

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.84 of 2006**

Arising Out of PS. Case No.-523 Year-2000 Thana- BARAUNI District- Begusarai

1. MUNILAL PASWAN Son of Bhattu Paswan Resident of village - Maushadpur, P.S.- Barauni (Refinary O.P.), District - Begusarai.
2. Kirandeo Paswan Son of Bhattu Paswan Resident of village - Maushadpur, P.S.- Barauni (Refinary O.P.), District - Begusarai.
3. Jageshwar Paswan Son of Bhattu Paswan Resident of village - Maushadpur, P.S.- Barauni (Refinary O.P.), District - Begusarai.
4. Arbind Paswan Son of Bhattu Paswan Resident of village - Maushadpur, P.S.- Barauni (Refinary O.P.), District - Begusarai.
5. Aajo Paswan Son of Bhattu Paswan Resident of village - Maushadpur, P.S.- Barauni (Refinary O.P.), District - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (SJ) No. 155 of 2006**

UGANDEO PASWAN son of Sri Bhattu Paswan resident of village  
Maushadpur, P.S. Barauni (Refinary O.P.) Distt. Begusarai

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (SJ) No. 84 of 2006)

For the Appellant/s : Ms. Vaishnavi Singh, Adv.

For the Respondent/s : Mr. Anita Kri. Singh, APP

(In CRIMINAL APPEAL (SJ) No. 155 of 2006)

For the Appellant/s : Ms. Vaishnavi Singh, Adv.

For the Respondent/s : Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR**  
**CAV JUDGMENT**

**Date : 04-07-2024**

Heard Ms. Vaishnavi Singh, learned counsel for the  
appellants and Mrs. Anita Kumari Singh, learned Additional



Public Prosecutor for the State.

2. The present appeals have been filed against the judgment of conviction dated 16.01.2006 and order of sentence dated 21.01.2006 passed by learned Additional Sessions Judge, F.T.C-II, Begusarai in connection with Sessions Trial No. 178 of 2001, arising out of Barauni P.S. Case No. 523 of 2000, whereby and whereunder the appellants were found guilty and convicted for the offences punishable under Sections 304(B) and 201 of the Indian Penal Code. Accused/appellant Ugandeo Paswan (husband of the deceased) was sentenced to undergo 10 years R.I. for the offence u/s 304B of the IPC and 7 years R.I. for the offence u/s 201 IPC. Remaining accused persons were sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 304(B) of the I.P.C and further rigorous imprisonment for a period of seven years under Section 201 of the I.P.C. Both the sentences were directed to run concurrently.

3. The prosecution case as per the F.I.R is that the informant Gita Paswan had solemnized marriage of his daughter, namely, Saraswati Devi with Ugandeo Paswan (appellant) in the year 1996. At the time of marriage, he gave articles according to his status. In the year 1999, after



*Durgaman*, his daughter came to her sasural Mosadpur. After sometime his son-in-law, Ugandeo Paswan and Bhaisur Munnilal Paswan, Ganesh Paswan. Arbind Paswan, Aajo Paswan and Bhattu Paswan (father-in-law) with a common intention started ill treatment and torturing with her daughter. His son-in-law, Ugandeo Paswan, Bhaisur and father-in-law asked to get Rs. 20,000/- from her father for setting a business. When his daughter came to her maternal house on the occasion of Rakhi, she asked him for money on which informant expressed his inability to meet her demand. The matter was settled down and his son-in-law made *Roksadi* of his daughter on the day of Durga Pooja. It is further alleged that on 09.12.2000 at about 9 A.M. he got information that last night his daughter was killed by his son-in-law and his family members and they have disposed off her dead body. On getting information, he along-with other co-villagers went to Mosadpur village (matrimonial house of his daughter) but did not find there family members. When he inquired into the matter from the neighbors, he came to know that his son-in-law, father-in-law of the deceased and bhaisur have already taken away her daughter last night. It is alleged by the informant that her daughter Saraswati Devi was killed by the



appellants due to non fulfillment of the dowry demand and they managed to flee away after concealing the dead body of her daughter.

4. On the basis of the aforesaid *fardbeyan* of the informant Barauni P.S. case No. 523 of 2000 was registered against the appellants under Sections 304(B) and 201/34 of the Indian Penal Code.

5. After completion of the investigation, charge-sheet was submitted against the accused/appellants. Thereafter, the case was committed to the Court of Sessions for trial. Trial court has explained the charges to accused persons to which they pleaded not guilty and claimed to be tried.

6. During the course of trial, altogether nine witnesses were examined on behalf of the prosecution and only one witness was examined for defence.

7. P.W.-1, namely, Virendra Kumar Paswan, brother of the deceased in para-4 of his examination in chief has stated that sasural people were demanding Rs. 20,000/- for setting a business. In para 9 he has stated that he came to know from his father about the killing of his sister and in para 18 he has stated that he does not remember the date on which the demand of Rs. 20,000/- was made by the in-laws of his sister. In para-20,



he has stated that his statement was recorded by I.O. on same day and he disclosed to him about demand of Rs. 20,000/-. In contra P.W.9, I.O. in para 11 has stated that PW-1 in his statement has not named the accused persons that who were demanding money. He also stated before the I.O. that his parents failed to give the money to the accused persons for setting a business.

8. P.W.-2 Raja Ram Paswan is a hearsay witness and he has stated in his deposition that he came to know about the occurrence from the informant. In para-6 he has stated that deceased told him prior to the occurrence that sasural people were demanding Rs. 20,000/-.When he along with other co-villagers went to the sasural of deceased, they found the house locked. In contra Investigating Officer in para 12 has stated that this witness has not taken the name of the accused, who killed the deceased.

9. P.W. 3 Ram Balak Paswan is uncle of the deceased and he is hearsay witness. He has stated in para 3 of his deposition that the accused persons used to demand Rs. 20,000/- as dowry. In para 13 of his deposition he has stated that on 8.12.2000 he had stated to Darogaji that accused persons had killed the informant's daughter and disappeared



her dead body and he received information from informant Geeta Paswan that Saraswati Devi was killed by accused persons. In contra, the I.O. in para-13 of his deposition that this witness has stated that statement of witness Ram Balak Paswan, Lalan Kumar Paswan and Ranjeet Paswan were recorded in para 18 and they have not stated that Saraswati Devi (deceased) is their niece, married in the year 1996 with Ugandeo paswan and on 8.12.2000 she was killed by her husband and in-laws member and disappeared the dead body and accused persons were asking to bring Rs. 20,000/- from the parent and on 9.12.2000, he learnt through Geeta Paswan about the death of his daughter.

10. P.W. 4 Ramanuj Pawan is a hearsay witness and in para-5 of his examination-in-chief that accused persons committed murder of Saraswati Devi due to non-fulfillment of dowry demand of Rs. 20,000/-. In contra, I.O. P.W.-9 has stated in para 7 that statement of this witness was recorded and in para 13 of the case diary he has not stated about demand of Rs. 20,000/- or of any kind of torture by accused. He has not stated name of any accused.

11. P.W. 5 Sunil Paswan is a hearsay witness and



stated that deceased was married to Ugandeo paswan in 1996. He has named all the accused persons. In para 2 he has stated that he along with others went to village Masodpur and he found the door locked. In para-7 of his cross-examination he has stated that he got information that due to non-fulfillment of RS. 20,000/- Saraswati Devi was killed by sasural members. In para-14 he has stated that he saw six chulha in a tiled house. In contra, the I.O. P.W.-9 has stated that in para 15 that this witness has not stated before him that Saraswati Devi was married to Ugandeo Paswan in the year 1996 and was killed on 8.12.2000 in the night in village Masudpur. When he went to village Masudpur, he found the room locked and he learned about the same through Geeta Paswan.

12. P.W. 6 Lalan Kumar Paswan is brother of the deceased and he has stated in his deposition that he came to know about the murder of Saraswati Devi from the informant. He has also stated that his sister had told him regarding the demand of Rs. 20,000/- as dowry. The I.O. P.W.-9 in para-13 has stated that this witness has not stated that deceased was married in the year 1996 with Ugandeo Paswan and on 8.12.2000 she was killed by accused persons and her dead body was disappeared and Rs. 20,000/- was demanded as



dowry to her parents.

13. P.W. 7 Ranjeet Paswan is uncle of deceased. In para 1 this witness has stated that husband and sasural members killed her and disappeared her dead body. In para-2 he has stated about demand of Rs. 20,000/- from her sasural members. In para-3 he has stated that he went to sasural of the deceased and he got information there that accused persons have taken away her dead body by vehicle. In para-9 of cross-examination he has stated that he has not witnessed the occurrence. About six months before, he went to sasural of Saraswati alone. He was given full respect there and foods were also provided to him. At that time, deceased had not disclosed him about any demand or torture by anyone at her sasural. In para-10 he has stated that firstly in the year 1999, demand was made but he cannot say the month and day. In contra, I.O. P.W. 9 in para 13 has stated that this witness has not stated to him that Saraswati Devi was married to Ugandeo Paswan in year 1996 and on 8.12.2000 she was killed by accused persons and they disposed off her dead body and they were also demanding Rs. 20,000/- as dowry from her parents.

14. P.W. 8. Gita Paswan is the informant of the case and father of the deceased Saraswati Devi. He has deposed that



saraswati Devi was married in the year 1996 to appellant Ugandeo Paswan. In the year 1999 saraswati Devi went to her sasural after Durgaman. In the month of Sawan, she came to her naihar and disclosed to her naihar family that sasural people started to torture and assault her. On the eve of Durga Puja hagain her Bidagiri was performed. On 9.12.2000, he got information through Balmiki Prasad that his daughter has been killed by her in-laws and sasural members have disappeared her taken away her dead body in same night. When he along with co-villagers went to her daughter's sasural, he found that the door was locked. In para 13 he has stated that Saraswati Devi (deceased) had come to her naihar in the month of Sawan in the year 2000. His son-in-law has also come alongwith her. In para 13 of his cross-examination he has stated that his Damad (son-in-law) has nenver demanded Rs. 20,000/- from him. In para 15 he has stated that he heard that accused persons were demanding Rs. 20,000/- from his daughter. In para 18 he has stated that Sagar Paswan informed him about the death of his daughter.

15. The Investigating Officer P.W.-9 has stated in para 2 that deceased was living in second room and in kitchen he found six Chulha. In para-6, he stated that no spot or sign was



found in the room of the deceased. In the fardbeyan or diary, it is not stated that accused persons were demanding dowry and due to non-fulfillment of the same, she was being tortured. Witness Sunil Paswan has not stated about dowry or torture. In para-8 he has stated that witness Baso Paswan has stated that Bhatu Paswan had 8 sons and after marriage, they all are living separately. On 8.12.2000, wife of Ugandeo Paswan fell ill, who was taken for treatment to Begusarai by her husband and father-in-law and from there for better treatment she was referred to Patna, where in course of treatment, she died. In para-9 investigating officer has stated that witness Jhingur Paswan and Ram Bilash Paswan stated that deceased died in course of treatment at Twin and Kids Clinic, Boring Road, Patna.

16. On behalf of the defense one witness, namely, Bijay Paswan (D.W.1) has been examined. He has deposed in his deposition that saraswati Devi, daughter of Gita Paswan (Informant) was married to Ugandeo Paswan. In para 2 of his deposition he has stated that Saraswati Devi (deceased) was suffering from Tetanus and he had provided information to deceased's father Geeta Pawan about this. Saraswati Devi was treated in the clinic of Dr. Ranjana Sinha at Begusarai from



where doctor has referred her to Patna for better treatment. He has proved the prescription of Dr. Ranjana Sinha which is marked as Ext. B. In para 3 of his deposition, he has deposed that Saraswati Devi was treated at Patna by Dr. Abha Rani, where she died during course of treatment. He has proved the death certificate issued by Dr. Abha Rani which is marked as Ext. B/1. Certificates of medical treatment were marked as Ext.B. The death certificate granted by Municipal corporation Patna is marked as Ext. A.

17. It is submitted by learned counsel for the appellants that during investigation by the I.O., several witnesses have stated that deceased with her husband were living separately after marriage from his other brothers. Deceased died during course of treatment. Learned trial Court had completely failed to appreciate the entire evidence made by the prosecution during trial by not considering the essential ingredients of Section 304(B) IPC as no witness has deposed that soon before the death of informant's daughter, any demand of dowry was made by the appellants and the death was an unnatural death. Prosecution story is completely weak and as such, the order passed by learned trial court is bad, illegal and perverse in the eye of law. It is further submitted by learned



counsel for the appellants that in the case of **Charan Singh Vs. State of Uttarakhand** as reported in **AIR 2023 SC 2095** in para-21 onwards, the Court has held that if the prosecution failed to prove 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 her death or otherwise, they cannot be convicted under Section 304B of the IPC. The impugned judgment of conviction and order of sentence is fit to be set aside.

18. Learned A.P.P. submitted that the judgment of conviction and order of sentence is fit and proper and based on consistent and cogent evidence and the conviction of the appellants is fit and proper. There is no need of interference in judgment of conviction and order of sentence. Due to non fulfillment of dowry demand the deceased (informant's daughter) was murdered within seven years from the date of marriage at her matrimonial home by the accused persons.

20. I have gone through the entire prosecution evidence, oral and documentary evidence as well as defense evidence. In this case the main point of consideration is whether the prosecution succeed to prove the charges levelled against the appellants beyond reasonable doubt or not.



19. In order to establish the offence under Section 304(B) of Indian Penal Code, the prosecution is obliged to prove that death of a woman is caused by burn or bodily injury or otherwise then under normal circumstances and such death occurs within seven years of her marriage and if it is shown that soon before the death, she was subjected to cruelty or harassment by her husband or any relative of her husband, such harassment and cruelty must be in connection with any demand of dowry. Way of harassment is also not been narrated by anyone. Doctors who had examined the deceased Saraswati Devi have not been examined. The Investigating Officer, who was examined as P.W. 9 has categorically stated in para no. 17 that he could not record the statement of the accused persons as all the accused persons had fled away from the place of occurrence and were not arrested as they had surrendered before the court. If the prosecution proves the aforesaid circumstances then presumption under Section 113-(B) of the evidence act will operate. In the light of the aforesaid provisions, I proceed to examine the evidence on record.

20. It is evident that there is nothing to show that soon before the death there was any demand or torture by the appellants which is necessary ingredient to bring the accused



under Section 304(B) of Indian Penal Code. Section 304(B) of Indian Penal code clearly says that in case of abnormal death if it is shown that soon before the death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry, such death can only be called dowry death. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused persons u/s 304B of the IPC. It is evident from the discussion made that necessary ingredient has not been established by the prosecution to bring the case within the ambit of Section 304(B) of Indian Penal Code. If the prosecution fails to establish the aforesaid ingredients then presumption under Section 113-(B) of the evidence Act does not apply and in such case burden does not shift to the accused persons to revert the presumption under the law. Since ingredient of Section 304(B) is absent on record, in our view the appellants cannot be convicted under Section 304(B) of Indian Penal Code. The trial Court did not consider the aforesaid aspect of the matter in view of the aforesaid findings, the evidence on record which remains to be considered is only circumstantial evidence.

21. It is established that the circumstantial evidence



which has been brought on record, as discussed above, is not sufficient to come to a conclusion that the appellant had committed dowry death. It is well established rule of law that in case of circumstantial evidence, chain must be completed to establish the guilt of the accused. In the instant case, there is no such circumstantial evidence/chain of circumstances to establish the guilt of the appellant. The prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the appellant is entitled to get the benefits of doubt. In this case there is no eye witness and on the basis of hearsay, all the witnesses have deposed in respect of the occurrence.

22. As discussed above, the major contradictions have been elicited during cross examination of the witnesses and from perusal of evidence of Investigating Officer, there are major contradictions found in the evidence of prosecution evidence. In this case there is no eye witness and the demand of dowry has not been proved as discussed above.

23. Thus, on consideration, as discussed above, I am of the opinion that the prosecution has failed to establish its case and as such the conviction of appellants cannot be upheld. Accordingly, these appeals are allowed. The judgment of conviction and order of sentence are hereby set aside.



24. The appellants are all along on bail are acquitted by giving them the benefits of doubt. They are discharged from the liabilities of the bail bonds.

25. Accordingly, both appeals stand allowed.

**(Sunil Kumar Panwar, J)**

sushma/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	1.7.2024
<b>Uploading Date</b>	
<b>Transmission Date</b>	

