# IN THE HIGH COURT OF JUDICATURE AT PATNA
**CRIMINAL APPEAL (DB) No.34 of 2001**

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1. Saheb Jan Mian, Son of Juman Mian.
2. Mian Jan Mian @ Babujan Mian, Son of Juman Mian.
3. Juman Mian, Son of Late Chitu Mian.

All resident of Baisakhwa, P.S.-Kesariya, District-East Champaran.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Rajesh Ranjan, Advocate |
| | | Ms. Maria Nazir, Advocate |
| For the Respondent/s | : | Mr. Abhimanyu Singh, APP |

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**CORAM: HONOURABLE MR. JUSTICE NANI TAGIA**
**and**
**HONOURABLE MR. JUSTICE ANSUL**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ANSUL)**

**Date : 13-05-2026**

Heard Mr. Rajesh Ranjan, learned counsel assisted with Ms. Maria Nazir, learned counsel for the appellants and Mr. Abhimanyu Singh, learned Additional Public Prosecutor for the State.

**2.** In the instant appeal, the appellants have challenged the judgment of conviction and order of sentence dated 21.12.2000 and 22.12.2000 respectively passed by the learned Additional Sessions Judge-VIII, East Champaran at Motihari in Sessions Trial No. 125 of 2000/79 of 2000, arising out of Kesharia P.S. Case No. 040 of 1999 dated 10.05.1999, whereby the appellants had been convicted under Section 304(B)/34 of Indian Penal Code (for short

"I.P.C."). For the offence under section 304(B)/34 IPC, the appellants had been sentenced to undergo rigorous imprisonment for life.

**3**. The prosecution case in brief is that the informant, Rahman Mian, P.W. 5 lodged information that his niece Ashma Khatoon was married to one Saheb Jan Mian, son of Jhuman Mian. After marriage Saheb Jan Mian, his father, Jhuman Mian and brother Mian Jan Mian @ Babujan Mian used to torture his niece. They used to threaten with death. They also used to state that he would marry again and at one point of time he had given them TV. On 09.05.1995 at 5 P.M., when he came to know that his niece had been killed he and maternal uncle of the girl namely Shamshudin Mian, P.W. 1 came to the house of the niece and found her dead. He saw black spot surround her neck and saw broken bangles on the bed and found the mosquito net to be torn. From the neighbours, she came to know that three accused persons had killed her and they had fled away.

**4.** After investigation, police submitted charge-sheet for the offence under Section 304B IPC, thereafter, the cognizance was taken and charges were framed under Section 304B IPC against the appellants which they denied and claimed to be tried.

**5.** During the course of trial, altogether nine witnesses were examined in support of the prosecution case, which are as under: -

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| P.W.-1 | Shamsuddin |
| P.W.-2 | Md. Yunus |
| P.W.-3 | Ful Yunus |
| P.W.-4 | Ibrahim Mian |
| P.W.-5 | Rahman Mian |
| P.W.-6 | Dr. Brajesh Kumar Singh |

**6.** Apart from the oral evidences, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows: -

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| Exhibit- 1 | Signature of Rahman Mian on *fardbeyan* |
| Exhibit- 2 | Pot-mortem report of Ashma Khatoon |

**7.** P.W. 1, Shamsuddin the witness referred in the FIR was declared hostile. P.W. 2, Md. Yunus, the cousin of the deceased, P.W. 3, Ful Yunus and P.W. 4, Ibrahim Mian were declared hostile.

**8.** P.W. 5, Rahman Mian, the informant in his chief-examination stated that there was demand of TV and for non-fulfilment of the same she was killed. In para 3, he stated that they had not demanded dowry and she used to live with her husband happily. He also stated that she had never complained about her husband.

**9.** P.W. 6, Dr. Brajesh Kumar Singh was the doctor who found the cause of death asphyxia due to strangulation.

**10.** After completion of prosecution evidence, the statement of the appellants was recorded under section 313 of the Code of Criminal Procedure, in which the appellants denied the allegation and stated that they are innocent and have falsely been implicated in the present case.

**11.** Learned counsel for the appellants submits that the prosecution has failed to establish the case under Section 304B IPC as well as cruelty and harassment and demand of dowry caused by the appellants.

**12**. Learned Additional Public Prosecutor for the State has supported the impugned judgment of conviction and sentence and has submitted that the appellants are responsible for committing suicide of Ashma Khatoon (deceased) as such the impugned order passed by learned Trial Court finds no infirmity.

**13.** The trial Court has previously recorded that all the witnesses except doctor were declared hostile. P.W. 5, the informant had made contradictory statements. In Para 1, he stated that his niece was killed due to non-fulfilment of demand of TV. In para 3, he comes out to the version that there is no demand of dowry and the lady lived with her husband happily. The same would result in non-reliance upon this witness but the learned Sessions Judge has committed an error of record in stating that the witness was declared hostile which she was not.

**14**. The learned Sessions Judge seems to have proceeded on the assumption that once a lady has died and the death as per the post-mortem is unnatural. In terms of the same, learned Sessions Judge has proceeded on the assumption that it was for the accused persons to prove that they had not killed the deceased and the presumption under Section 113B of the Evidence Act comes into play. Moreover, the failure to discharge the burden would result in automatic conclusion of guilt of the accused persons that in the opinion of this Court the learned Sessions Judge has grossly erred in appreciation of law is that the prosecution has to prove three things:- (i) death within seven years (ii) demand of dowry (iii) death in other natural circumstances.

**15.** The prosecution has not in its deposition has even established the date of marriage of the deceased with the accused. The FIR though says that the marriage of the deceased with Md. Sahabejan was solemnized in the year 1998 but the informant P.W. 5 in his deposition has stated nothing about date of the marriage. It is trite law that the FIR is not a substantive piece of evidence and it has to be proved by the informant in the Court. The same not having been done and anything having been sought with regard to date of marriage. In the deposition, it has to be held that the prosecution has failed to establish the date of the marriage and, thus, death within seven years so far as the issue of demand of dowry is concerned the FIR does mention about dowry but the sole witness who has not been declared hostile, i.e., informant P.W. 5. in para 1 says that his niece was killed due to demand of dowry but in para 3 he makes completely contradictory and incompatible statement that there was no demand for dowry and the girl used to live happily with harassment. The statement of all the witnesses seems to have been given in the chief-examination on the same date itself it cannot be even alleged that the witness was given on two different dates. These mutual contradictory and incompatible statement would rule out reliance on any of the statements making the entire evidence is baseless for the entire prosecution so far as the victim of unnatural death is concerned. No doubt doctor has stated that the death was caused by asphyxia due to strangulation but the same has not been uttered by any witness and, thus, there is absolutely no co-operation of the statement given by the doctor.

**16.** I.O. of this case has not been examined. Non-examination of the I.O. lacks the defence opportunity of bringing on record the materials that could have shown the mode, manner and genesis of occurrence and their innocence. Since no issues are there which have to be countered by the defence it is useless to say that absence of I.O. caused grave prejudice to the defence that the law with regard to reverse burden to prove is well settled. The Hon'ble Supreme Court in the case of **Noor Aga vs. State of Punjab and Anr.** reported in **(2008) 16 SCC 417** in the context of NDPS has clearly stated that the legal presumption or reverse burden of proof does not absolve the prosecution of establishing its *prima facie* case and once a *prima facie* case is established only then the reverse burden of proof is applied and the defence falls under a duty to explain the death. The relevant paragraphs 51, 53, 54, 56 and 58 are as under:-

> *"**51.** The Act specifically provides for the exceptions. It is a trite law that presumption of innocence being a human right cannot be thrown aside, but it has to be applied subject to exceptions.*
>
> ***53.** Dealing with the provisions of Sections 118(b) and 139 of the Negotiable Instruments Act, 1881.*
> *"43. But, we may at the same time notice the development of law in this area in some jurisdictions.*
> *44. The presumption of innocence is a human right. Article 6(2) of the European Convention on Human Rights provides: 'Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.' Although India is*

*not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused's rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the aforementioned purpose the nature of the offence, seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasised. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused e.g. honest and reasonable mistake of fact. In a recent Article The Presumption of Innocence and Reverse Burdens: A Balancing Duty published in 2007 CLJ (March Part) 142 it has been stated:*

*'In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden? How easily could an innocent defendant discharge the reverse burden? But courts will not allow these pragmatic considerations to override the legitimate rights of the defendant. Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice—where the offence is not too serious or the reverse burden only*

*concerns a matter incidental to guilt. And greater weight will be given to prosecutorial efficiency in the regulatory environment.'*
*The abovestated principles should be applied in each case having regard to the statutory provisions involved therein.*

***54.*** *We may, however, notice that recently in Seema Silk & Sarees v. Directorate of Enforcement [(2008) 5 SCC 580 : (2008) 2 SCC (Cri) 649 : (2008) 7 Scale 624] , in a case where the constitutionality of the provisions of Sections 18(2) and 18(3) of the Foreign Exchange Regulation Act, 1973 was questioned on the ground of infringing the "equality clause" enshrined in Article 14 of the Constitution of India, this Court held: (SCC pp. 586-87, paras 19-21)*

*"19. A legal provision does not become unconstitutional only because it provides for a reverse burden. The question as regards burden of proof is procedural in nature. (See Hiten P. Dalal v. Bratindranath Banerjee [(2001) 6 SCC 16 : 2001 SCC (Cri) 960] and M.S. Narayana Menon v. State of Kerala [(2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] .*

*20. The presumption raised against the trader is a rebuttable one. Reverse burden as also statutory presumptions can be raised in several statutes as, for example, the Negotiable Instruments Act, Prevention of Corruption Act, TADA, etc. Presumption is raised only when certain foundational facts are established by the prosecution. The accused in such an event would be entitled to show that he has not violated the provisions of the Act. In a case of this nature, particularly, when an appeal against the order of the Tribunal is pending, we do not think that the appellants are entitled to take the benefit thereof at this stage. Such* *contentions must be raised before the criminal court.*

*21. Commercial expediency or auditing of books of accounts cannot be a ground for questioning the constitutional validity of a parliamentary Act. If the parliamentary Act is valid and constitutional, the same cannot be declared ultra vires only because the appellant faces some difficulty in writing off the bad debts in his books of accounts. He may do so. But that does not mean the statute is unconstitutional or the criminal prosecution becomes vitiated in law."*
*Provisions imposing reverse burden, however, must not only be required to be strictly complied with but also may be subject to proof of some basic facts as envisaged under the statute in question.*

**56.** *The provisions of the Act and the punishment prescribed therein being indisputably stringent flowing from elements such as a heightened standard for bail, absence of any provision for remissions, specific provisions for grant of minimum sentence, enabling provisions granting power to the court to impose fine of more than maximum punishment of Rs 2,00,000 as also the presumption of guilt emerging from possession of narcotic drugs and psychotropic substances, the extent of burden to prove the foundational facts on the prosecution i.e. "proof beyond all reasonable doubt" would be more onerous. A heightened scrutiny test would be necessary to be invoked. It is so because whereas, on the one hand, the court must strive towards giving effect to the parliamentary object and intent in the light of the international conventions, but, on the other, it is also necessary to uphold the individual human rights and dignity as provided for under the UN Declaration of*

*Human Rights by insisting upon scrupulous compliance with the provisions of the Act for the purpose of upholding the democratic values. It is necessary for giving effect to the concept of "wider civilisation". The court must always remind itself that it is a well-settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused. In State of Punjab v. Baldev Singh [(1999) 6 SCC 172 : 1999 SCC (Cri) 1080] it was stated: (SCC p. 199, para 28)*

*"28. ... It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."*

***58.** Sections 35 and 54 of the Act, no doubt, raise presumptions with regard to the culpable mental state on the part of the accused as also place the burden of proof in this behalf on the accused; but a bare perusal of the said provision would clearly show that presumption would operate in the trial of the accused only in the event the circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by* *the accused cannot be said to have been established."*

**17.** Here in the case neither the date of death, the date of marriage, demand of dowry or unnatural death has been successfully proved by the prosecution. Thus, no question with regard to reverse burden of proof on the accused arises.

**18.** Having carefully considered the statement of the witnesses and the medical evidence, we find that the impugned judgment passed by learned trial Court is not well considered.

**19.** However, in the instant case, the evidence on record is not sufficient to prove the foundational fact of the prosecution case.

**20.** For the reasons stated above, we are not agreeable with the findings made by the learned Trial Court. We find that the impugned judgment of conviction and order of sentence does not stand to scrutiny, hence, the same requires interference, thus, the appellants deserve to be acquitted of the charges levelled against them.

**21**. Accordingly, the appeal is allowed and the judgment of conviction and order of sentence 21.12.2000 and 22.12.2000 respectively passed by the learned Additional Sessions Judge-VIII, East Champaran at Motihari in Sessions Trial No. 125 of 2000/79 of 2000, arising out of Kesharia P.S. Case No. 040 of 1999 dated

10.05.1999, whereby the appellants had been convicted under Section 304(B)/34 of Indian Penal Code (for short “I.P.C.”). is set aside. Consequently, the appellants of the present appeal is acquitted of the charges levelled against them.

**22.** If the appellants are in jail, they shall be released forthwith, if not required in any other case. The appellants are discharged from the liabilities of their bail bonds.

**23.** Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court, forthwith.

**(Ansul, J)**

I agree

**(Nani Tagia, J)**

Vikash/-

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| **AFR/NAFR** | |
| **CAV DATE** | 19.02.2026 |
| **Uploading Date** | 13.05.2026 |
| **Transmission Date** | 13.05.2026 |