

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.261 of 2024

Arising Out of PS. Case No.-6 Year-2013 Thana- RAMGARHWA District- East Champaran

Md. Islam @ Phul Babu Son of Late Gayasuddin R/o vill - Vishambharpur,
P.S. - Ramgarhwa, Distt. - East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Adv.

Mr. Rahul Kumar, Adv.

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

03-03-2025

Heard Mr. Bimlesh Kumar Pandey, learned
counsel for the sole appellant and Mr. Bal Mukund Prasad
Sinha, learned APP.

2. The present appeal has been preferred
against the **judgment and order** dated **06.11.2023/09.11.2023**
passed by **learned Additional Sessions Judge-13, East**
Champaran, Motihari by which while exonerating the other
accused persons of the charges, the appellant, **Md. Islam @**
Phul Babu has been convicted under Section 304(B) of the
Indian Penal Code and sentenced to undergo **Rigorous**
Imprisonment for 10 years with a further direction to that the
period already undergone by the convict shall be set off from
the period of sentence.



3. Earlier the appeal was admitted on 29.01.2024 by the Co-ordinate Bench and the Trial Court Record was called for which has now been received.

4. As per the prosecution story, the informant, the father of the victim (PW 4) alleged that on 14.01.2013, he received telephonic information about the killing of his daughter, Afsana Khatoon by the in-laws. On receipt of such information, when he along with his son, Md. Saddam and a co-villager went to the matrimonial home, none of the accused persons were present and the villagers informed that the police has taken the body. Upon reaching Ramgarhwa Police Station, found the burnt dead body of his daughter which was later sent for postmortem.

5. The informant alleged that his daughter was married seven years ago but there was repeatedly tortured for want of dowry. Fed up with the same, she returned home and filed **Complaint Case No. 772 of 2011** before the competent Civil Court, Muzaffarpur. It however, later came to be compromised on **09.05.2012** whereafter, the victim returned to her in-laws house. However, on 14.01.2013, they got the information about her killing. This led to the FIR.

6. The police investigated the matter and as the



appellant chose to abscond for years, only after he was arrested about five years later on **31.12.2017**, the **charge-sheet no. 250 of 2017** came to be submitted against him on the same day (wrongly typed as 27.10.2018 in the judgment). The charges were framed on **08.05.2019**, whereafter, the accused having denied their role in the occurrence, the trial commenced.

7. The prosecution side in support of its case put forward eight witnesses as follows:-

- 1. PW-1 Md. Saddam Hussain, (brother of the deceased,**
- 2. PW-2 Md. Dildar, (cousin brother of the deceased,**
- 3. PW-3 Noor Mohammad, (uncle of the deceased,**
- 4. PW-4 Md. Akbar (informant and father of the deceased)**
- 5. PW-5 Md. Phool Babu, (brother in law of the deceased)**
- 6. PW-6 Dr. Surendra Nath Sinha, (the Medical Officer of SKMCH, Muzaffarpur who conducted postmortem)**
- 7. PW-7 Ramayan Ram, (the second**



Investigating Officer) and

**8. PW-8 Gauri Shankar Ram (first
Investigating officer)**

8. The prosecution further put forward the following exhibits:-

(i) Exhibit-1 written report,

(ii) Exhibit-2 Post Mortem report of the victim,

(iii) Exhibit-3 Charge-sheet No. 250/2017,

(iv) Exhibit-4 Signature of the Station Head Officer on the written report,

(v) Exhibit-5 Signature of the SHO on the Formal FIR.

9. PW-1 Md. Saddam Hussain and PW-2

Md. Dildar are brother/cousin brother respectively of the deceased who supported the prosecution story. They deposed that the occurrence took place seven years ago when they got the information that their sister has been burnt to death. Upon reaching there, they came to know that the police has taken away the dead body which was found at the police station. They further deposed that the deceased used to complain about the dowry demand by the in-laws and when the same was not



fulfilled, she was killed.

10. **PW 3 Noor Mohammad** is the cousin uncle of the deceased. He has also supported the prosecution story. According to him, on information, he along with his brother (informant) and **Sonu Afsana Khatoon** (not examined) went to the place where no member of the in-law was present. The villagers informed that the body has been taken to the police station, went there and found the burnt dead body. The allegation is that when she last returned to her *Maika*, had informed that they are demanding Rs. 1,00,000/- .

11. **PW-4 is the informant.** According to him, the lady was married in the year 2007 but was tortured for dowry as the appellant wanted money to enter into scrap dealing. Fed up with the same, a case was also filed by the victim. A 'Panchayati' took place and on the basis of the agreement submitted before the Court, they took her to in-laws house but was later killed. He found the body of his daughter at Ramgarhwa Police Station. It was later taken by the Police to Sadar Hospital Motihari from where, it was sent to SKMCH, Muzaffarpur for postmortem.

12. **PW-5 is Md. Phool Babu** who is **son-in-law** of the **informant/brother-in-law of the deceased**. He has



also narrated the same story which have been deposed by the PWs 1 and 2.

13. **PW-6** is the **Medical Officer, Dr. Surendra Nath Sinha** who was posted as an **Assistant Professor, SKMCH, Muzaffarpur** and conducted the postmortem. The report reads as follows:-

External Examination

(i) *On opening the neck subcutaneous tissue and muscle of neck were congested. Trachea was congested with fracture of tracheal ring with blood clots.*

(ii) *There was protrusion of tongue in between the teeth and outside the mouth. Both eye balls were bulged.*

(iii) *There was post-mortem dermo epidermal burn was present over whole body. There was absence the of the red zone of reaction over the skin and subcutaneous tissues were light yellow in colour and hard in consistence. There was presence of few blisters without fluid inside.*

(iv) *All the abdominal internal*



visceras congested. Both lungs were also congested.

Opinion- The deceased died due to asphyxia as a result of pressure over the neck. Time since death- within 2 to 4 days since the time of post mortem examination.

This post mortem report has been prepared by me in my own handwriting with my signature to which. He identifies. (on the basis of statement of the witness the postmortem report of the dead body of Afshana Khatoon is marked as Ext.2) Cross Examination on behalf of defence-

He have not mentioned the age of deceased over the post-mortem report such type of symptom cannot occur in suicidal case. Over the post-mortem report the P.S. case number is not mentioned and we note down only the P.M. examination number 40/13 dated 16.01.13 over the post-mortem report.

Symptom of asphyxia occurs



in homicide as well as suicidal case also but in hanging case also sometimes symptom of asphyxia may occur.

In the post mortem report, there is no mention of bad smell coming out from the internal body of the deceased.

There was superficial burn and second degree of burn dermo epidermal burn but the precented whose post-mortem was conducted by me.

It is wrong to say that the post-mortem report is collusive one and it also wrong to say that the post-mortem report is only a table work and not based upon actual post-mortem of the dead body of deceased whose post-mortem was conducted by me.

He conducted the post-mortem on the basis of direction issued by the District Magistrate, Muzaffarpur vide is order no. 124 dated 16-01-2013.

He do not find any referred



report of any doctor or hospital. He only conducted the post-mortem of deceased.

14. The aforesaid witness has recorded that the victim died due to asphyxia as a result of pressure on the neck.

15. **PWs-7 Ramayan Ram** and **8 Gauri Shankar Ram** are the two Investigating Officers of the case. While **PW-8** took over the case from SHO, Ramgarhwa after the FIR was lodged and visited the place of occurrence, the **PW-7** is the second Investigating Officer who joined in the month of July, 2017 and took over the charge of this case on 12.07.2017. He arrested the appellant on 31.12.2017 and submitted **charge-sheet** vide no. **250/2017** on the same day under Section **304(B)/120/34 of the IPC**.

16. **PW-8** is **Gauri Shankar Ram** who was posted on 15.01.2013 at Ramgarhwa Police Station as Sub-Inspector of Police. According to PW 8, he was made the Investigating Officer by SHO, Ganesh Pathak. He recorded the statement of **Akbar Mian, Saddam Hussain, Noor Mohammad** and **Md. Nisar**. The said witness also inspected the place of occurrence where he found bed and a tin-box. According to him, the postmortem report recorded death due to burn injuries.



17. The learned APP appearing in the trial supported the prosecution story and according to him for want of dowry, the informant's daughter was killed by the accused persons and as such, they be convicted/sentenced. The defence denied the accusation and the learned defence counsel submitted that the married sisters-in-law (*Nanad*) have also been made accused. Further, Lal Babu is differently abled while the mother-in-law is 76 years old. The husband (appellant) was outside the place of occurrence for work. The lady actually committed suicide on minor issue but they were implicated.

18. The Trial Court having heard the parties/State and recording the statement of the PWs and came to the conclusion that so far as the marriage is concerned, they have consistently stated 2007 to be the year of marriage. As the date of occurrence is 14.01.2013, assuming 2007 as the year of marriage, the occurrence took place within seven years.

19. The Trial Court also dealt with Section 304(B) of the IPC to prove that earlier the torture took place, Panchayati held, whereafter, they had taken the deceased to their house but within seven months, the killing took place. The Trial Court though held that entire family members



including the married sisters-in-law cannot be dragged in the case and as such, save and except the appellant herein, the others were given benefit of doubt and acquittal order was passed against them.

20. So far as the appellant/husband herein is concerned, the Court held him guilty under Section **304(B)** of the **IPC** and sentenced to undergo **10 years Rigorous Imprisonment** vide an order dated **06.11.2023/09.11.2023**.

21. Aggrieved, the present appeal.

22. Mr. Bimlesh Kumar Pandey, learned counsel for the sole appellant submits that the prosecution failed to consider the fact that none of the prosecution witnesses were able to give the date, month and year of the marriage to prove that it took place within seven years. His submission is that accepting the year as 2007 and concluding that since the occurrence took place in the month of January, 2013, it is within seven years, is actually bad only to prove the case to be under 304(B) of the IPC.

23. It is his next contention that after the victim returned home and lodged the case no. **772/2011** before the competent Civil Court, Muzaffarpur, it was compromised on **09.05.2012**. The victim thereafter came back to her in-laws



house. His submission is that from **09.05.2012 to 14.01.2013**, when the unfortunate death took place, none of the prosecution witnesses has/have alleged/supported/put forward any theory to show that any demand was made.

24. He has taken this Court to **Section 304(B) of the Indian Penal Code** which reads as follows:-

“304-B. Dowry death.—(1)

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.”

25. Learned counsel reiterates that neither the date, month, year of the marriage is on record nor the Trial Court took into account the fact that after the Panchayati took



place and the victim returned to her in-laws house on 09.05.2012, the prosecution witnesses ever received any information regarding the demand of dowry. In that circumstances, Section 304(B) of the IPC is not attracted.

26. He further has taken this Court to the postmortem report conducted by the doctor PW 6 who was then posted at SKMCH, Muzaffarpur. He has given the opinion of asphyxia due to pressure over the neck. According to him, the consistent stand of the prosecution is that the death took place due to burn injuries whereas in the medical opinion/postmortem report, it has been recorded as asphyxia due to pressure over the neck. He has further taken this Court to the same postmortem report to show that it occurs both in homicide as well as in suicidal case. He submits that against the prosecution story of the victim having been burnt to death, when the medical opinion differs and also points to suicidal case, the benefit of doubt has to be extended to the accused side.

27. So far as applicability of Section **304(B)** **IPC** is concerned, learned counsel for the appellant has taken this Court to an order of the **Hon'ble the Supreme Court** passed in the case of **Baljeet Singh and Anr. vs. State of**



Haryana reported in **2004 3 SCC 122** with specific reference to paragraphs-17 and 21.

28. The said paragraphs-17 and 21 of **Baljeet Singh (supra)** read as follows:-

“17. Having noticed the requirement of law both under Section 304-B of the IPC as also under Section 113-B of the Evidence Act, we are of the considered opinion that both the courts below erred in drawing an adverse presumption against the accused by shifting the onus on them to prove the date of marriage, which, in our opinion, is not the requirement of law. On the contrary, the law requires the prosecution to establish first by cogent evidence that the death in the case occurred within 7 years of the marriage. Therefore, we will have to consider whether the prosecution has established the factum of Darshana having died within 5 years of her marriage as contended by PW-4. A perusal of his evidence shows that according him marriage



of Darshana was solemnized in the year 1982 but he was not aware which Sambat it was. He says the month of Jaistha but was not sure whether it was Sambat 2035. He specifically states that a Bahi entry was made by his nephew Sathir in regard to the date of marriage and expenses incurred in connection therewith, but this document was not produced in the court Existence of such a document is established not only from the evidence of PW-4 but also from the evidence of the Investigating Officer PW-10 who says that he was made known of the existence of such a document but he did not either seize the said document or verify the date of marriage from the said document. He also states that he made an inquiry about the year of marriage of Darshana and nobody was able to tell the date but year of marriage was told to him. He goes further to state that he did not record the statement of those persons who told him about the year of marriage.



Therefore, it is clear that the prosecution has failed to produce the available evidence regarding the date of Darshana s marriage thereby failed to discharge its initial onus of proof. The defence in this case has unequivocally challenged the correctness of the date of marriage, as stated by the prosecution. It even examined defence witnesses in this regard. Be that as it may the question whether the defence has been able to establish its version of the date of marriage is immaterial because in the first instance it was for the prosecution to establish this fact which for reasons stated above, it has failed to do. Both the courts below, thus, have clearly erred in shifting the onus of proving the date of marriage on the defence and drawing a presumption against it. This is evident from the finding of the trial court which is as follows. "Accused Baljeet in this case has not been able to rebut the mandatory presumption under Section 113-B



of the Indian Evidence Act thus prosecution has been able to prove him the guilt". This finding which is concurred to by the High Court, in our opinion, is wholly erroneous and unsustainable in law.

21. PW-6 is an uncle of Darshana who also speaks about the harassment allegedly meted out by the appellant and his family to Darshana but these facts are not mentioned to the I.O. in his statement under Section 161 (See Ex. DA). He states that they came to know the death of Darshana from one Balwan who had told about the death of Darshana to a cousin of Darshana, by name Dilbagh, who in turn had informed the other members of the family about the death of Darshana. Curiously none of the witnesses who came to know of the incident from Balwan are able to give either the correct address, the particulars of the caste and occupation of Balwan which gives us an impression that



this Balwan is an imaginary person. In these circumstances, bearing in mind the falsity we have found in the evidence of PW-4, we do not consider it safe to place reliance on such oral evidence led by the prosecution to establish the fact that the appellant or his family used to harass Darshana. There is one other aspect of the case to be borne in mind to consider the role played by the appellant in the alleged harassment of Darshana. It has come in evidence that the appellant was not residing in the village with his wife but was employed in Jagadhari in Ambala District and was only visiting the village now and then. This fact has been noticed by the trial court but it rejected the same by observing that if the appellant was not present when Darshana died the evidence under section 304-B is not affected by the factum of appellant being away from his house at the time of death, forgetting the fact that the argument of the defence was not



merely the absence of the appellant at the time of death of Darshana but also the possibility of appellant's involvement in the alleged harassment, since most of the time he was away from the village. That apart, we notice that the courts below have not founded the guilt of the appellant on the oral evidence produced by the prosecution but the same is based primarily on a presumption drawn under Section 113-B of the Evidence Act which we have held to be impermissible in law in view of the prosecution's failure to prove the basic facts which was a condition precedent to the drawing of such a presumption."

29. He has further taken this Court to another order of **Hon'ble the Supreme Court** passed in the case of **Charan Singh @ Charanjit Singh vs. State of Uttarakhand** reported in **2023 SCC Online SC 454** with reference to **paragraph-21 and 23** which read as follows:-

"21. In the aforesaid evidence led by the prosecution, none of the witnesses



stated about the cruelty or harassment to the deceased by the appellant or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act. Even the ingredients of Section 498A are not made out for the same reason as there is no evidence cruelty and harassment to the deceased soon before her death.

23. *On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B IPC and Section 113B of the Indian Evidence Act having not been fulfilled, the conviction of the appellant cannot be*



justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A IPC. The cause of death as such is not known”.

30. Lastly, learned counsel for the appellant has taken this Court to another order of **Hon’ble the Supreme Court** passed in the case of **Karan Singh v. State of Haryana** reported in **2025 0 Supreme (SC) 254** with reference to **paragraphs-8 and 17** which read as follows:-

“8. In this case, there is no dispute that the death of the appellant's wife occurred within seven years of the marriage. Section 113-B of the Evidence Act reads thus:

"113-B. 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 death.

Explanation. For the purposes of this section, "dowry death" shall have the same meaning as in Section 306-18 of Indian Penal Code (45 of 1860)."

The presumption under Section 113-B will apply when it is established that soon before her death, the woman has been subjected by the accused to cruelty or harassment for, or in connection with, any demand for dowry. Therefore, even for attracting Section 113-B, the prosecution must establish that the deceased was subjected by the appellant to cruelty or harassment for or in connection with any demand of dowry soon before her death. Unless these facts are proved, the presumptions under Section 113-B of the Evidence Act cannot be invoked.

17. Now, coming to evidence



of PW-8, Ram Singh. PW-6 has not deposed that any demand of dowry was made to PW-8 or in his presence. She claimed in the cross-examination that PW-8 had told her about the maltreatment and the demand of dowry by the accused three to four months after the marriage. She stated that before 23rd June 1998, the police did not record the statement of PW- 8. She stated that PW-8 had come to her house after the death of the deceased but she did not tell her brother make a statement before the police. The statement of PW-8 was recorded more than two and half months from the date of the incident. Moreover, he had no personal knowledge whether the appellant had subjected the deceased to cruelty or harassment. Therefore, the prosecution did not prove the material ingredients of the offence punishable under Section 304-B. Not a single incident of cruelty covered by Section 498-A was proved by the



prosecution. Section 304-B of the IPC was brought on the statute book in 1986. This Court has repeatedly laid down and explained the ingredients of the offence under Section 304-B. But, the Trial Courts are committing the same mistakes repeatedly. It is for the State Judicial Academies to step in. Perhaps this is a case of moral conviction.”

31. Learned counsel for the appellant concludes by submitting that the chain of Section 304(B) of the IPC has not been completed and further contrary to the statement of the prosecution witnesses that she died of burn injuries, the postmortem records asphyxia due to pressure over the neck. Further, while for the same set of accusation, others have been granted benefit of doubt, the husband has been singled out only because, he was duty bound to protect the lady in which he failed. The moral side apart, which cannot be denied, as he failed as a husband, whether that can be the reason for his conviction and the sentence, this Court has to decide as the appellant is in custody since 31.12.2017.

32. Learned APP, Mr. Sinha, on the other, hand



submits that the year 2007 has come as the year when marriage took place. The occurrence happened on 14.01.2013, the learned Trial Court was fully justified in concluding that it is within seven years of the marriage and as such, Section 304(B) of the IPC stands attracted. It is his further submission that the lady on demand of dowry returned home, filed the Complaint Case No. 772 of 2011 which ended into compromise on 09.05.2012. Thereafter, she returned to her in-laws house followed by the unfortunate incident. Thus, the demand of dowry also stands proved.

33. Learned APP further submits that so far as the postmortem report is concerned, though the cause of death has been shown as asphyxia due to pressure on the neck, the fact remains that the burn injuries were also found and thus, that cannot be a ground for his acquittal. The last submission is that the appellant admittedly being the husband, has to be held responsible for the unfortunate death of the lady.

34. Having gone through the facts of the case and the submissions of the parties, so far as the marriage year is concerned, this Court is in agreement with the learned Trial Court as also the learned APP that simple missing of the date and month cannot be the basis to shrug off the consistent stand



of the prosecution witnesses that the marriage took place in the **year 2007**. Since the death occurred on **14.01.2013**, it is within the **seven years of marriage**.

35. Having said so, this court cannot overlook the fact that so far as the demand of dowry is concerned, despite the prosecution examining altogether five witnesses who all are family members being the father, uncle, cousin brothers and brother-in-law of the deceased, none of them has/have deposed that after the 'Panchayati' took place and the lady returned on 09.05.2012; there was any demand of dowry till the death took place on 14.01.2013. Thus, the chain of Section 304(B) of the IPC is not complete in this case. The opinion of this Court is backed by the judgment of the Hon'ble Apex Court in the case of **Baljeet Singh (supra)**.

36. This court has also taken note of the postmortem report wherein asphyxia due to pressure on the neck has been recorded contrary to the consistent stand of the prosecution witnesses that when they entered the room, the kerosene oil smell was there and the lady was found burnt. Further, the Doctor has deposed that it can be a case of homicide as well as suicide.

37. The last point put forward by the learned



counsel for the appellant is worth consideration. For the same set of accusation against all the accused persons, while the learned Trial Court gave them (the family members of the appellant) the benefit of doubt clubbing them as being married sisters-in-law, aged mother-in-law and a crippled father-in-law, the appellant was singled out and convicted.

38. The considered opinion of the Court is that the learned Trial Court should not have singled out the appellant only because he is /was husband of the victim lady. This definitely comes in the category of moral conviction of the appellant. In case of bail applications, the Court takes this point that he being the husband failed to do his duty and as such, cannot exonerate himself from the responsibility of the unfortunate death. However, in case of trial, only because he is the husband, it cannot be taken as a ground to convict the person unless the prosecution side has proved beyond doubt the role of any accused much less the husband.

39. The case of **Karan Singh (supra)** as put forward by learned counsel for the appellant has to be taken note of where **the Hon'ble Apex Court** recorded that despite laying down the ingredients of under Section 304(B) of the IPC, the Trial Courts are committing the same mistakes again



and again and it is time for the State Judicial Academy to look into the matter to stop such kind of moral conviction.

40. Considering the aforesaid facts which stand recorded, this Court is of the opinion that the prosecution side failed to prove beyond doubt the role of the husband in the killing/unfortunate death of the lady, Afsana Khatoon. It has been informed that the husband is in custody since 31.12.2017.

41. The order of conviction dated **06.11.2023/09.11.2023** passed under Section 304(B) of the Indian Penal Code by **learned Additional Sessions Judge-13, East Champaran, Motihari** stands set aside.

42. The appellant, **Md. Islam @ Phul Babu** shall be set free if not wanted in any other case.

43. **Cr. Appeal (SJ) No. 261 of 2024** is allowed.

(Rajiv Roy, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.03.2025
Transmission Date	06.03.2025

