

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.358 of 2024

Arising Out of PS. Case No.-382 Year-2018 Thana- JAGDISHPUR District- Bhagalpur

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Dulari Devi, Wife of Mokil Yadav, Resident of Kashimpur, P.S.-Goradih District -Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar
2. Shravan Yadav, Son of Haldhar Yadav, Resident of Village- Tarcha, P.S. -Goradih, District -Bhagalpur.
3. Haldhar Yadav, Son of Late Bhango Yadav, Resident of Village- Tarcha, PS -Goradih District -Bhagalpur.
4. Kanki Devi, Wife of Haldhar Yadav, Resident of Village- Tarcha, P.S. -Goradih District -Bhagalpur.
5. Lalan Yadav, Son of Haldhar Yadav, Resident of Kashimpur Kahalgaon, P.S. -Goradih District -Bhagalpur.
6. Sunil Yadav, Son of Haldhar Yadav, Resident of Village- Tarcha, P.S. -Goradih District -Bhagalpur.
7. Sushil Yadav, Son of Shiv Yadav, Resident of Village- Kashimpur Kahalgaon, P.S.- Goradih, Dist- Bhagalpur.
8. Reeta Devi @ Reena Devi, Son of Shushil Yadav, Resident of Village- Kashimpur Kahalgaon, P.S.- Goradih, Dist- Bhagalpur.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Praveen Kumar Agrawal, Advocate
For the Resp. No.1	:	Mr. Ajay Mishra, APP
For the Resp Nos. 2 to 8:		Mr. Aditya Narayan Singh, Advocate
		Mr. Praveen Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-05-2025

Heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the Respondent Nos. 2 to 8.



2. The present appeal has been preferred for setting aside the judgment of acquittal passed on 01.02.2024 (hereinafter referred to as the impugned judgment) by the learned Additional District & Sessions Judge-V, Bhagalpur in Sessions Trial No. 119 of 2019 + Session Trial No. 339 of 2019 + Session Trial No. 223 of 2021 (Trial No. 263 of 2022) arising out of Jagdishpur (Goradih) P.S. Case No. 382 of 2018 dated 22.07.2018 whereby and whereunder the learned trial court has been pleased to acquit Respondent Nos. 2 to 8 of the charges under Sections 304(B)/34, 302/34, 201/34 & 120B of the Indian Penal Code (in short 'IPC').

Prosecution Case

3. The prosecution case is based on the written application of the mother of the deceased (PW-2) addressed to the Deputy Inspector General of Police, Bhagalpur in which she has stated that she had got her daughter married to Shravan Yadav, resident of Bhagalpur in the year 2012 and out of the wedlock, her daughter has got two children. After marriage, her daughter's husband Shravan Yadav, father-in-law Haldhar Yadav, mother-in-law Kanki Devi, devar Lalan Yadav and Sunil Yadav, Sushil Yadav and Reeta Devi were continuously torturing and beating her daughter for Rupees One Lakh and cow due to which her daughter used to come to her *naihar* many times to save her life. It is further



alleged that six months ago, upon compromise with the husband of her daughter and her in-laws showing good faith, the informant allowed her daughter to go to her *sasural* and also gave two cows worth Rs.60,000/-, but again the in-laws started assaulting her daughter and harassed her. On 22.07.2018, the informant came to know that her daughter has been murdered by her husband and in-laws, they have concealed the dead body and ran away after locking their house. The informant alleged that she gave written complaint in Goradih Police Station but no action was being taken. This written application was sent to the Officer Incharge of Goradih Police Station to ensure proper action as per law. On being receipt of this written application, Jagdishpur (Goradih) P.S. Case No. 382 of 2018 dated 02.08.2018 was registered for the offences under Sections 304B/201/34 IPC.

4. After investigation, police submitted a charge-sheet bearing No. 172 of 2018 dated 28.11.2018 against Sushil Yadav (respondent no. 7) keeping investigation pending against other accused persons. After receiving this chargesheet, learned Magistrate took cognizance for the offence under Sections 304(B)/201/120(B)/34 IPC vide order dated 13.12.2018. After commitment, Session Trial No. 119 of 2019 was registered on 26.03.2019 in which charges were explained to accused Sushil



Yadav to which he denied and claimed to be tried. Accordingly charges under Sections 304B/34, 302/34, 201/34 and 120B IPC was framed vide order dated 30.04.2019.

5. Thereafter, police submitted supplementary chargesheet bearing No. 51 of 2019 dated 15.05.2019 against Reeta Devi (Respondent no. 8) keeping investigation pending against other accused persons. After receiving this chargesheet, learned Magistrate finding prima-facie material against her for the offences under Sections 304(B)/201/120(B)/34 IPC vide order dated 21.05.2019 kept the case for supply of police paper. After commitment, Session Trial No. 339 of 2019 was registered on 19.06.2019 in which charges were explained to accused Reeta Devi to which she denied and claimed to be tried. Accordingly, charges under Sections 304B/120B/201/34 IPC was framed vide order dated 20.02.2020.

6. Thereafter, police submitted another supplementary chargesheet bearing No. 186 of 2019 dated 05.12.2019 against Shravan Yadav (Respondent No. 2), Lalan Yadav (Respondent No. 5), Sunil Yadav (Respondent No. 6), Haldhar Yadav (Respondent No. 3), Kanki Devi (Respondent No. 4). After receiving this chargesheet, learned Magistrate finding prima-facie material against these accused persons for the offences under Sections



304(B)/201/120(B)/34 IPC vide order dated 23.12.2019 kept the case for supply of police paper. After commitment, Session Trial No. 223 of 2021 was registered on 15.03.2021 in which charges were explained to accused persons to which they denied and claimed to be tried. Accordingly, charges have been framed against Shравan Yadav, Haldhar Yadav, Lalan Yadav, Kanki Devi and Sunil Yadav vide order dated 01.12.2021 under Sections 304(B)/34, 201 and 120(B) IPC. Prio to 21.09.2022, PW-1 and PW-2 of Sessions Trial No. 223 of 2021 were already examined and discharged. In Session Trial No. 1191 of 2019, Ena Devi (PW-1) had been examined prior to passing of the order of amalgamation. Further, we find from the ordersheet of Sessions Trial No. 339 of 2019 that in the said trial Ena Devi has been examined on 07.05.2022, she has been described as PW-3 but there is no PW-1 and PW-2.

7. Vide order dated 21.09.2022, Sessions Trial No. 339 of 2019 and Sessions Trial No. 223 of 2021 were amalgamated with Session Trial No. 119 of 2019. Prior to 21.09.2022, PW-1 and PW-2 of Sessions Trial No. 223 of 2021 were already examined and discharged. In Sessions Trail No. 119 of 2019, Ena Devi (PW-1) had been examined prior to passing of the order of amalgamation. Further, we find from the ordersheet of Sessions



Trial No. 339 of 2019 that in the said trial Ena Devi has been examined on 07.05.2022, she has been described as PW-3 but there is no PW-1 and PW-2.

8. In course of trial, prosecution examined several witnesses and got exhibited some documentary evidences. List of Prosecution witnesses and the documents adduced on behalf of prosecution are mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PWs	Name of witness	
PW 1	Ena Devi	ST No. 119 of 2019
PW 2	Dulari Devi	ST No. 119 of 2019 +ST No. 339 of 2019 + ST No. 223 of 2021
PW 3	Mokil Yadav	ST No. 119 of 2019 +ST No. 339 of 2019 + ST No. 223 of 2021
PW 4	Dr. Bibhuti Kumar	ST No. 119 of 2019 +ST No. 339 of 2019 + ST No. 223 of 2021
Two witnesses were previously examined in ST No. 223 of 2021		
PW 1	Umesh Yadav	
PW 2	Gopal Pandit	

List of Exhibits

Exhibit	Description of the Exhibit
Ext-P1/PW-2	Signature of the Informant on written informant
Ext-P1/PW-4	PM Report

List of Defence Witnesses

DW-1	Pankaj Kumar
DW-2	Mohril Das



Findings of Learned Trial Court

9. Learned trial court, after analysing the evidences available on the record found that in the written application, the informant alleged that her daughter was harassed by her in-laws for dowry due to which her daughter many times came to *naiher* but there is no evidence of any witness to corroborate this allegation. Further, learned trial court found that there is no application regarding beating for dowry on record reported to any authority. Learned trial court further found from the evidence of the defence witnesses that accused Reeta Devi was married and was living in her sasural with her husband and all the brothers of the husband of the deceased were also living separately. Learned trial court observed that it seems that the informant has tried to drag the entire family of in-laws of her daughter in the dowry case due to said unfortunate incident.

10. Learned trial court found that the body of the deceased was recovered from river after seven days. Learned trial court found that PW-2 deposed that there was black mark on neck of her daughter but this fact has not been supported by her husband (PW-3). Learned trial court further found that Post mortem report shows that there was no external injury and it



indicates the presence of Celphos in the visceral fluid of the deceased but it does not show that the said Celphos was forcefully administered to the deceased.

11. Learned trial court observed that even if for the argument sake, it is presumed that Celphos was forcefully administered to the deceased and the body was thrown in the river then also there is not a single eye witness to depose from the prosecution side that they have seen the accused persons throwing the dead body in the river.

12. Learned trial court after considering all the materials found that the prosecution has failed to prove beyond all reasonable doubts that the deceased was harassed soon before her death for demand of dowry and due to non-fulfilment of said demand, the deceased was killed by the accused. Accordingly, learned trial court found that the prosecution is unable to prove the charges under Sections 304B/34, 302/34, 201/34 and 120B IPC, hence, acquitted the accused persons-respondent nos. 2 to 8.

Submissions on behalf of the Appellants

13. Learned counsel for the appellant has assailed the impugned judgment. It is submitted that learned trial court has acquitted the respondent nos. 2 to 8 without appreciating the evidences available on the record. Learned trial court has failed to



appreciate the evidence of PW-2 and PW-3 who have supported the prosecution case.

14. Learned trial court has erroneously closed the evidence without examining the four charge-sheet witnesses including the Investigating Officer of this case and the Officer-in-Charge of Sanhaura Police Station.

15. Learned counsel submits that there were ample materials before the learned trial court to hold the respondent nos. 2 to 8 guilty but has erroneously acquitted them from the charges levelled against them without examining all the chargesheet witnesses.

Submissions on behalf of the Respondent Nos. 2 to 8

16. Learned counsel representing respondent nos. 2 to 8 defended the impugned judgment by submitting that the learned trial court has rightly come to the conclusion in acquitting the accused persons after analysing the evidences brought by the prosecution and no fault may be found with the same.

17. Learned counsel submits that it is the case of the prosecution that the informant's daughter was continuously harassed for dowry and beaten due to which she many times came to naiher but prosecution has not brought any evidence to substantiate this allegation. Further, the prosecution has failed to



bring any documentary evidence to show that the informant or deceased had ever submitted any application regarding beating for dowry to any authority.

18. Learned counsel further submits that the defence witnesses deposed that accused Reeta Devi (respondent no. 8) was married and was living in her sasural with her husband (respondent no. 7) and all the brothers of the husband of the deceased were also living separately which shows that the informant has tried to drag the entire family of in-laws of her daughter in the dowry case due to said unfortunate incident.

Submissions of the State

19. On the other hand, learned counsel for the the learned Additional Public Prosecutor for the State has defended the impugned judgment but fairly submitted that learned trial court has closed the evidence without examining the four chargesheet witnesses.

Appreciation of evidence on behalf of the prosecution

20. In this case, though, while submitting Charge-sheet No. 172 of 2018, the I.O. has shown five witnesses as chargesheet witnesses but out of five, only three witnesses have been examined on behalf of the prosecution.



21. In Charge-sheet No. 186 of 2019, apart from the five charge-sheet witnesses of Charge-sheet Witness No. 172 of 2018, two other witnesses namely Umesh Yadav and Gopal Pandit have been made charge-sheet witnesses.

22. In the third charge-sheet bearing No. 51 of 2019 dated 15.05.2019, in the column of the charge-sheet witnesses it is recorded as “*poorv aarop patra ke anusar*”. It is thus evident that altogether seven witnesses were cited on behalf of the prosecution to support its case.

23. Ena Devi (PW-1) has been declared hostile. She has been cross-examined by the prosecution and her attention was drawn towards her earlier statement made before police in which she had stated that Chandani Devi (the deceased) had two children and her *sasural* people were regularly beating her. She had also stated that Chandani Devi was murdered by Shrawan Yadav with the help of his mother-father and brother. This witness was suggested in course of her cross-examination that she had come in collusion with the accused persons and was making false deposition.

24. Dulari Devi, wife of Mokil Yadav has deposed as PW-2. She is the informant of this case. She has stated that her daughter was married in the year 2012. The occurrence had taken



place in the year 2018. She has further stated in her examination-in-chief that Haldar Yadav, Sunil Yadav, Lalan Yadav, Shrawan Yadav, Kanki Devi, Rita Devi, Sushil Yadav all were together assaulting her daughter Chandani Devi and her daughter has been murdered as she could not fulfill the demand of Rs. 1.50 lakhs as dowry. She was not allowed to see the dead body of her daughter and they had made the dead body to disappear. They had also concealed her nati and natni. This witness has stated that the accused persons were threatening her. She had stated everything to police and she is looking for justice. She has identified her signature on the fardbeyan which has been marked 'P1/PW-2'. This witness has identified all the accused persons in the dock.

In her cross-examination this witness has stated that Rita Devi is sister of Shrawan. Sushil is jija (brother-in-law) of Shrawan. Sushil and Rita were married prior to the marriage of Chandani Devi and Rita Devi was living with her husband Sushil. She has stated that prior to the marriage of Chandani Devi, Rita Devi and her husband Sushil were living separately. She has stated that she had given her application to 2-4 persons of the village but she did not remember their name. The dead body of her daughter was found at Sanhaura Police Station. She heard the rumour of the death of her daughter in her village whereafter she had gone to the



house of the accused persons and later on she went to the police station where she saw the dead body of her daughter. She identified the dead body on looking at the same and the photographs. She came to know that the dead body of her daughter was found in a river. She could not see any mark of injury because the dead body was found after seven days. She has stated that there was a black mark on the neck of the dead body. She denied the suggestion of the defence that there was no demand of dowry and she had falsely implicated the accused persons.

25. Mokil Yadav (PW-3) is the father of the deceased. He has stated that the occurrence is of the year 2018. This witness has further stated that Shrawan Yadav was indulging in beating his daughter and was demanding Rs. 1 Lakh as dowry. He has further stated that because he could not pay the dowry money so Shrawan had killed his daughter. He had given two cows to Shrawan. His son-in-law Shrawan, Sunil, Suman, Haldar and Sushil all had together taken away the cows. This witness has stated that the dead body was found in the Sanhaura Police Station, he had lodged the case and had also made his statement before the police. In his cross-examination this witness has stated that he had not seen the occurrence by his own naked eyes and he had lodged the



case in anger. He cannot say as to from whom he had received the information. He had not given any written information with regard to the demand of dowry to any Mukhiya or Sarpanch. He denied the suggestion of defence that no dowry was demanded and he had falsely implicated the accused persons.

26. Dr. Bibhuti Kumar (PW-4) is the doctor who had conducted the autopsy on the dead body on 27.07.2018 at 1:00 PM. He has stated that the dead body was brought to the department by Chowkidar Nishikant Rajak and Akshay Paswan from Sanhaura Police Station. The dead body was identified by the same Chowkidar and it was handed over to them after postmortem examination. In his deposition, PW-4 has stated that on examination rigor mortis had passed off. Scalp hairs had fallen off. Muscles and tissue of scalp and face had been eaten up by aquatic animals. Maggots were swarming all over the dead body. No external injury was found over the body and body surface. The body was in early decomposition. On dissection stomach contain about 50 ml of gray colour fluid with deeply congested gastric mucosa and strong pungent smell. Solid organs like liver, spleen, kidney and lungs were congested. Bladder was empty. Uterus was small in size, right side of heart contain blood whole left side was empty. Brain and its meninges were in process of liquefaction.



The viceras were preserved and forwarded to the FSL for chemical analysis. Regarding the time since death, PW-4 has deposed that the death was within two days to five days of postmortem examination in the department. In his cross-examination this witness has stated that the dead body was decomposed. Over the dead body no ante-mortem injury were present. The gastric mucosa was congested with strong pungent smell and he had preserved the viscera for suspected poisoning. The postmortem report has been marked Exhibit 'P1/PW-4'.

27. This Court has noticed that the FSL report has been brought on record, however, the FSL report has not been proved and this has not been marked exhibit.

Appreciation of evidence on behalf of the defence

28. On behalf of the defence, two witnesses have deposed. Pankaj Kumar (DW-1) is a co-villager of Haldar Yadav. He has stated that Haldar Yadav has three sons namely Lalan Yadav, Sunil Yadav and Shrawan Yadav and one daughter namely Rita Devi. Rita Devi was married in the year 2016-17 in village Kasimpur and he was living with her husband in her sasural. He has stated that Shrawan Yadav, Haldar Yadav, Sunil Yadav are living separately. In his cross-examination he has stated that he has no relationship with the accused persons.



29. Mohril Das (DW-2) has deposed on the same line. He has also stated that Rita Devi was married about fifteen years ago and all the brothers are living separately with their family.

Consideration

30. We have perused the ordersheets of the trial court to find out as to why the other four witnesses including the Investigating Officer of this case and the Officer-in-Charge of Sanhaura Police Station who were charge-sheet witnesses have not been examined. This Court finds that the records of the three trials were amalgamated and all the three trials were transferred to the court of learned Additional District and Sessions Judge-V. The records were running for production of prosecution witnesses. On 16.12.2022, Bibhuti Kumar (PW-4) was examined, cross-examined and discharged by the trial court. On 03.01.2023, 20.01.2023, 01.02.2023, 22.02.2023, 04.03.2023, 22.03.2023, 03.04.2023, 26.04.2023, 10.05.2023, 07.06.2023, 07.07.2023, 05.08.2023, 08.09.2023, 09.10.2023, 16.10.2023 and 08.11.2023 no prosecution witness was produced. On 08.11.2023, the learned trial court passed an order for issuance of a show-cause to the Investigating Officer of the case. The case was kept on 05.12.2023, however, on 05.12.2023 again no prosecution witness appeared. This time, the trial court recorded that it is the last



chance for the prosecution to produce the witness. The matter was kept on 20.12.2023 but again on 20.12.2023 no prosecution witness was present. On that date, the learned trial court closed the prosecution evidence and the records were kept for statement under Section 313 Code of Criminal Procedure (in short 'CrPC').

31. On 02.02.2024, the statement of the accused persons were recorded. The defence examined two witnesses on 08.01.2024 and 09.01.2024. On 18.01.2024 and 25.01.2024 hearings took place and thereafter judgment was delivered on 01.02.2024.

32. It is evident from the orders passed by the learned trial court that save and except that on one date a show-cause was called from the I.O., no other effective order could be passed to secure the appearance of the prosecution witnesses. On record, we do not find any application on behalf of the Public Prosecutor seeking appropriate steps for procuring presence of the prosecution witnesses. On record there is a letter of the Presiding Officer of the trial court to the Senior Superintendent of Police, Bhagalpur issued on 17th September, 2023 by which the Senior Superintendent of Police, Bhagalpur was informed that the Investigating Officer namely Neeraj Kumar and Ram Pravesh Yadav are not putting appearance,ailable warrant and non-



bailable warrants have been issued against them but they have not appeared. The Senior Superintendent of Police was directed to issue order to the two I.Os. to mark their presence in court on 09.10.2023 for recording of their evidences. This letter seems to have been issued vide DB 394 dated 11.09.2023.

33. It is evident from the records that the Senior Superintendent of Police did not take care of the letter issued by the Presiding Officer of the trial court. The two I.Os. of the case did not depose.

34. The laches on the part of the prosecution is evident from the records. The trial court though issued a show-cause to the I.O. but did not bother to see that whether show-cause has been received or not and if not received then what action is required to be taken at its end. In the opinion of this Court, it was incumbent upon the learned trial court to exhaust all the procedures which are prescribed by law. The CrPC prescribes the steps required to be taken by the trial court by way of issuance of summons, bailable warrant, non-bailable warrant and the proclamation to procure the presence of a person who is either absconding or is concealing himself so that such warrant cannot be executed.

35. In the present case as the materials on the record would show, the dead body of the victim was recovered from a



river after about five days and thereafter her postmortem was conducted. It was kept in the Sanhaura Police Station. The Police Officer who had recovered the dead body was the Officer-in-Charge of the Sanhaura Police Station but despite the fact that he was one of the charge-sheet witnesses, he did not appear. The inaction on the part of the Senior Superintendent of Police, Bhagalpur is also evident.

36. In the case of Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, IN RE vs. State of Andhra Pradesh and Ors. reported in **(2021) 10 SCC 598**, the Hon'ble Supreme Court has provided the Draft Criminal Rules on Practice, 2021. The Rules are to be made part of the rules governing the criminal trials. Directions in this regard have been issued to all the High Courts and the State Governments.

The Draft Criminal Rules on Practice, 2021 is as under:-

“DRAFT CRIMINAL RULES ON PRACTICE, 2021

CHAPTER I : INVESTIGATION

1. *Body sketch to accompany medico-legal certificate, post-mortem report and inquest report.*—

Every medico-legal certificate, post-mortem report shall contain a printed format of the human body on its reverse and injuries, if any, shall be indicated on such sketch.

Explanation: The printed format of the human body shall contain both a frontal and rear view of the human body as provided in Annexure A.

2. *Photographs and videographs of post-mortem in certain cases.*—(i) In case of death of a person in police action [under Section 46, Criminal Procedure]



Code, 1973 (“CrPC”) or Sections 129 to 131 CrPC] or death while in police custody, the Magistrate or the investigating officer as the case may be, shall inform the hospital or doctor in charge to arrange for photographs or videography for conducting the post-mortem examination of the deceased. The photographs of the deceased shall also be arranged to be taken in all cases.

(ii) Such photograph and videographs shall be taken either by arranging a police photographer or a nominated photographer of the State Government, and where neither of the above are available, an independent or private photographer shall be engaged.

(iii) Such photographs or videographs shall be seized under a panchnama or seizure memo and all steps taken to ensure proper proof of such photographs/videographs during trial.

(iv) The investigating officer shall ensure that such photographs and videographs, if taken electronically, are seized under a panchnama or seizure memo and 12steps are taken to preserve the original, and ensure that certificate under Section 65-B of the Evidence Act, 1872 is obtained and taken to be proved during trial.

(v) The video or photographs shall be stored on a separate memory card, accompanied by a duly certified certificate under Section 65-B of the Evidence Act, 1872.

(vi) Where post-mortems are recorded in electronic form, the file containing the post-mortem proceedings, duly certified, should be placed with the memory card as an attachment unless individual memory cards are not capable of being produced before court.

3. Scene mahazar/spot panchnama.—(i) A site plan of the place of occurrence of an incident shall be appended by the investigating officer to the scene mahazar or spot panchnama.

(ii) The site plan shall be prepared by the investigating 12officer by hand, and shall disclose:

(a) the place of occurrence,

(b) the place where the body (or bodies) was/were found,

(c) the place where material exhibits and/or weapons,

(d) bloodstains and/or body fluids had fallen,



(e) the place where bullet shells, if any, were found or have caused impact,

(f) the source of light, if any, and

(g) adjoining natural and man-made structures or features such as walls, pits, fences, trees/bushes, if any, and

(h) elevation of structures and their location.

(iii) The preparation of this sketch by the investigating officer shall be followed by a scaled site plan prepared by police draftsman, if available, or such other authorised or nominated draftsman by the State Government, who shall prepare the scaled site plan after visiting the spot.

(iv) The relevant details in the mahazar or panchnama shall be marked and correlated in the said site plan.

4. Supply of documents under Sections 173, 207 and 208 CrPC.—(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208 CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.

CHAPTER II : CHARGE

5. The order framing charge shall be accompanied by a formal charge in Form 32, Schedule II CrPC to be prepared personally by the Presiding Officer after complete and total application of mind.

CHAPTER III : TRIAL

6. Recording of evidence : Procedure.—(i) The depositions of witnesses shall be recorded, in typed format, if possible. The record of evidence shall be prepared on computers, if available, in the court on the dictation of the Presiding Officer:

Provided that in case the language of deposition is to be recorded in a language other than English or the language of the State, the Presiding Officer shall simultaneously translate the deposition either himself or through a competent translator into English.

(ii) The deposition shall be recorded in the language of the witness and in English when translated as provided in Clause 6(i).



(iii) The depositions shall without exception be read over by the Presiding Officer in court. Hard copy of the testimony so recorded duly signed to be a true copy by the Presiding Officer/court officer shall be made available free of cost against receipt to the accused or an advocate representing the accused, to the witness and the prosecutor on the date of recording.

(iv) A translator shall be made available in each court and Presiding Officers shall be trained in the local languages, on the request of the Presiding Officer.

(v) The Presiding Officers shall not record evidence in more than one case at the same time.

7. Recording of evidence : Format of witnesses.—(i)

The deposition of each witness shall be recorded dividing it into separate paragraphs assigning paragraph numbers.

(ii) Prosecution witnesses shall be numbered as PW 1, PW 2, etc. in seriatim. Similarly, defence witnesses shall be numbered as DW 1, DW 2, etc. in seriatim. The court witnesses shall be numbered as CW 1, CW 2, etc. in seriatim.

(iii) The record of depositions shall indicate the date of the chief examination, the cross-examination and re-examination.

(iv) The Presiding Officers shall wherever necessary record the deposition in question and answer format.

(v) Objections by either the prosecution or the defence counsel shall be taken note of and reflected in the evidence and decided immediately, in accordance with law, or, at the discretion of the learned Judge, at the end of the deposition of the witness in question.

(vi) The name and number of the witness shall be clearly stated on any subsequent date, if the evidence is not concluded on the date on which it begins.

8. Exhibiting of material objects and evidence.—(i)

Prosecution exhibits shall be marked as Exhibit P-1, P-2, etc. in seriatim. Similarly, defence exhibits shall be marked as Exhibit D-1, D-2, etc. in seriatim. The court exhibit shall be marked as Exhibit C-1, C-2, etc. in seriatim.

(ii) To easily locate the witness through whom the document was first introduced in evidence, the exhibit number shall further show the witness number of such witness after the exhibit number. If an exhibit is



marked without proper proof, the same shall be indicated by showing in brackets (subject to proof).

Explanation : If Prosecution Witness 1 (PW 1) introduces a document in evidence, that document shall be marked as Exhibit P-1/PW 1. If proper proof is not offered for that document at the time when it is marked, it shall be marked as Exhibit P-1/PW 1 (subject to proof). The second document introduced by PW 1 will be Exhibit P-2/PW 1.

(iii) The material objects shall be marked in seriatim as MO 1, MO 2, etc.

9. Subsequent references to accused, witness, exhibits and material objects.—(i) After framing of charges, the accused shall be referred to only by their ranks in the array of accused in the charge-sheet and not by their names or other references except at the stage of identification by the witness.

(ii) After recording the deposition of witnesses, marking of the exhibits and material objects, while recording deposition of other witnesses, the witnesses, exhibits and material objects shall be referred to by their numbers and not by names or other references.

(iii) Where witness cited in the complaint or police report are not examined, they shall be referred to by their names and the numbers allotted to them in the complaint or police report.

10. References to statements under Section 161 and 164 CrPC.—(i) During cross-examination, the relevant portion of the statements recorded under Section 161 CrPC used for contradicting the respective witness shall be extracted. If it is not possible to extract the relevant part as aforesaid, the Presiding Officer, in his discretion, shall indicate specifically the opening and closing words of such relevant portion, while recording the deposition, through distinct marking.

(ii) In such cases, where the relevant portion is not extracted, the portions only shall be distinctly marked as prosecution or defence exhibit as the case may be, so that other inadmissible portions of the evidence are not part of the record.

(iii) In cases, where the relevant portion is not extracted, the admissible portion shall be distinctly marked as prosecution or defence exhibit as the case may be.



(iv) The aforesaid rule applicable to recording of the statements under Section 161 shall mutatis mutandis apply to statements recorded under Section 164 CrPC, whenever such portions of prior statements of living persons are used for contradiction/corroboration.

(v) Omnibus marking of the entire statement under Sections 161 and 164 CrPC shall not be done.

11. Marking of confessional statements.—The Presiding Officers shall ensure that only admissible portion of Section 8 or Section 27 of the Evidence Act, 1872 is marked and such portion alone is extracted on a separate sheet and marked and given an exhibit number.

Chapter IV : The Judgment

12. Every judgment shall contain the following:

(i) Start with a preface showing the names of parties as per Form A to the Rules.

(ii) A tabular statement as per Form B to the Rules.

(iii) An appendix giving the list of prosecution witnesses, defence witnesses, court witnesses, prosecution exhibits, defence exhibits and court exhibits and material objects as per Form C to the Rules.

13. In compliance with Sections 354 and 355 CrPC, in all cases, the judgments shall contain:

(i) the point or points for determination,

(ii) the decision thereon, and

(iii) the reasons for the decision.

14. In case of conviction, the judgment shall separately indicate the offence involved and the sentence awarded. In case there are multiple accused, each of them shall be dealt with separately. In case of acquittal and if the accused is in confinement, a direction shall be given to set the accused at liberty, unless such accused is in custody in any other case.

15. In the judgment the accused, witnesses, exhibits and material objects shall be referred to by their nomenclature or number and not only by their names or otherwise. 12Wherever, there is a need to refer to the accused or witnesses by their name, the number shall be indicated within brackets.

16. The judgment shall be written in paragraphs and each paragraph shall be numbered in seriatim. The Presiding Officers, may, in their discretion, organise the judgment into different sections.

CHAPTER V : MISCELLANEOUS

17. Bail.—(i) The application for bail in non-bailable cases must ordinarily be disposed off within a period



of 3 to 7 days from the date of first hearing. If the application is not disposed off within such period, the Presiding Officer shall furnish reasons thereof in the order itself. Copy of the order and the reply to the bail application or status report (by the police or prosecution) if any, shall be furnished to the accused and to the accused on the date of pronouncement of the order itself.

(ii) The Presiding Officer may, in an appropriate case in its discretion insist on a statement to be filed by the prosecutor in charge of the case.

18. Separation of prosecutors and investigators.— The State Governments shall appoint advocates, other than Public Prosecutors, to advise the investigating officer during investigation.

19. Directions for expeditious trial.—(i) In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and, in particular, when the examination of witnesses has once begun, the same shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. [Section 309(1) CrPC]. For this purpose, at the commencement, and immediately after framing charge, the court shall hold a scheduling hearing, to ascertain and fix consecutive dates for recording of evidence, regard being had to whether the witnesses are material, or eyewitnesses, or formal witnesses or are experts. The court then shall draw up a schedule indicating the consecutive dates, when witnesses would be examined; it is open to schedule recording of a set of witness' depositions on one date, and on the next date, other sets, and so on. The court shall also, before commencement of trial, ascertain if the parties wish to carry out admission of any document under Section 294, and permit them to do so, after which such consecutive dates for trial shall be fixed.

(ii) After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable. If witnesses are in attendance no adjournment or



postponement shall be granted, without examining them, except for special reasons to be recorded, in writing. [Section 309(2) CrPC].

(iii) Sessions cases may be given precedence over all other work and no other work should be taken up on Sessions days until the Sessions work for the day is completed. A Sessions case once posted should not be postponed unless that is unavoidable, and once the trial has begun, it should proceed continuously from day today till it is completed. If for any reason, a case has to be adjourned or postponed, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

37. The Draft Criminal Rules, even if not incorporated in the Rules governing the Criminal Trial Rules, provides at least a guidance to the trial court as to how the trials in a criminal case be taken up.

Section 311 of the CrPC, 1973 reads as under:-

“311. Power to summon material witness, or examine person present.-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

38. The object underlying Section 311 CrPC has been discussed in the case of **V.N. Patil vs. K. Niranjan Kumar** reported in **(2021) 3 SCC 661**. Paragraph ‘14’ and ‘15’ of the judgment reads as under:-

“14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either



party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion”.

15. The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in *Vi-jay Kumar v. State of U.P.*²: (SCC p. 141, para 17).

“17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously. Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason.”

39. The case of **V.N. Patil** (supra) was under Sections 304B and 302 IPC read with Sections 4 and 6 of the Dowry Prohibition Act. In the said case Public Prosecutor had filed an application under Section 173(5) read with Section 311 CrPC which was allowed by the learned trial court. The High Court upset the order of the trial court summoning the witnesses but the Hon’ble Supreme Court upheld the order of the trial court.

2. (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC L&S 240]



40. In the present case, however, the Public Prosecutor who conducted the case at Bhagalpur was not acting with due diligence and care. The records speak for themselves. No summon was issued to the other prosecution witnesses, no explanation came from the two police personnel who were charge-sheet witnesses, even Senior Superintendent of Police did not act on receipt of the letter from the court. In fact the FIR itself was registered after the informant made a complaint to the Dy.SP.

41. The judicial conscience of this Court is totally disturbed on finding the kind of insensitiveness on the part of the investigating agency and the Public Prosecutor who were involved in this case. The trial court seems to have acted in haste in closing the prosecution evidence without taking care of its own order dated 08.11.2023 by which an explanation was called from the I.O. The Court had a duty to find out the truth and for this purpose the Presiding Officer of the trial court was required to exhaust all such procedures which were available to him in law to secure the presence of the witnesses.

42. This Court is, therefore, of the considered opinion that the judgment of acquittal in this case, having been passed in haste is liable to be set aside.



43. This Court, accordingly sets aside the impugned judgment. The trial court is directed to take steps to secure presence of the prosecution witnesses in accordance with law. The Senior Superintendent of Police, Bhagalpur shall ensure presence of the police officers who are charge-sheet witnesses of this case on the dates fixed in the matter.

44. Respondent nos. 2 to 8 shall surrender in the trial court within four weeks from today. Since the respondent nos. 3 to 8 were on bail during trial, the learned trial court shall allow them to continue on bail. Respondent No. 2 was in custody at the time of delivery of impugned judgment, therefore, he would be taken into custody. It will be open to respondent no.2 to pray for bail in the trial court.

45. A copy of this judgment be sent to the Director General of Police, Bihar. This Court requests the DGP, Bihar to consider taking appropriate action.

46. Let a copy of this judgment and the trial court's record be sent down to the trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	28.03.2025
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