

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.309 of 1990**

1. Chinta Devi, Wife of Ram Ekbal Singh.  
2. Kukum Kumari, Daughter of Ram Ekbal Singh.  
Both residents of Village Purshottampur, P.S. Maniyari, Dist. Muzaffarpur. .... Appellants

Versus

The State of Bihar

.... Respondent

With

**Criminal Appeal (DB) No. 312 of 1990**

Dilip Kumar Sharma, son of Ram Ekbal Singh, Resident of Village Purushottampur, P.S. Maniyari, Dist. Muzaffarpur. .... Appellant

Versus

The State of Bihar

.... Respondent

**Appearance :**

**(In CR. APP (DB) No. 309 of 1990)**

For the Appellant/s : Mr. Shailendra Kumar Jha, Amicus Curiae

For the Respondent/s : Ms. Sashi Bala Verma, APP

**(In CR. APP (DB) No. 312 of 1990)**

For the Appellant/s : Mr. Shailendra Kumar Jha, Amicus Curiae

For the Respondent/s : Ms. Sashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**

**And**


**HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA)**

**Date: 14-08-2012**

Both these appeals arise out of the common judgment dated 12.6.1990 in Sessions Trial No. 185 of 1987, whereby and whereunder, the 4<sup>th</sup> Additional Sessions Judge, Muzaffarpur has convicted the three appellants for offence under Section 302/34 of the Indian Penal Code as well as for offence under Section 304B/34 of the



Indian Penal Code and Section 4 of the Dowry Prohibition Act. The appellants have been sentenced to under rigorous imprisonment for life for both offences under Section 302/34 as well as Section 304B/34 of the Indian Penal Code and additionally they have also been convicted for rigorous imprisonment for two years and a fine of Rs. 2,000/- each for the offence under Section 498A/34 of the Indian Penal Code and in default of fine to undergo rigorous imprisonment for six months. They have further sentenced to undergo one year rigorous imprisonment for offence under Section 4 of the Dowry Prohibition Act as well as a fine of Rs. 1,000/- each and in default thereof to undergo rigorous imprisonment of three months.

2. The prosecution case has been set out by the unfortunate father Rajeshwar Prasad Singh (P.W.6) who, in his statement to the police on 22.5.1987 at 4 PM at the Darwaja of his son-in-law, appellant Dilip Kumar Sharma, had stated that his daughter Indu Devi was married to the appellant Dilip Kumar Sharma in the year 1984 and since his daughter was of dark complexion, such marriage was solemnized after full agreement of the bridegroom side. The informant has also stated that his daughter had remained in her Sasural for a period of one year whereafter she had returned to her 'maika' i.e. the house of the informant. In this regard he has alleged that the appellant Dilip Kumar Sharma his son-in-law, Kumkum


Kumari sister of his son-in-law and Chinta Devi mother of his son-in-law had always been taunting and demanding dowry in the form of television, tape recorder, scooter and cash etc. The informant has also claimed that the information of such demand of dowry was always being received by him but on account of his poverty, he was not in a position to fulfill such demand of dowry.

3. The further prosecution case as per the version of the informant is that in the year 1986, his daughter had returned back to her Sasural when his son-in-law the appellant Dilip Kumar Sharma after Ruksadi (second marriage) had taken the deceased Indu Devi to his house. The informant in this regard has alleged that even after the second marriage of his daughter, the demand of dowry by the appellant was continued and when the same was not fulfilled, all the three appellants had kept on threatening his daughter (deceased) that if the goods demanded in dowry were not given, she (Indu Devi) would be done to death whereafter the appellant Dilip Kumar Sharma would solemnize another marriage. The informant has also specifically alleged that some four to five days prior to his recording of Fardbeyan, his daughter was assaulted and on coming to know of this assault on her, when he had gone to the house of the appellant and had requested them to send his daughter back with him to his house (informant's house) as they were not satisfied with the complexion of

his daughter, but his such request was not allowed by the appellants who had stated that unless all the goods of dowry such as television, tape recorder, scooter and cash were given to them, the girl (Indu Devi) would not be allowed to go back to her house.


4. The informant has also stated that on 22.5.1987 while he was when in village Khabra, in the house of his brother-in-law Ram Japu Ojha, he could come to know that his daughter had been done to death after being burnt by her husband appellant Dilip Kumar Sharma, her sister-in-law, Kumkum Kumari and her mother-in-law Chinta Devi and on receipt of such information, he had rushed to the place of his son-in-law appellant Dilip Kumar Sharma and there he could come to know from the neighbours that at about 1.30 PM on the same day i.e. 22.5.1987, his daughter Indu Devi was burnt to death after sprinkling kerosene oil over her body and when the villagers had gone to save her (Indu Devi), they were also prevented from doing so. It is in this manner that the informant has categorically alleged that the death of Indu Devi, the daughter of the informant had taken place on account of concerted overt acts on the part of the three appellants.

5. On the basis of the Fardbeyan of the informant, the father of the victim girl Indu Devi, Maniyari P.S. Case No. 27 of 1987 was recorded for offence under Section 302/34 and 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The



police after investigation had submitted the charge-sheet whereafter the case being triable by court of sessions was committed by an order dated 17.11.1987. The trial court, having framed charges for offence under Section 302/34 of the Indian Penal Code, Section 304/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, had conducted the trial which, as noted above, has ended with the impugned judgment of conviction and sentence of all the appellants.

6. Learned counsel for the appellant, while assailing the impugned judgment, has basically concentrated on the aspect that in the light of the evidence on record, the present case could not be one under Section 302 or Section 304(B) of the Indian Penal Code and at best, the same could be one under Section 306 of the Indian Penal Code. He has further submitted that the evidence of P.W.2 claiming to be an eyewitness of the entire occurrence of burning of Indu Devi, the deceased inside the house of accused persons in the presence of the appellant, is wholly unbelievable, inasmuch as, he in his evidence in court has materially contradicted himself on many counts. He has further assailed the impugned judgment on the ground that when the appellant Chinta Devi, mother-in-law, according to the prosecution case itself, had accompanied her daughter-in-law to the hospital, her being party to the alleged offence after killing of her daughter-in-law for demand of dowry seems to be absolutely unbelievable, if not




absurd. As with regard to the appellant Kumkum Kumari, learned counsel for the appellants has submitted that there is no evidence against her of committing any overt act, inasmuch as, the only unreliable evidence of the P.W.2 of appellant Kumkum Kumari standing near the Darwaja of the room, in question, where Indu Devi was being burnt, with a sickle (Hasua) in her hands in order to prevent any one to save the deceased would hardly inspire any confidence. He has also submitted that as a matter of fact, Kumkum Kumari at the time of the occurrence being a minor, her prosecution itself was bad and in this regard, he has referred to the evidence of D.W.5 for establishing that the said issue of minority/juvenile of the appellant Kumkum Kumari was proved.

7. He has further submitted that in any event, the appellant Dilip Kumar Sharma could not have been convicted only because he was the husband of the victim lady Indu Devi, inasmuch as, from the alibi in the form of deposition of doctor D.W.3, it was well established that on the date of occurrence he was at Jamshedpur (Tatanagar) and was being treated by the said doctor D.W.3. He has also submitted that the prosecution case hinges only on the evidence of P.W.2 and P.W.5 and when the evidence of P.W.2 is wholly unreliable and the conduct of P.W.5, the village Chaukidar, is also shrouded in mystery, the prosecution cannot be said to have proved its

charge beyond reasonable doubt.

8. He has also explained that in fact there is no evidence as with regard to the alleged offence of Section 302 I.P.C. against any of the appellants and in absence of any conclusive and clinching material as with regard to the demand of dowry by the appellants soon before the death of Indu Devi, the ingredient of Section 304B of the Indian Penal Code is also not attracted, inasmuch as, no such presumption under Section 113B of the Evidence Act could be drawn on the basis of the materials on record. He has also criticized the evidence on the point of demand of dowry and has submitted that only four family members of the deceased being obviously interested, have tried to give a shape of dowry death in their evidence in court but when the same is examined, they stand fully exposed in their bid to falsely implicate the appellants. Learned counsel for the appellants has thus submitted that Indu Devi had in fact died on account of accidental fire caused during her cooking in the house.

9. Learned counsel for the State on the other hand while supporting the impugned judgment has submitted that the present case is an open and shut case as with regard to the offence under Section 304B and 498A of the Indian Penal Code. She has also however made her efforts to justify the conviction of the appellants under Section 302/34 of the Indian Penal Code by referring to the postmortem report



and the evidence of P.W.2 which according to her would be sufficient to show that as a matter of fact, the deceased was burnt to death by causing fire after tying her hands and feet. As with regard to the criticism made on the conviction and sentence of the charges under Section 304B of the Indian Penal Code, she has submitted that all the ingredients are fully satisfied in the evidence on record specially when P.W.6 and P.W.4 in their deposition have remained undeterred that such dowry demand was made even four days back prior to the unfortunate occurrence.


10. Defending the evidence of P.W.2, she has submitted that it may be true that he has tried to become over enthusiastic to support the prosecution case but then even if such embellishment made by him is discarded, he still remains a reliable witness on the point of objective findings regarding burn injuries on the person of the deceased. She has also submitted that the prosecution, having examined the village Chaukidar in the form of P.W.5, has given exact narration of the objective findings of the place of occurrence and the manner of occurrence, inasmuch as, the same has also been reiterated and confirmed by the Investigating Officer (P.W.10) in his evidence.

11. She has also submitted that the alibi of the husband, appellant Dilip Kumar Sharma is fit to be rejected on the face of record because when D.W.1 and D.W.2 themselves in their

examination-in-chief have shown him to be present at the place of occurrence, the evidence of D.W.3 a doctor of Jamshedpur (Tatanagar) showing him to be present for his treatment at Jamshedpur and his certificate can hardly said to be either authentic or genuine.


12. As with regard to appellant Kumkum Kumari being juvenile/minor on the date of occurrence, she has supported the assessment of age made by the trial court which had found her to be major on the date of occurrence and in this regard, she has submitted that the evidence of D.W.5, a doctor, cannot be said to be conclusive in absence of production of the X-ray report and other relevant materials on the basis of which such opinion of D.W.5 was based. Commenting further on this aspect, learned counsel for the State has also submitted that as a matter of fact, this issue relating to the appellant Kumkum Kumari being either juvenile or minor could have been gone into and enquired into had there been a prayer made by the appellant in the trial court but in absence thereof, now this matter cannot be examined much less reopened by this Court in view of the prima facie material on record.

13. It has also been submitted that the role of appellant Chinta Devi, the mother-in-law cannot be said to be in any way minimized in the occurrence, in question and to that extent, the story



of her accompanying the deceased on a rickshaw to the hospital is itself unbelievable in absence of any authentic evidence on record. In this regard, she has also invited attention of this Court to the statement of appellant recorded under Section 313 of the Cr.P.C. and specially that of the appellant Chinta Devi, the mother-in-law wherein no such defence was taken that an occurrence as alleged had never taken place and Indu Devi had died on account of accidental fire and despite best of the effort made by her to save the life of Indu Devi and even by taking her to the hospital, she could not be saved.

14. As these submissions of both the parties can be examined by us only on the basis of evidence on record, it has to be noted that the prosecution in all has examined ten witnesses out of whom P.W.1 Ram Japu Ojha, P.W.3 Bindeshwar Prasad Singh, P.W.4 Madhusudan Prasad Singh, P.W.6 Rajeshwar Prasad Singh are the family members of the deceased Indu Devi who have only come to the place of occurrence after acquiring knowledge of the death of the deceased, P.W.2 Bimal Kumar Singh and P.W.5 Bijay Paswan are the two villagers of the appellants in which the occurrence, in question, is said to have taken place and they have supported the manner of occurrence. Though two other villagers P.W.8 Janki Raman Singh and P.W.9 Ram Bali Singh were also examined by the prosecution but they have only been tendered. P.W.7 Dr. Manoranjan Kumar



Shrivastava had conducted postmortem over the person of the deceased Indu Devi and P.W.10 Raj Bali Sharma is the Investigating Officer who had conducted the entire investigation and had submitted the charge-sheet against the appellants. The prosecution has also exhibited six documents, namely, Exbt.-1 the signature over the inquest report, Exbt.-2 signature over the Fardbeyan, Exbt.-3 postmortem report, Exbt.-4 the Fardbeyan, Exbt.-5 Formal F.I.R. and Exbt.-6 the seizure list.

15. At this stage, it would be also relevant to mention here that the accused persons have entered into their defence by examining five witnesses out of whom D.W.1 Surendra Singh and D.W.2 Ranjeet Kumar Sharma being the villagers have come out to support the defence version that the deceased had died as a consequence of accidental fire. D.W.3 Dr. Abdul Wadood Sidique has come out to support the alibi of appellant Dilip Kumar Sharma by claiming that the latter on the day of occurrence was in his treatment at Jamshedpur. D.W.4 Bishambhar Kumar Jha is a formal witness and has produced the plaint of Title Suit No. 120 of 1985 in which P.W.2 had been made party. D.W.5 Dr. Preeti Bala is a doctor who had ascertained the age of appellant Kumkum Kumari under the orders of the trial court and had estimated her to be a minor. The defence has also exhibited certain documents such as Exbt.-A Series being

prescription of treatment of appellant Dilip Kumar Sharma and Exbt.- B the consequential certificate of the doctor D.W.3, Exbt.-C is the plaint of Title Suit No. 120 of 1985 and Exbt. D is the medical report submitted by D.W.5, the doctor regarding the age of appellant Kumkum Kumari.

16. The first and foremost admitted fact is the death of the deceased as has been found by the doctor in his first postmortem report relevant portion whereof reads as follows:-

*"(1) On 23.5.87 at 10 a.m. I held postmortem on the dead body of Indu Devi W/o Dilip Kumar Sharma of Village Purushotampur P.S. Maniari Dist. Muzaffarpur. The body was brought and identified by constable no. 148 Prabhunath Singh. It was a female body aged about 19 years with presence of rigor mortis and average body built. Following ante mortem burn injuries were found on the dead body externally and internally. Extensive burn injuries found on the face, total skull with severing of the hairs of the skull. Extensive burn injuries were found on front of the chest, back of chest, both thigh and upper limbs skin was pealed of on front of the chest. On dissection black shoots was present in the trachea. Lungs was highly congested. All the viscera was highly congested. Evidence of three months of foetus found in the uterus. (i) 1/4" of diameter with bruising of the muscles found on both wrist joint with laceration of muscles found on the both hands. (ii) 1/2" in diameter with bruising and laceration found on the both ankle joints of the leg. These injuries have been caused by some hard rope and ante mortem in nature.*

*The cause of death is shock caused by burn injuries. Time since death is within 24 hours."*


*(Underlining by us for emphasis)*

17. As would be evident from the aforementioned objective findings of the doctor P.W.7 in the postmortem report, the death of the deceased had been on account of ante mortem injuries and the most significant feature as underlined above in the postmortem report is the presence of tying mark of ropes on both the hands and both the legs of the deceased which also were also found to be ante mortem in nature. The defence had put a volley of questions in cross-examination to the doctor P.W.7 in this regard and they were answered by him in the following manner:-

- (2) *1/4" in diameter with bruising of the muscles found on both wrist joints with laceration of muscles of both hands & 1/2" diameter with bruising and laceration found with both ankles of the leg and these injuries have been caused by hard rope. These two injuries were not burn injuries. I did not find any rope on the body.*
- (3) *The silver bangles in hands and silver payal in legs will not cause such injuries as it is not fixed to the particular place of the body. If hands and legs are tied while she was alive, then these injuries can happen. Burn injuries can be caused by accidental fire."*

18. Thus, when the medical evidence as with regard to the presence of ante mortem burn injuries clubbed with sign of tying of hands and feet by rope remains totally undisturbed, the ocular evidence has to be examined only in the backdrop of the allegations made by the informant in the First Information Report. As noted

above, the informant is not an eyewitness and he has only stated that he could come to know that his daughter has been burnt to death by the appellants. The prosecution in fact to support this part of the deceased having been burnt to death has brought on record only the evidence of P.W.2 and P.W.5. Amongst them also, P.W.5 has very candidly accepted that he did not see the actual occurrence of burning and in fact came to the place of occurrence only after acquiring knowledge of death of the deceased by causing burn injury over the person. Eventually, it is only the P.W.2 who has come out to support the allegations of the deceased having been burnt by three appellants and he in this regard in the court has submitted that on hearing Hulla of "*Bachao-Bachao*" raised by the deceased, had rushed to the house of the appellants where he had found a large number of persons to be present and since the door of the house was bolted from inside, he had scaled down the wall whereafter he had found the deceased under flames and shouting "*Bachao-Bachao*" whereas appellant Kumkum Kumari was standing over there with a sickle (Hasua) with a view to prevent P.W.2 in rescuing the Indu Devi (deceased). He has further stated that the appellant Chinta Devi, the mother-in-law was also standing over there and appellant Dilip Kumar Sharma was also standing at the same place who having seen the arrival of the P.W.2, had ran away towards the western side. P.W.2 has also stated that he



had immediately opened the door of the house whereafter a large number of villagers had come inside the house. He has also claimed that P.W.5, a village Chaukidar, had come over there and he along with the village Chaukidar had made the attempt to save the life of Indu Devi by taking her to the hospital but when they reached near the village Susta, Indu Devi had died and as such, they had returned back to the house and had kept the dead body at the Darwaja of the house of the appellants. He has also submitted that the three appellants being the husband, mother-in-law and sister-in-law of the deceased, had even earlier been indulging themselves in assaulting the deceased for demand of dowry and even four days earlier, they had assaulted the deceased. In the cross-examination, while he has tried to remain firm as with regard to the placement of his house and a close proximity with the house of the appellants but then in view of the evidence other PWs record and his own admission that his house was at a quite far place across the road and that no one else of the members of the villagers have supported the story of opening of the door of the house by P.W.2 after scaling down the wall as also his own version being not supported by the P.W.5, the only other villager such, this Court would find it difficult to accept that part of prosecution case by which the three appellants were sought to be implicated by way of causing murder of the deceased by burning her

to death.

19. As noted above, apart from P.W.2, there is none to have supported this part of manner of occurrence in which the three appellants are said to be present in the house while deceased was being burnt to death, this Court will have no difficulty in holding that P.W.2 has tried to improve upon his earliest version. In fact when no other villager has also come out to support the evidence of P.W.2 despite there being presence of a large number of houses situated by the side of the house of the appellants, this Court must hold that there is no evidence as with regard to causing murder of the deceased by the three appellants. The charge under Section 302 I.P.C. against the appellants at least on the strength of the sole witness P.W.2 cannot be said to have been substantiated much less proved beyond reasonable doubt.

20. The question of culpability of the appellants however still will remain open, inasmuch as, there was an alternative charge against the appellants of Section 304B/34 I.P.C. and Section 498A/34 I.P.C. and thus if the prosecution evidence has been sufficient to prove this charge, the appellants' conviction to that extent can still be affirmed by this Court. As with regard to requirement of Section 304B IPC, the provision of law itself is very clear. Section 304B I.P.C. reads as follows:-

*"304B. 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.*

*(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."*

21. Section 304B of the I.P.C. as quoted above has to be necessarily understood in the context of the amended provision of the Evidence Act as incorporated under Section 113B, which reads as follows:-

*"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 dowry death."*

22. Law also stands well settled that in order to prove the charge of Section 304B of the I.P.C., the following essential ingredients have to be proven:-

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances,
- (ii) such a death should have occurred within seven years of


her marriage,

- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) such cruelty or harassment should be for, or in connection with, demand for dowry and'
- (v) such cruelty or harassment is shown to have been meted out to the women soon before her death.

23. The aforementioned ingredients in fact have been also enumerated in the judgment of the Apex Court in the case of *Kunhiabdulla & Anr. Vs. State of Kerala* reported in *2004(4)SCC 13*.

24. In the light of the aforementioned requirements of Section 304B of the I.P.C., if we analyze the evidence on record, there is no dearth of material to establish the death of the deceased had taken place on account of injuries caused by burn and the fact that her such burn injuries were clubbed with a mark of tying of her hands and feet by rope would automatically lead to an conclusion that her death was caused in otherwise than under normal circumstances.

25. There is also no dispute that the marriage of the deceased with the appellant Dilip Kumar Sharma had taken place in the year 1984 and the occurrence in question had taken place on 22.5.1987 and thus, within seven years of the marriage.



26. The third and fourth requirement of the deceased being subjected to cruelty or harassment by her husband or relatives of the husband is also fully satisfied in this case, inasmuch as, there are four witnesses on the point of demand of dowry and cruelty being inflicted on the deceased. They are P.W.1 Ram Jappu Ojha (Fufa of the deceased), P.W.3 Bindeshwar Prasad Singh (Mama of the deceased), P.W.4 Madhusudan Prasad Singh (the maternal cousin of the deceased) and P.W.6 Rajeshwar Prasad Singh (father of the deceased). The demand of dowry and torture being inflicted on the deceased has been fully supported by the informant P.W.6 in his evidence. P.W.6 in this regard has stated that despite his giving cash of Rs. 20,000/- and gift of utensils worth Rs. 5,000/- in the marriage as demanded, there was still a persistent demand from all the three appellants for giving television, tape recorder, scooter and further cash money by way of dowry. He has also stated that in a span of married life of his deceased daughter, when she had gone to her Sasural, she had been always taunted and ill treated by the appellants for fulfillment of the dowry demand. He in this regard has also stated that there were some settlement sought to be made immediately after the marriage by the intervention of the common family members who had gone to Garib Sthan, a common place, wherein the appellant Chinta Devi, mother-in-law and appellant Kumkum Kumari, sister-in-law

had stated that the deceased was an ugly lady and she could be kept in their house only after fulfillment of their dowry demands. The informant, father of the deceased girl, in his evidence has also given details of the repeated torture being made by the appellants for fulfillment of dowry in a graphic manner and in this regard, he has stood the test of cross-examination and has remained firm and with regard to an incident taking place just four days prior to the death of the deceased as with regard to which, he had stated as follows:-


*“घटना के चार पाँच दिन पहले जब मैं पुरुषोत्तमपुर गया था तो दिलीप कुमार शर्मा, उसकी माँ तथा बहन टी. भी., स्कूटर तथा टेप रेकार्ड की माँग की थी। मैंने उनलोगों को समझाया बुझाया तथा कहा कि शनिवार को मैं फिर आऊंगा तो पंचेती कराकर निर्णय लिया जायेगा।”*

27. This part of his specific version in his evidence in examination-in-chief read with his other portion of evidence in examination-in-chief on the issue of demand of dowry has remained un-rebutted, inasmuch as, all that the defence could take from this witness was that the father of the appellant Dilip Kumar Shrama and the husband of Chinta Devi had not demanded any dowry from P.W.6. As a matter of fact, it is no one's case that the father of the appellant Dilip Kumar Sharma and the husband of appellant Chinta Devi had ever demanded dowry from the deceased residing in the village home along with the appellants either prior to or the day on which the occurrence, in question, had taken place. In that view of the

matter, merely because this witness P.W.6 has denied as with regard to demand of dowry by the father of the appellant Dilip Kumar Sharma that would not mean that the other family members, namely, mother-in-law Chinta Devi and the husband Dilip Kumar Sharma as well as sister-in-law Kumkum Kumari had also not tortured the victim deceased lady for demand of dowry.

28. As a matter of fact, this part of demand of dowry and subjecting the deceased to cruelty has been also fully supported by P.W.4, the cousin of the deceased who in his cross-examination in para-5 had stated that though assault on the deceased had not taken place in his presence but she was denied food by the appellants in his presence. He has also stated that such occurrence of denying food to the deceased had taken place some 2½ - 3 months prior to the occurrence. He has also stated that this fact was made known by him to the father of the deceased, P.W.6 the informant whereafter both he (P.W.4) and P.W.6 had gone to the house of the appellants and in this way, the demand of dowry and subjecting the deceased to cruelty has been also supported by P.W.4.

29. On this point, there is yet another evidence of P.W.3 who is the father of P.W.4 and Mama (maternal uncle of the deceased). P.W.6 in his evidence had also stated that this fact that it was P.W.3 who had negotiated the marriage of appellant Dilip Kumar



Sharma with the deceased and in this backdrop, when P.W.3 in his evidence had not only supported the evidence of P.W.6 but had also given details as with regard to the conduct of the appellants particularly mother-in-law and sister-in-law as with regard to their refusal to accept the deceased as a daughter-in-law only on account of not giving the ornaments as promised in the marriage, there is nothing more for this Court to assume that the evidence on the point of demand of dowry and torturing the deceased for the same by all the three appellants is well supported from the evidence on record. In fact, when in cross-examination itself, the defence has taken from this witness P.W.3 as with regard to complaint made by the P.W.6, the father to P.W.3 who had arranged the marriage and negotiated the same, there would be hardly any occasion for this Court to disbelieve the evidence of prosecution on the issue of demand of dowry and subjecting the deceased to cruelty or harassment by all the three appellants.

30. In this manner, this Court would find that the test of Section 304B is fully supported from the evidence on record specially when the P.W.6 and P.W.4 have remained firm as with regard to the demand of such dowry and cruelty and/or harassment inflicted on the deceased to have been meted out within a period of four days to three months as discussed above. The issue as to what would be the

meaning of expression "soon before" the death of the deceased in terms of Section 304B in fact also stands answered by the Apex Court in the case of Kunhiabdulla (supra), wherein, it was held as follows:-

*"11. ----- It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. --- The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If [the] alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."*

31. In that view of the matter, this Court will have no difficulty in holding that the death of the deceased had taken place in an unnatural manner and before her death, only her hands and legs were tied with rope but she was also burnt to death as is evident from the findings of the doctor and corroborated by the objective findings of the Investigating Officer, P.W.10 who has given a vivid description of the place of occurrence in his evidence, relevant portion whereof reads as follows:-

*“घटना स्थल अभियुक्त दीलीप कुमार शर्मा का उतर रूख का छत्तदार मकान है। इस मकान में उतर रूख का प्रवेश द्वार है। अन्दर जाने पर पश्चिम तरफ से तीन कमरा हैं दखिन-पूरब कोना वाला कमड़ा है जिसमें उपर छत नहीं है। घटना*

*स्थल वाला कमरा में एक टुटा हुआ सलाई जिसमें कुछ कॉटी शेष थोड़ा अधजला बाल, साड़ी का जला अधजला टुकड़ा, सूती चादर का जला अधजला टुकड़ा, अधजला वढ़नी खर का, एक कटोरा जिससे किरासन तेल का गंध आता था, कमरे में जमीन पर काला दाग तथा दिवाल पर भी कालादाग पाया गया।”*

32. In view of the aforementioned objective findings of the Investigating Officer specially the presence of dark spot on the floor and also black spot on the wall with a bowl smelling kerosene oil and recovery of burnt hairs, the used and mutilated matchbox with unused matchsticks, the other half portion of burnt Sari as also the cotton bed sheet at the place of occurrence would fully support the findings of doctor conducting postmortem who had found ante mortem injuries by way of specific mark of tying the hands and legs of the deceased apart from burn injuries all over her body.


33. Learned counsel for the appellants, however, had tried to explain that once there was presence of black mark on the wall, the story of tying the hands and legs of the deceased would automatically vanish, inasmuch as, a person whose hands and legs are tied cannot stand so as to cause black mark on the walls. Such desperate submission of the learned counsel for the appellants, however, has to be only noted for its being rejected. Presence of black spot on the floor is indicative of the fact that the deceased was initially sought to be burnt by tying her legs and hand, inasmuch as, both these tying injuries on the muscle of the hands and legs were ante mortem in nature and, therefore, it is quite possible that she was initially

sought to be burnt in a tying condition but when the flames had burnt the ropes, she may have tried to save herself in the standing posture on account of which the wall also got black spots.

34. In any event, the onus in such cases in view of Section 113B will always be on the accused whenever there are materials to establish a dowry death. In this regard, one has to also go to the explanation given by all the three accused persons in their examination made under Section 313 of the Cr.P.C. From their statement under Section 313 Cr.P.C., it is absolutely clear that they have not tried to put any such circumstances on account of which it could be said that the deceased had died on account of accidental fire, a possibility which itself is ruled out in view of the mark of tying of her hands and legs found by the doctor by way of ante mortem injury on the person of the deceased. In that view of the matter, this Court will also have no difficulty in rejecting the submissions of the learned counsel for the appellants that it was actually a case of suicide and at best punishable under Section 306 of the Indian Penal Code. A person committing suicide cannot first tie his own hand and leg and thereafter put herself on fire. Moreover, it has come on record that the deceased was carrying pregnancy of three months and thus an expecting mother could not have ventured to end her life by firstly sprinkling kerosene oil all over her body and then tying her own hands and legs with a


rope as also ignite the match stick for committing suicide by burning herself. That is simply impossible.

35. If in this background, the specific defence of the appellants as taken by them in the light of their evidence is examined, that would by itself lead to no uncertain end. D.W.1 Surendra Singh and D.W.2 Ranjeet Kumar Sharma, the villagers, when they have not only specifically stated about the presence of all the three appellants by the side of the deceased in a burnt state, the so-called plea of alibi of the appellant Dilip Kumar Sharma of his being treated at a far place in Jamshedpur by doctor D.W.3 Dr. Abdul Wadood Sidique on the date of occurrence automatically vanishes. It has to be kept in mind that D.W.3 is a regular practitioner and does not claim to be running a hospital in which the appellant Dilip Kumar Sharma was ever admitted and was under 24 hours vigil of the doctor. In that view of the matter, the plea of alibi of the appellant Dilip Kumar Sharma must fail. The two defence witnesses D.W.1 and D.W.2 in fact having shown the presence of the appellant Dilip Kumar Sharma at the place of occurrence along with the two other appellants Chinta Devi, mother-in-law and Kumkum Kumari, Sister-in-law have themselves given a support to the case of the prosecution as with regard to their presence in the house when the deceased was found to be in the burnt condition and had ultimately succumbed to her such injuries.



Moreover, D.W.1 and D.W.2 have also supported the immediate appearance of P.W.5 Bijay Paswan, the Chaukidar and the version of this Chaukidar is very clear that when he had reached the place of occurrence on hearing Hulla about the unnatural death of the deceased, he had found the deceased in a burnt condition and though he had made effort to save her life by taking her to the hospital but she died in the way to the hospital.


36. Learned counsel for the appellants, however, has criticized the evidence of P.W.5 by stating that the alleged dying declaration of the deceased to P.W.5 would not be either admissible or inspire confidence, inasmuch as, this part of the evidence of P.W.5 in court that the deceased had revealed to P.W.5 that all the three appellants had burnt her to death in presence of P.W.2 was not at all supported by P.W.2 in his evidence. This Court having examined the evidence of P.W.5 will have no difficulty in rejecting that part of his evidence wherein he had sought to introduce the demand of dowry in the mouth of the deceased and naming the three appellants as the persons who had caused such burn injury on her person, inasmuch as, there is no such support to his version by any of the other witnesses including even the P.W.2 who was accompanying the deceased to the hospital along with P.W.5. The crucial question, however, would still be that even if P.W.5 is disbelieved on this score, his reaching on the



place of occurrence soon after the burn injury of the deceased is even otherwise supported by D.W.1 and D.W.2 themselves. Additionally, his presence at the place of occurrence is also supported by the Investigating Officer who in his deposition has accepted that he had examined the village Chaukidar P.W.5 on 22.5.1987 at the place of occurrence. In that view of the matter, this Court would only rely on P.W.5 to the extent of his arriving at the place of occurrence after the Hulla and seeing the deceased in burnt condition. Even then, the charge under Section 304B I.P.C. would stand proved because there would be no requirement in terms of Section 304B of the I.P.C. read with Section 113B of the Evidence Act to pin point any specific overt act against the accused persons in order to bring the charge home.


37. Thus, having given anxious consideration to the entire evidence on record, this Court will have no difficulty in holding that the charge under Section 304B/34 of the I.P.C. and Section 498/34 of the I.P.C. as well as Section 4 of the Dowry Prohibition Act stands proved against the appellants.

38. In view of the aforementioned discussions, while the complicity of the three appellants is writ large on the face of record specially when the appellant Chinta Devi is the mother-in-law, appellant Kumkum Kumari is the sister-in-law and the appellant Dilip Kumar Sharma is the husband of the deceased, a question, however,



would still be as to whether the sentence of the appellant Kumkum Kumari can be maintained? In this regard, this Court would find that the specific plea raised by the appellant Kumkum Kumari that on the date of occurrence i.e. on 22.5.1987, she was a minor and in support of this fact, she had also adduced the evidence of D.W.5 Dr. Preeti Bala who had examined her as per the direction of the court on 19.2.1988 and had ascertained her age around eighteen years on the date of such examination. The trial court, however, having assessed the age of Kumkum Kumari on 30.1.1989 as twenty years despite the claim of the appellant Kumkum Kumari that on 30.1.1989 when her statement was being recorded under Section 313 Cr.P.C., was only fifteen years of age, has proceeded to reject the case of appellant Kumkum Kumari of being a minor on the ground that the evidence of D.W.5 as with regard to the opinion of the age of Kumkum Kumari was based upon certain radiological reports and records which were not proved by the defence in accordance with Evidence Act. This Court would find such reasons given by the trial court to be only unacceptable, inasmuch as, whenever such question of age relating to minority/juvenility would arise, there has to be necessarily an enquiry by the court itself but from the records it is evident that no such enquiry was conducted by the trial court.


39. At the relevant point of time in the year 1989, when



such an issue had arisen in the case of the appellant Kumkum Kumari, the provision of Children Act had to be followed in letter and spirit which also envisages an enquiry for ascertaining and fixing the age. Section 8 of the Bihar Children Act, 1982 which was then in vogue had prescribed for holding an enquiry for recording opinion as with regard to age for declaration of children. Similarly, provision of Section 20 of the 1982 Act also prescribes enquiry by Children's Court regarding delinquent children and Section 24 had laid down no joint trial of a child and a person of not being a child could be held. Thus the mandate of law of an enquiry by the court concerned having been not undergone by the trial court, this Court would find the sentence of Kumkum Kumari to be bad.

40. In this connection, we, while exercising out appellate power keeping in mind the provision of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, would hold that there has to be a fresh enquiry as with regard to the determination of the claim of the appellant Kumkum Kumari of her being a child in terms of the Bihar Children Act, 1982 read with her being a juvenile in terms of the Juvenile Justice (Care and Protection of Children) Act, 2000.

41. Such age of the appellant Kumkum Kumari must be determined by holding an enquiry and she is found to be



children/juvenile in terms of Bihar Children Act, 1982 and the Juvenile Justice (Care and Protection of Children Act, 2000, her sentence would be determined afresh in keeping with the provision of the Bihar Children Act, 1982. If however, she is not found to be a child on the date of occurrence or her juvenile in terms of the 2000 Act on the date of occurrence, her sentence, as recorded by the trial court in the impugned judgment shall remain undisturbed.

42. In view of the aforesaid discussion, this Court would partly allow both the appeal by setting aside the conviction and sentence of the appellants under Section 302/34 of the Indian Penal Code but their rest of the conviction and sentence for offences under Section 304B/34 and Section 498A/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act as awarded by the trial court in the impugned judgment is affirmed, subject to the observations and direction made in the case of appellant Kumkum Kumari.

43. With the aforementioned modifications in the impugned judgment, both the appeals are dismissed.

44. Since the appellants are on bail, their bail bonds are hereby cancelled and while appellant Chinta Devi and appellant Dilip Kumar Sharma are directed to surrender before the court below for serving out the rest of their sentence, appellant Kumkum Kumari also

must appear before the trial court for establishing her claim of being a child/juvenile on the date of occurrence.

**(Aditya Kumar Trivedi, J)**

**(Mihir Kumar Jha, J)**

Patna High Court  
The 14<sup>th</sup> of August, 2012  
NAFR/Rishi

