arrived and had carried out paper-work. Her husband filed the case in the morning of the following day of the incident. The dead body was sent for *post mortem*. She claims that her daughter was murdered by the accused persons as the accused Rajeev Ranjan was greedy of dowry, he wanted to marry a girl of white complexion and had illicit relationship with another girl. She has also stated that her statement was recorded by the police. She has identified



accused Rajeev Ranjan, present in Court and claims to identify other accused persons by face.

20.1. In her cross-examination, she has stated that she cannot tell the exact time of filing of the case. She is not aware as to who is the registered owner of the in-laws' house of Deepa. She only knows that her in-laws' house stands partitioned. She has further stated that whenever she went to see her daughter, she used to talk to other family members as well. Though her daughter used to allege about the demand of dowry by the in-laws, but the in-laws did not make any such demand from her. She has stated in para-10 that the birthday of Deepa's son was celebrated on 6th September, 2009 in which she, her husband, her son Ritesh, daughter-in-law Gayatri Devi, younger daughter Pooja Rani had gone to participate. Deepa had herself arranged the party as the accused persons were not willing to celebrate the birthday. She has accepted that Rajeev Ranjan gave them a warm welcome on the occasion. There was no exchange of money between her husband and the accused in her presence. She has further stated that the accused wanted custody of the child, but prosecution-side is not ready to hand over custody of the child as they have apprehension that they (accused) would kill the child. She has further stated that all her



family members had participated in the funeral of her daughter. She has denied the suggestion that they broke the lock and took away jewelry and other house-hold articles with them. She has denied the suggestion that her husband, hatching a conspiracy with Shankar Chaurasia, was pressurizing the accused and his parents to transfer the property either to the son of Deepa or to Daisy, the daughter of Shankar Chaurasia. She has also denied to have given false deposition with an intention to grab the property of the accused.

21. P.W. 10 Dr. Ashok Kumar Yadav has stated in his examination-in-chief that On September, 2009 he was posted as Professor, Forensic Medicine at Nalanda Medical College, Patna and had conducted *post mortem* examination of Dipa Rani, wife of Rajeev Ranjan at 11:30 a.m. in the N.M.C.H. Mortuary. Dead body was brought by constable No. 5214 Dinanath Ram. Following injuries were noted during the *post mortem* examination:-

Rigor Mortis was positive, face red, eyes congested and (illegible) at the (illegible) and lips.

One ligature mark and encircling the neck measuring 13" long and 1/2"x1" wide was found.

Ligature mark was just above the thyroid cartilage on the front of the neck 1/2" below the right ear on the right side of neck, 2.5" below the left ear on the left side of neck and 1.5" below the external (illegible).



Ligature mark was on the front of the neck was more marked and less marked on the back of neck.

On internal examination, the underlying area above and below the ligature mark were found congested.

Above mentioned ligature mark was *ante mortem* grievous and dangerous to life in ordinary course of nature and caused by pressure of ligature.

Cause of death- Asphyxia due to pressure over the neck. Time of death within 12 to 24 hours from the time of P.M. examination. The P.M. report is in his pen and signature (Ext. 1).

21.1. In his cross-examination, he has stated that Ligature mark was found on the neck which can be caused by committing suicide by encircling sari around the neck. He had not found any other injury on the body. The tongue was protruding, eyes were at the place and not protruding. There was no burn injury. The cause of death was suffocation. There was no sign of froth coming out.

22. P.W. 11 Vijay Kumar Bhagat has deposed in his examination-in-chief that he is the informant of this case and the written complaint is in his pen and signature which he identifies (Ext. 2). Deceased Deepa Rani was his daughter. He had got her daughter married with Rajeev Ranjan on 23rd November, 2005 as per Hindu rites and rituals and had given



his daughter 13 *bhar* Gold, electric apparatus, Washing Machine, Refrigerator, Cooler etc. His daughter went to her in-laws' place and stayed there for 15-20 days happily. Thereafter, the accused persons started torturing her. All the accused persons, namely Lakshman Ram (father-in-law), Tara Devi (mother-in-law), Rajeev Ranjan (husband) and Ravi Ranjan started demanding dowry of Rs.2,00,000/- and threatened to kill her in the event of non-fulfilment of the demand. His daughter used to inform him about the same. After 20 days of the marriage, they drove her back to his house and threatened not to come back without paying Rs.2,00,000/-. He tried to pacify the situation and negotiated with the accused. After 5-6 days, he managed to borrow Rs.1,00,000/-, went to the house of the accused with his friend Manu Singh and Shrikant Singh and handed over the amount to Rajeev Ranjan in presence of all the family members. He had gone with his daughter and implored Lakshman Ram, Tara Devi and Ravi Ranjan to keep his daughter with them and they promised to keep her with dignity. His daughter stayed there happily for two months. Again the accused persons started demanding Rs.1,00,000/- and torturing her. On 6th March, 2006, his son went with Ritesh Kumar and Arif Hussain (staff) to the in-laws' house and paid



Rs.50,000/- to Rajeev Ranjan in presence of his parents. For some days thereafter, the accused kept his daughter with dignity. Again the accused persons started torturing his daughter and in July, 2006 brought his daughter to his house. At that time, his daughter was pregnant. On 06.09.2006 she gave birth to her son. Total expense of treatment and delivery was borne by him. Nobody from the side of the groom turned up. His son Ritesh was married on 28.01.2007 on which occasion the accused did not allow his daughter to come to his house and put a condition that she can go only if a Gold chain and a Gold ring is given. He went after 3-4 days of the demand and fulfilled the demand and only then they sent his daughter with him. Four days after the said marriage, she went back to her in-laws' house. On 06.09.2009, his daughter had dialed and had wished happy birthday to the grandson of his brother. At that time she also informed that the accused persons were torturing her. The same day, at 08:30 p.m. Rajeev Ranjan informed him on his mobile that Deepa Rani had committed suicide. Hearing this, he became senseless. He along with Manu Singh, Shrikant Singh, his nephew Santosh and Sanjay, his son Ritesh, Ram, Agya Yadav, Arif Hussain etc. reached the in-laws' house of his daughter. They went to the 2nd floor and



found that his daughter was lying dead in the verandah. Except Rajeev Ranjan, no member from the in-laws' family was present there. His daughter was wearing a sari. He had also seen a black mark on the neck. It looked as if she was murdered by fastening a wire around the neck and pulling it. Tongue was not protruding. His colleagues expressed strong suspicion that his daughter has been killed by the accused. When the police came, he narrated everything to the police and submitted a written complaint. *Panchnama* of the dead-body was prepared. He went to the police station from there. The dead-body was sent for *post mortem* examination. Police had re-interrogated him, but had not arrested anybody that day. He has identified accused Rajeev Ranjan, present in Court. He further adds that Rajeev Ranjan has contracted 2nd marriage and also he tried to kill the bride by strangulating her neck, but on alarm being raised by her, the local residents bate him regarding which a case is pending in the Court. He has the F.I.R. of that case bearing Case No. 713/13. He promised to bring the paper on record on the next date.

22.1. In his cross-examination, he has stated that he did not go to the police station as he had become senseless on seeing the dead body of his daughter. Police had come there.



The funeral was done after formalities done by the police. Only his son-in-law had participated in the funeral. Other members of his son-in-law's family were absconding. Police had recorded his re-statement in the office of Dy. S.P. while the I.O. had gone to his house. He again states that the Investigating Officer had also interrogated him and his wife at his own house and thereafter took them to Dy. S.P. He has identified certain photographs as Ext. 1 and 1/A. He always saw a refrigerator in the house of the accused, but he cannot say from which shop it was purchased because he had only given money for purchasing the same. He had given huge amount twice, once in December, 2005 and again on 6th March, 2006 Rs. 50,000/-. He had gone to pay with his son and Md. Arif Hussain (staff). First time he had gone alone. He had taken his son-in-law on pilgrimage, once to Bindhyachal and second time to Deoghar. He had taken him to Deoghar about one and a half-two years before the death of his daughter. He does not remember whether it was before or after the birth of his daughter's son. Further, he has identified certain photographs of the year 2007 as Ext. 1/B and 1/C in which he, his son-in-law, his daughter, his grandson, granddaughter and his wife as also the wife of his son figure. Birthday of his grandson (Nati) was celebrated on



6th September, 2009, about 10 days before the death of his daughter in which he, his wife, his son Ritesh, his son's wife Madhbi, granddaughter Banshika had gone to participate. He has also identified certain other photographs as Ext. 1/D to 1/G. He has denied the suggestion that he had lost the case filed against him in the Hon'ble High Court for misappropriation. He has denied that he has kidnapped Amit Kumar and stated that he is in his safe custody. He has also denied that he does not permit Amit Kumar to talk with his father and grand parents. He has further stated that his daughter had never submitted any complaint, written or verbal, against any family member of the accused side right from her marriage till her death. He had deposed on the basis of the information provided by his daughter second time on telephone, but he has not procured the C.D.R. of his daughter's mobile. He has further stated that the incident of 16.09.2009 had not taken place in his presence. He had reached after the incident. He was informed about the incident by Rajeev Ranjan himself. He has denied to have given false deposition and that his son-in-law used to purchase Kisan Vikas Patra, sometime of Rs.10,000/-, at another of Rs.20,000/-. He has also denied to have concealed this fact intentionally. He has identified the photograph in



which his hand is on the shoulder of his son-in-law (Ext. 1/K) and the photograph filed by the defense side in which his daughter and son-in-law are together (Ext.1/L). He has denied the suggestion to have given false deposition on the script of the Dy. S.P.

23. DW-1 Pankaj Kumar has deposed that on 16.09.2009 he had gone to the jewelry shop of Rajeev Ranjan at 07:30 p.m. At that very time, a lady came with the son of Rajeev Ranjan in her lap and told him that she had taken the son to his house, but nobody opened the door to receive the child. Saying this, she left the child there. At this, Rajeev Ranjan closed down the shutter and proceeded towards his house carrying his child. He also followed Rajeev Ranjan with local people. When the door could not be opened by pushing hard, Rajeev Ranjan informed the police station and police came there. He was present there. He went inside the house following the police along with others and saw that the wife of Rajeev Ranjan was hanging with the ceiling fan of verandah. On the instruction of Dy. S.P. the body was brought down. During this, no member from the family of Rajeev Ranjan was present nor anybody from the in-laws' family of Rajeev Ranjan had reached there. He had no acquaintance with Rajeev Ranjan



from before.

23.1. In his cross-examination, he has stated that he had not seen any of the family members of Rajeev Ranjan or his wife. He had deposed on the request made by Rajeev Ranjan. He has denied the suggestion that Deepa was being tortured for dowry and for that very reason she was murdered. He has further stated that he had gone to the house of Rajeev Ranjan at 07:40 p.m. and left the place at 08:00 p.m. Panchnama was not done in his presence.

24. D.W. 2 Pramod Kumar has stated in his examination-in-chief that he is acquainted with both sides. The incident is of 16.09.2009. He was at his jewelry shop. Rajeev Ranjan was also at his own shop. His wife brought lunch for him, put the child at the shop and went back in a tempo. Rajeev Ranjan sent his child to his house with a lady who returned with the child and reported that the door was locked from inside and was not opened despite knocking hard several times. Police came and broke the door open. He returned home. He had never seen the couple quarreling with each other. Even that day their behaviour was normal.

24.1. In his cross-examination, he has stated that Rajeev was married ten years before the incident i.e. on



23.11.2005. He has further stated that he has come to depose on the request of the learned counsel (illegible) Kumar. He is aware that a case is going on against Rajeev and his parents for the alleged killing of Rajeev's wife. He has denied the suggestion that the family of the accused has committed the murder for dowry. He has also denied the suggestion that he has given false deposition to save Rajeev Ranjan from the case.

25. D.W. 3 Mohan Kumar has just corroborated the version of D.W. 2 and has not added any material thing.

26. D.W. 4 Rajeev Ranjan is the appellant himself. He has stated that he had not made any demand at the time of his marriage. He had purchased the ornaments and house-hold articles. He had also taken Kisan Vikas Patras in the name of his wife. He has filed the Kisan Vikas Patra for Rs. 35000/- bearing the signature of the Post Master (Ext. X). He had also purchased the refrigerator on installment (Ext.X/7). He has further stated that he had no complaint against any of his in-laws, rather his wife Deepa Rani had some issue with her step mother regarding some money deposited in her name. He has also stated that his wife continued her education even after the marriage and he used to go with her to the examination centre to keep the child during examination hours. He has also filed



the admit card (Ext. 1). He has further stated that on the date of incident, i.e. on 16.09.2009, he was at his shop. His wife came with the lunch, left the child at the shop and went away saying that she is going to meet his step mother. His mother lives at a distance of 10-15 minutes. When she did not return, he sent the child with Anita Devi, who is an adjacent shop-keeper. She returned with the child and said that the door was locked. Then he himself went to his house with 2-3 persons and saw that the main gate is locked from inside. He informed the police on telephone. At 08:20 p.m., the police came. Daroga Ji broke open the gate, went inside with lady constable and saw that his wife is hanging with the help of her sari. He informed his father-in-law Vijay Yadav about the mishap. He performed both funeral and last rites of his wife in which his father-in-law, his brother, friend and staff all participated. His father-in-law had taken the child with him on that very occasion. After performing the last rites of his wife, he tried to contact the child, but his father-in-law did not allow him to talk and put a precondition to transfer the property in his child's name.

26.1. In his cross-examination, he has stated that he is the accused of this case lodged by his father-in-law against him and his parents. He has further stated that police



had not arrested him, rather he had surrendered in November. He was released from custody after 16 months on getting bail from Patna High Court. In his further cross-examination, he has stated that police had reached to his house at 08:20 p.m. and the informant Vijay Kumar had reached at 12:30 in the night and not at 11:00 p.m. Police had already reached there. The inquest report was prepared in his presence, but he did not get the opportunity to go through the same. He has denied the suggestion that it is written in the inquest report that the dead body was lying on the floor. He has denied the allegation to have killed the deceased by strangulating her and that he has given false deposition.

27. D.W. 5 Tej Narayan Mishra has also supported the version of D.W. 2. He has also identified a photograph which was marked Ext. B on protest. He has also stated that he was a witness in the previous case.

27.1. In his cross-examination, he has stated that he has been called by Rajeev Ranjan to depose. He has also stated that the 2nd wife of Rajeev Ranjan has also lodged a case against him alleging that he is not keeping her with him. He has further stated that he does not remember the date on which the Rajeev Ranjan's wife died. He had not gone to the place where



her dead body was lying as the police forbade him to go there.

28. D.W. 6 Anita Devi has stated in her examination-in-chief that the incident took place in 2009. She was at her shop. Rajeev Ranjan's shop is situated to the north of her shop. As usual, Deepa Rani, wife of Rajeev Ranjan, came with the lunch for him. The 2.5-3 year old child was also with her. That day she returned leaving the child at the shop. When, on the request of Rajeev Ranjan, the deponent went to his house, the door was locked from inside. She knocked the door several times, but the door was not opened. Lastly, she came back to Rajeev Ranjan, informed him everything and handed over the child to him. On being interrogated by the Police, she stated to the police that she had gone to the house of Rajeev Ranjan with his child, but when the door was not opened even after knocking several times, she returned and handed over the child to Rajeev Ranjan. She has further stated that whatever she has deposed in the Court, she had stated before the Police also. She has further stated that Deepa Rani never disclosed to her about any differences with the husband. She has also stated that except the couple, no other family member was residing in the house.

28.1. In her cross-examination, she has stated that



she has been brought to depose by the accused. She has also stated that she is acquainted with Rajeev Ranjan since 2007. She has further stated that police had recorded her statement a day after the incident at her shop. She has the knowledge that Rajeev Ranjan was arrested. She has denied the suggestion to have deposed on the instruction of Rajeev Ranjan that she went to his house with the child and found the door locked. She has also denied the suggestion that she has given false deposition to save Rajeev Ranjan.

29. We have re-appreciated the entire evidence led by the prosecution and perused the typed copy of the depositions of the prosecution-witnesses supplied by the learned counsel for the appellant.

30. It transpires from the record that the written complaint has been given by the informant who is father of the deceased at about 02:00 p.m. on 17.09.2009 for the alleged incident which took place on 16.09.2009 at about 08:30 p.m. It further transpires that in the written complaint the informant has specifically stated that one day prior to the date of incident, his daughter called him and wished happy birthday to his grandson. Thus, from the said averment made in the written complaint itself, it cannot be said that there was any cruelty



meted out to the deceased soon before her death. It is further revealed from the deposition of the informant/P.W. 11 that, for the first time, the said witness has deposed before the Court in his examination-in-chief that his daughter informed him about the cruelty meted out to her with regard to the payment of dowry and she told about the same when she called one day prior to the date of incident and congratulated and wished happy birthday to his grandson. Thus, it is revealed that there is an improvement in the version of P.W. 11, the informant. It is also revealed from the written complaint that the informant has stated about the demand of refrigerator made by the accused. It is also stated that one refrigerator was given to the accused. However, from the deposition of the defence witnesses and from the bill produced on behalf of the defence, which has been exhibited, it is revealed that the refrigerator was purchased by the appellant. It is also revealed from the deposition of P.W. 11 and, more particularly from the examination-in-chief that at the time of marriage Gold, electric instruments, washing machine, refrigerator, cooler etc. were given by the informant to his daughter. Thus, it can be said that if the refrigerator was given in November, 2005, then there was no question of demand of refrigerator again in 2009 (within four years). Thus, we are of



the view that there are major contradictions, inconsistencies and improvement in the deposition of the informant.

30.1. It is further revealed that initially the police made enquiry from the informant with regard to the incident. However, at that time the F.I.R. was not registered nor his *fardbeyan* was recorded. On the next day, after the funeral, the written complaint was given by the informant. At this stage, it is also required to be observed that from the deposition of the prosecution-witnesses, it is revealed that the so called demand of dowry was made in the year 2006 and thereafter in January, 2007. There is nothing on record to suggest that such demand was made soon before the death of the deceased.

31. It would further reveal from the evidence of the prosecution that P.W. 1, P.W. 2 and P.W. 8 have turned hostile and they have not supported the case of the prosecution. Further P.W. 5, P.W. 6 and P.W. 7, who are independent witnesses, have specifically deposed before the Court that appellant was having cordial relationship with his wife (deceased).

32. Thus, the prosecution has tried to prove the case against the appellant by examining P.W. 3 Ritesh Kumar, who is brother of the deceased, P.W. 4 Md. Arif Hussain, who



is a staff of P.W. 11, the informant, P.W. 9 Sunita Devi, mother of the deceased and P.W. 11 Vijay Kumar Bhagat, father of the deceased and informant.

33. We have gone through the deposition of the aforesaid witnesses. However, there are major contradictions, inconsistencies and improvement in their depositions and the said witnesses cannot be termed as sterling witnesses.

33.1. It is pertinent to note at this stage that in the present case the prosecution has failed to examine the Investigating Officer who has carried out the investigation. The F.I.R. has also not been exhibited. It is the specific case of the appellant/defence that because of the non-examination of the Investigating Officer, serious prejudice has been caused to him. We have also observed hereinabove that the informant has improved his version before the Court while giving his examination-in-chief and stated certain aspect for the first time which he has not written in the written complaint. Further, all the independent witnesses i.e. P.W.5, P.W. 6 and P.W. 7, have specifically deposed that their statements have not been recorded by the Investigating Officer and, in fact, the relationship between the appellant and the deceased wife was very cordial. Further, the defence witnesses have also deposed



that their statements have been recorded by the Investigating Officer. However, the prosecution has failed to examine the said witnesses as prosecution-witnesses. In the aforesaid background, because of the non-examination of the Investigating Officer, the appellant lost the opportunity to cross-examine. Therefore, we are of the view that in the facts and circumstances of the present case, serious prejudice has been caused to the defence i.e. the appellant herein.

34. Now, we would like to examine the judgment cited by the learned counsel for the appellant. In the judgment cited by the learned counsel for the appellant, **Lahu Kamlakar Patil (supra)**, the Hon'ble Supreme Court has observed at para 18 as under:-

“18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar* [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] , this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused.



In *Bahadur Naik v. State of Bihar* [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186], it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar* [(2001) 6 SCC 407 : 2001 SCC (Cri) 1148] , *Rattanlal v. State of J&K* [(2007) 13 SCC 18 : (2009) 2 SCC (Cri) 349] and *Ravishwar Manjhi v. State of Jharkhand* [(2008) 16 SCC 561 : (2010) 4 SCC (Cri) 50] , has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

35. From the aforesaid decision, it can be said that non-examination of the Investigating Officer is not fatal to the prosecution-case, especially when no prejudice is likely to



be suffered by the accused. However, from the aforesaid evidence led by the prosecution in the present case, we are of the view that the present case is one where the Investigating Officer should have been examined and his non-examination creates a *lacuna* in the case of the prosecution.

36. Thus, from the aforesaid observation made by the Hon'ble Supreme Court, it can be said that essential ingredients of the dowry death under Section-304B of I.P.C. is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume under Section-113B of the Evidence Act that the accused has committed the offence of dowry death.

37. In the present case, from the evidence led by the prosecution, it can be said that the prosecution has failed to prove that the appellant has subjected the deceased to cruelty in connection with demand for dowry soon before her death.

38. From the evidence of defence witnesses examined by the appellant and from the documents produced by the defence, it is revealed that the appellant was in good relationship with his wife (deceased). The photographs which



are produced and exhibited, the said aspect can be revealed. Appellant has also purchased Kisan Vikas Patras in the name of his wife. He also encouraged his wife to continue her education and rendered every kind of support to her.

39. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions, inconsistencies and improvement in the deposition of the prosecution-witnesses.

40. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

41. Accordingly, the impugned judgment of conviction dated 08.04.2019 and order of sentence dated 18.04.2019 passed by learned Additional Sessions Judge-VII, Patna City, in Sessions Trial No. 403 of 2011, (arising out of Khajekala P.S. Case No. 203 of 2009) are quashed and set aside. The appellant is acquitted of the charges levelled against him by the learned Trial Court.



41.1. Since the sole appellant is in jail, he is directed to be released from jail custody forthwith, if his presence is not required in any other case.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	24.09.2024
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