

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.323 of 2004**

Arising Out of PS. Case No.-18 Year-2001 Thana- MEHANDIA District- Jehanabad

1. Bijli Paswan (Abated vide Honble Courts order dated 18-03-2026) S/O Late Ramdev Paswan R/O Village- Bodh Bigha, P.S- Mahendia, Distt.- Jehanabad.
2. Kalawati Devi W/O Bijli Paswan R/O Village- Bodh Bigha, P.S- Mahendia, Distt.- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 398 of 2004

ASHOK PASWAN, Son of Bijli Paswan, Resident of Village- Bodh Bigha, P.S. Mehendia, Dist – Jehanabad.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 323 of 2004)

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

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

(In CRIMINAL APPEAL (SJ) No. 398 of 2004)

For the Appellant/s : Mr. Ansh Prasad, Amicus curiae

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

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 02-04-2026

1. The Cr. APP (SJ) No. 323 of 2004 is filed by Bijli Paswan and Kalawati Devi, who are the in-laws of the Sarita Devi (hereinafter referred as deceased) and Cr. APP (SJ) No. 398 of 2004, is filed



by Ashok Paswan, who is husband of the deceased. Both appeals are arising out of the judgment of conviction dated 01.04.2004 and order of sentence dated 05.04.2004, on the file of the Learned 1st Additional Sessions Judge, Jehanabad, in Sessions Trial No. 111 of 200/ 56 of 2004 arising out of Mehandia P.S. Case No. 18 of 2001, wherein all the appellants were convicted for the offences punishable under Section 304-B of Indian Penal Code (hereinafter referred as "I.P.C."), and were sentenced to undergo rigorous imprisonment for a period of ten years. Further, the appellants were convicted for the offences punishable under Section 201 of I.P.C., and were sentenced to undergo rigorous imprisonment for a period of three years, along with a fine of rupees 5000/- (five thousand) each, and in default of payment of fine, to undergo rigorous imprisonment for a period of six months.

2. It is pertinent to mention that the F.I.R. was registered on 08.03.2001 on the file of Mehandiya Police Station against the appellants for



the offences punishable under Sections 304-B and 201 r/w 34 of the I.P.C., based on Complaint Case No. 108 of 2001 on the file of the Chief Judicial Magistrate, Jehanabad, which was registered on 07.03.2001. The complaint was filed before the Chief Judicial Magistrate, Jehanabad on 05.03.2001, by Ram Swaroop Pawan, i.e., father of the deceased.

3. The contents of the complaint disclose that Sarita Devi got married to Ashok Paswan at Bodh Bigha, in the month of Vaishakh, 2000. After marriage, the deceased went to her matrimonial house, stayed there for ten days and then returned to her parental house. It is the specific allegation in the complaint that the deceased/ Sarita Devi informed them, that all the appellants demanded for a gold chain of two tolas. On 25.02.2001, Ashok Paswan (husband of the deceased), along with ten of his relatives, went to the house of the informant/P.W. 6 and, without fixing any date, asked them to arrange for *ruksati*. The informant requested to arrange the *ruksati* in the month of



Vaishakh, which was not agreed by the husband of the deceased. P.W. 6 arranged the *ruksati* on 26.02.2001 and gave items as per his capacity but the husband of the deceased and his relatives were not satisfied with the said items and threatened to harass the deceased. They further warned P.W. 6 that if he wanted his daughter to be alive, he has to fulfill the demand for dowry. The complaint further disclose that on 01.03.2001, at about 08:00 AM, two persons from Bodh Bigha came to his house and informed him, that his daughter was murdered by the appellants, and asked them to go to the house of the appellants. Thereupon, the nephew of P.W. 6, Shailesh Paswan (P.W. 4), and Vidyanand Paswan (not examined) went to Bodh Bigha and found that Sarita Devi was dead and her dead body was burnt. Krit Paswan/P.W. 1, the brother of P.W. 6, informed P.W. 6 about the incident and he returned to his home from Hazaribag and went to Mehandiya Police Station, to file a complaint on which the Sub-Inspector asked him to approach the Court. The



complaint further disclose that the appellants murdered the informant's daughter for non-fulfillment of the dowry demand.

4. The signature of P.W. 6 on the complaint petition dated 05.03.2001 was marked as Ext. 1. The endorsement of the Station House Officer on the complaint petition dated 05.03.2001 was marked as Ext. 2. Further, the record reveals that the Chief Judicial Magistrate, Jehanabad, made an endorsement on the complaint petition directing the Mehendiya Police Station to institute and investigate the case under Section 156(3) of the Cr.P.C. The endorsement on Ext. 2 reads as "registered Mehendiya P.S. Case No. 18 of 2001 dated 08.03.2001 under Sections 304-B/201/34 of the I.P.C.; S.I. A.K. Panjekar will please investigate this case."

5. Section 156 of Cr.P.C. reads as under:

Section 156. Police officer's power to investigate cognizable case. (1) Any officer in charge of a police station may, without the order of a Magistrate,



investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

6. As per Section 156(3) of the Cr.P.C., a Magistrate empowered under Section 190 of Cr.P.C., may order such investigation by the police in cases of cognizable offences.

7. It is just necessary to refer to Section 190 of the Cr.P.C. for better appreciation of the case. Section 190 of Cr.P.C. reads as under:

Section 190.
Cognizance of offences by Magistrates. (1) Subject to the



provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

8. As per the above provision, a Magistrate of the First Class may take cognizance of an offence upon receiving a complaint which constitutes the commission of an offence. In the present case, the complaint was preferred by



P.W.6. The Magistrate is empowered to refer the complaint under Section 156(3) of Cr.P.C. to the police, for investigation; however, no cognizance was taken by the Magistrate before referring it to the police.

9. It is also relevant to mention that Section 2(d) of the Cr.P.C. defines a complaint as any allegation made orally or in writing to a Magistrate. Such a complaint is to be made under Section 200 of the Cr.P.C.

10. Under Section 200 of the Cr.P.C., if a complaint is filed, if the Magistrate takes cognizance of the offence, he has to examine the complainant and the witnesses present on oath. As stated supra, it is a cognizable offence, the Magistrate is empowered to refer it to the police for investigation, therefore, the question of recording the statement of the complainant or the witnesses does not arise.

11. During the course of investigation, the investigating authority recorded the statements under Section 161 of the Cr.P.C. of



charge-sheeted witnesses nos. 1 to 8, i.e., Ramswaroop Paswan (P.W. 6), Krit Paswan (P.W. 1), Sita Paswan (P.W. 2), Shailesh Paswan (P.W. 4), Ravindra Ram (D.W. 1), Devendra Paswan (D.W. 2), Ramanand Ram (not examined), and Sumitra Devi (P.W. 5). However, charge-sheeted witnesses no. 9, Baleshwar Chaudhary; C.W. 10/Bundi Chaudhary, and C.W. 11/Samkuri Devi (P.W. 3), were not examined under Section 161 of the Cr.P.C by the Investigating Officer. Nevertheless, their names have been incorporated as charge-sheeted witnesses, apart from the official witnesses, i.e., C.W. 12, Dr. Gautam Modi, and C.W. 13, Ajay Kumar Panjekar, the Investigating Officer. The record further reveals that the statement of one Fulmati Devi was recorded under Section 161 of the Cr.P.C.; however, her name does not appear among the prosecution witnesses in the charge-sheet.

12. On perusal of the record, it is evident that in the absence of statements under Section 161 of the Cr.P.C., the names of charge-sheeted witnesses nos. 9 to 11 were incorporated as



prosecution witnesses.

13. On completion of the investigation, initially, the charge-sheet was filed against Ashok Paswan alone, and no charge-sheet was laid against parents of Ashok Paswan, i.e., Bijli Paswan and Kalawati Devi. The record further disclose that P.W. 6 preferred a protest petition on 08.06.2001, and without any further order on the protest petition, the Judicial Magistrate, 1st Class, took cognizance against all the accused for the offences punishable under Sections 304-B and 201 r/w 34 of the I.P.C. on 26.06.2002, later the case was committed to the Court of Sessions on 08.02.2002.

14. During course of trial, charges were framed against all three appellants for the offences punishable under Section 304-B and 201 of I.P.C., read over and explained to all the appellants for which, they pleaded not guilty and claimed to be tried.

15. On behalf of the prosecution, altogether seven witnesses i.e., P.Ws. 1-7 were examined and Exhibits 1 and 2 were marked.



Later, the appellants were examined under Section 313 of Cr.P.C. On behalf of defence, D.Ws. 1 - 4 were examined and Exts. A, B and B/1 got marked. The name and details of P.Ws. as well as D.Ws. and list of exhibits are as follows:-

P.Ws.No	P.W.s Name	Relation
P.W. 1	Krit Paswan	Uncle of the deceased
P.W. 2	Sita Paswan	Aunt of the deceased
P.W. 3	Samkuri Devi	Aunt of the deceased
P.W. 4	Shailesh Paswan	Cousin of the deceased
P.W. 5	Sumitra Devi	Mother of the deceased
P.W. 6	Ram Swaroop Paswan	Complainant/Father of the deceased
P.W. 7	Ajay Kumar Panjekar	Sub-Inspector (Investigating Officer)

Sl. No.	Exhibit	Exhibit Details
1.	Ext. 1	Signature of Informant on complaint petition
2.	Ext. 2	Endorsement of S.H.O. on complaint petition
3.	Ext. A	Death Report of Sarita Devi
4	Ext.B & B/1	Payment of receipts

16. After considering the entire material available on record, the trial Court convicted and sentenced the appellants for the offences



punishable under Sections 304-B and 201 of the I.P.C. However, the trial Court did not frame any charge against the appellants under Section 34 of the I.P.C. to prove the charge against Bijli Paswan and Kalawati Devi, who were alleged to have shared a common intention with Ashok Paswan.

17. As there is no assistance from the Learned counsel for the appellants in both cases, this Court was constrained to appoint *amicus curiae*, Mr. Shahil Kumar (in Cr. APP (SJ) No. 323 of 2004) and Mr. Ansh Prasad (in Cr. APP (SJ) No. 398 of 2004).

18. Since both appeals pertain to the year 2004, and there was no communication between the appellants and the *amicus curiae*, this Court deemed it necessary to call for a report from the Superintendent of Police, Jehanabad, to ascertain the status of the appellants. Pursuant to the order dated 20.02.2025, this Court received a report from the Superintendent of Police, Jehanabad, stating that appellant no. 1/Bijli Paswan (in Cr. APP (SJ) No. 323 of 2004), had died.



However, Kalawati Devi and Ashok Paswan are still alive.

19. Based on the report of the Superintendent of Police, Jehanabad, this Court abated the criminal case against appellant no. 1/ Bijli Paswan (in Cr. APP (SJ) No. 323 of 2004), vide order dated 18.03.2026.

20. Heard arguments on behalf of the Learned Amicus curie, Mr. Shahil Kumar, (in Cr. APP (SJ) no. 323 of 2004), Mr. Ansh Prasad, (in Cr. APP (SJ) no. 398 of 2004) and Mrs. Anita Kumari Singh, the Learned Additional Public Prosecutor for the State in both appeals.

21. The Learned *amicus curiae*, Mr. Ansh Prasad (in Cr. APP (SJ) No. 398 of 2004), contended that essential ingredients under Section 304-B of the I.P.C. have not been made out; the prosecution has miserably failed to prove the guilt of the appellants either under Section 304-B or under Section 201 of the I.P.C. Consequently, the burden does not shift on the appellants to disprove the prosecution case. It is further contended that there



are major contradictions in the evidence of the prosecution witnesses regarding the *ruksati* ceremony and, the presence of P.W. 6 at the relevant time. In view of such inconsistencies, the benefit of doubt ought to be extended to the appellants. It is further contended that the prosecution has failed to establish the place of occurrence and that no corroborative medical evidence has been adduced in support of the oral evidence, which is fatal to the case of the prosecution. It is contended that, the trial Court ought not to have convicted the appellants for the offences punishable under Sections 304-B and 201 of the I.P.C. in the absence of the evidence of the doctor and the post-mortem report. It is further contended that, except for interested or related witnesses, there are no independent witnesses to prove the alleged harassment in connection with the demand for dowry or to establish that, soon before her death, the deceased was subjected to cruelty or harassment, so as to attract the ingredients of Section 304-B of the I.P.C.



22. In support of his submissions, the Learned *amicus curiae*, Mr. Ansh Prasad, relied upon the judgments of the Hon'ble Apex Court relating to the evidentiary value of interested or related witnesses.

23. The Learned *amicus curiae*, Mr. Sahil Kumar, contended that there is no iota of evidence before the trial Court with respect to harassment or screening away of evidence insofar as the in-laws are concerned, nor there is any material to establish that the in-laws shared common intention with the prime accused/ Ashok Paswan. He further contended that the charge-sheet clearly disclose that no incriminating material was found by the the Investigating Officer against the in-laws of the deceased and, accordingly the charge-sheet was initially filed only against Ashok Paswan and therefore, prayed for acquittal of the appellant, Kalawati Devi, in this case.

24. On the other hand, the Learned Additional Public Prosecutor, Mrs. Anita Kumari Singh, contended that the death of the deceased



occurred within seven years of her marriage and that too within two days of going to her in-laws' house after *ruksati*. It is further contended that all the prosecution witnesses, in one tone, have stated that there was a demand for a gold chain by the appellants, which clearly establishes the offence under Section 304-B of the I.P.C., and accordingly, she prayed to confirm the judgment of the trial Court.

25. The points for determination in these appeals are :-

(i) Whether the prosecution is able to prove the guilt of the appellants for the offences punishable under Sections 304-B and 201 of I.P.C. beyond reasonable doubt?

(ii) Whether the trial Court has rightly convicted and sentenced the appellants for the aforesaid offences?

26. In order to decide the aforesaid points for determination, it is just necessary to re-appreciate the evidence on record.

27. P.W. 1/Krit Paswan, is the uncle of the



deceased. His evidence disclose that the deceased/Sarita Devi, got married to Ashok Paswan two years prior to her death. After marriage, she went to her in-laws' house and, stayed there for about ten days, during the said period, the appellants allegedly demanded a gold chain. Thereafter, she returned to her parental house. His evidence further disclose that after one year, the husband of the deceased came to the house of the complainant/P.W. 6 and took his wife along with him. At the time of *ruksati*, he threatened to teach the deceased a lesson, if the articles were not given to him. On the third day after the *bidai*, the complainant came to know about the death of the deceased. It is specifically testified by P.W. 1 that the appellant/Ashok Paswan (husband of the deceased) had murdered her by administering poison.

28. P.W. 2, Sita Paswan, and P.W. 3, Samkuri Devi, are the maternal aunts of the deceased. Their evidence is also on the same lines as that of P.W. 1. It is specifically testified by P.Ws.



2 and 3 that the appellants murdered the deceased for non-fulfillment of the demand for a gold chain as dowry. Further, the evidence of P.W. 2 disclose that after receiving information about the death of the deceased, they went to the village of the appellants and found their house locked. The villagers informed them that the body of the deceased was cremated in a garden, and upon visiting the said place, they found the ashes of the dead body.

29. P.W. 4/Shailesh Paswan, is the cousin of the deceased. His evidence disclose that the deceased was married to Ashok Paswan about two years prior to her death and had stayed for ten days in her in-laws' house. He further deposed that the *ruksati* was arranged in the month of *Falgun*, and that within three days thereafter, she was murdered.

30. P.W. 5, Sumitra Devi, is the mother of the deceased. Her evidence disclose that after the marriage, the deceased stayed in her in-laws' house for ten days and thereafter, she returned to



her parental home. She further stated that the *ruksati* took place in the month of *Falgun*, when Ashok Paswan forcibly took her daughter without fixing any date for *ruksati* and used abusive language at that particular point of time. Her evidence further disclose that P.W. 6/ her husband, who was working at Hazaribag during that period.

31. P.W. 6/informant/Ram Swaroop Paswan, who is the father of the deceased, preferred the complaint before the Chief Judicial Magistrate, Jehanabad. His evidence disclose that his daughter was married to Ashok Paswan in the month of *Vaishakh*, 2000. After marriage, the deceased went to her in-laws' house and stayed there only for ten days. After returning from her in-laws' house, she informed them that the appellants had demanded a gold chain and had threatened to kill her. His evidence further disclose that in *Falgun* of 2001, the husband of the deceased, without fixing any date, took the deceased back, and at the time of *bidai*, he threatened and used abusive language, stating that since the demanded items



had not been given, the deceased would be killed. It is further testified that two days after *ruksati*, the appellants murdered the deceased and cremated her dead body.

32. On perusal of the entire evidence on behalf of the prosecution witnesses, i.e., P.Ws. 1 to 6, it is evident that all of them are related to the deceased in one way or the other. It is an admitted fact that the deceased stayed with the appellants only for a period of ten days immediately after marriage, and thereafter, she stayed with them only for two days following *ruksati*. The gap between the marriage and *ruksati* is approximately ten months. During this period, there is no allegation made by the prosecution witnesses against the appellants. Neither P.W. 6, P.W. 5, nor the deceased preferred any complaint before the police with respect to the offence punishable under Section 498-A of the I.P.C. for harassment on account of demand for dowry. Admittedly, all the witnesses, in one tone, testified that the deceased was murdered two days after *ruksati*. However,



there is no evidence on record to substantiate the alleged murder punishable under Section 302 of the I.P.C. Further, no independent witnesses from Bodh Bigha village were examined, either by the Investigating Officer or cited in the complaint petition by P.W. 6 i.e., Ext. 2. The essential ingredients of Section 304-B I.P.C., and Section 313 Cr.P.C., as well as on the issue of cognizance shall be discussed at the appropriate stage.

33. The defence of the appellants is that the deceased died due to illness. Ext. A is the death certificate which was exhibited before the trial Court disclose that the deceased died due to cardio-respiratory failure. In cross-examination, the defence attempted to elicit that the deceased succumbed to illness, and it was suggested that some of the prosecution witnesses also attended the cremation of the deceased. The defence also adduced the evidence of D.Ws. 1 to 3, who, consistently, testified before the trial Court, that after the marriage, the deceased lived with the appellants and there was no dispute regarding



tilak or dowry. They further stated that the deceased fell ill, became unconscious, suffered severe shivering, and bled from her nose and mouth, for which she was initially taken to Arval, where Dr. Shankar Prasad, examined her, and advised immediate referral to Patna due to her critical condition. Thereafter, she was taken to P.M.C.H., Patna, but due to strike, she could not receive treatment and was subsequently shifted to Kurji Hospital, where she was admitted, and, she died during the course of treatment. Thereafter, her dead body was brought back to the village and her funeral rites were performed in the presence of her family members, including her brother and sister.

34. On perusal of the entire record, it is evident that there are many inconsistencies in the evidence of the witnesses. The first inconsistency pertains to the issue of *ruksati*, as P.W. 1 testified that *ruksati* was arranged in the month of *Falgun*, whereas the evidence of P.Ws. 5 and 6 disclose that no such arrangement was made and that



Ashok Paswan forcibly took the deceased away from her home. Though it is testified by P.Ws. 1 to 4 that the deceased narrated to her mother about the demand for a gold chain, that part of the evidence can only be treated as hearsay, as the deceased never informed them, about the demand for a gold chain by the appellants. It is specifically admitted in paragraph 13 of the cross-examination of P.W. 1 that he was not present at the time of *ruksati* when the deceased was sent along with Ashok Paswan. In paragraph 14 of the cross-examination, he also admitted that the deceased did not give him any information with regard to the demand for dowry.

35. Likewise, the evidence of P.W. 2 also disclose that *ruksati* was arranged at the instance of Ashok Paswan without fixing any specific date. This evidence can also be treated as hearsay. Further, his evidence disclose that the villagers informed him that the dead body of the deceased had been burnt in a garden; however, it is to be noted that he had no personal knowledge about



the cremation of the dead body, as he had not visited the said place. In the cross-examination, P.W. 2 admitted that he received information about the death of the deceased at about 7:00 A.M. and reached Bodh Bigha along with others at around 4:00 P.M. and where he found only one person, who informed him that the dead body had already been cremated. This is also inconsistent with the evidence of P.W. 6. P.W. 6 specifically mentioned in the complaint that he came to know about the death of the deceased at 8:00 A.M. It was further testified by P.W. 2 that he did not know the name of the person who informed him about cremation. At paragraph 10 of his cross-examination, P.W. 2 specifically testified that he attended the *ruksati*, that there was an arrangement for food, and there was no scuffle or assault during the *ruksati*. He also stated that P.W. 6 had the financial capacity to provide a gold chain. However, this evidence is completely inconsistent with the evidence of P.W.5.

36. The crucial evidence is that of P.W. 5, the mother of the deceased. She testified that



there was no scuffle or assault at the time of marriage and that no food was arranged during *ruksati*. As already stated, it is inconsistent with the evidence of P.W. 6, who categorically stated that food was arranged during *ruksati*. It is the specific evidence of P.W. 5 that her sister-in-law's husband alone came at the time of *ruksati* and no one else was informed about it. She fairly admitted that they did not give any clothes to Ashok Paswan during *bidai* and no assault took place. It is also admitted by her that she neither informed her husband nor the police that Ashok Paswan had forcibly taken her daughter. Further, during *ruksati*, Ashok Paswan informed her, that they were extremely poor and could not expect anything during *bidai*.

37. The evidence of P.W. 5 clearly disclose that she informed her husband about the death of her daughter after three days, and thereafter, her husband came home after two days and, after discussion, he preferred a complaint against the appellants before the Magistrate.



38. P.W.6, father of the deceased also stated in the same lines in complaint copy. His evidence disclose that *ruksati* was arranged in *Falgun*, 2001, and Ashok Paswan, along with others, came to his place and took his daughter away, and during the course of *ruksati*, Ashok Paswan used abusive language and threatened them, as he did not receive any items. It is admitted by P.W. 6 that he was not present in the village and was posted at Hazaribagh at that particular point of time. Therefore, his evidence may also be treated as hearsay. It is testified in the cross-examination, by P.W. 6 that he went to Mehandiya Police Station on 4th March and thereafter, went to Jehanabad Court on 5th March, i.e., after three days. His evidence also disclose that as Mehandiya Police Station refused to lodge the case, he approached the Court.

39. Section 154 of the Cr.P.C. envisages that if the “Station House Officer” refuses to register a case, the remedy available to the informant is to approach a Senior Officer, i.e., the



Superintendent of Police. It is testified by P.W. 6 that, in order to reach Mehendiya Police Station from Arval, he had to cross the office of the Superintendent of Police and Deputy Superintendent of Police but he did not choose to submit any report before the Superintendent of Police. The delay in preferring the report before the police, either immediately after the death of the deceased or in filing the complaint before the Jehanabad Court, has not been explained by the prosecution. It is also testified by P.W. 6 that although he mentioned in the complaint that seven persons had attended *ruksati*, he himself was not present at that time. Moreover, the fact that he was at Hazaribagh at that time was not stated in the complaint petition. Further, the allegation regarding Ashok Paswan threatening or using abusive language is also not the part of the complaint petition. It is fairly admitted by P.W. 6 that no dowry was given at the time of marriage and that he came to know that the accused informed his family that the deceased had died



due to illness and was treated at Patna.

40. There are many inconsistencies in the evidence of the prosecution witnesses, as stated supra, and none of the witnesses are eye-witnesses either to the alleged harassment or cruelty said to have been inflicted by the appellants upon the deceased, prior to her death or soon before her death.

41. The evidence of P.W. 7/ Investigating Officer, disclose that on 08.03.2001, he took over the investigation of this case. The place of occurrence, as per his investigation, was the house of Ashok Paswan. During the course of investigation, he recorded the statements of other witnesses and later arrested Ashok Paswan and produced him before the Court for judicial remand. It is admitted by P.W. 7 that the charge-sheet was filed only against Ashok Paswan, as per the instructions of his superior officers, as sufficient evidence was not found against other accused.

42. In the cross-examination, it is admitted by P.W. 7 that Ashok Paswan claimed



himself to be innocent and informed him that the health condition of the deceased suddenly deteriorated on 28.02.2001, as she suffered severe sweating and bleeding from her nose. Thereupon, the appellants hired a jeep, and initially took her to a private doctor at Arval, and thereafter brought her to P.M.C.H., Patna. However, due to a strike, she was admitted to Kurji Hospital, where she died during treatment. His evidence further disclose that Ashok Paswan informed him that after bringing the dead body back to the village, the family members of the deceased were duly informed, and the dead body was cremated on 01.03.2001. He also admitted that he recorded the statements of Rajendra Paswan, Devendra Paswan, and Ramanand Paswan, under Section 161 of the Cr.P.C. who stated that the health condition of the deceased, suddenly deteriorated and she died during treatment at Kurji Hospital. P.W. 7 further testified that, after recording the statements of the aforesaid persons, he went to Kurji Hospital to verify the same where he inspected the available



registers and documents with the help of the staff, and also collected a photocopy of the death certificate of the deceased, which was marked as "X". He also testified that the certificate of Kurji Hospital clearly disclose that the deceased, Sarita Devi, was admitted on 01.03.2001 at 2:15 A.M. and died at 03:07 A.M. He further recorded the statement of Dr. Gautam Modi, which also disclose that the deceased died during the course of treatment.

43. Further, it is admitted by P.W. 7 that the mother of the deceased did not state before him that the appellants had murdered the deceased, nor did she state anything about the demand for a gold chain or that the deceased had consumed poison. He also testified that Shailesh Paswan/P.W. 4 did not state before him that the accused persons murdered the deceased, Sarita Devi, or about any demand for a gold chain. Further, P.W. 5 also did not state under Section 161 of the Cr.P.C. that all the accused were involved in the murder of her daughter. P.W. 7 also admitted



that after completion of the investigation, he filed the charge-sheet and submitted a final form with respect to the parents of Ashok Paswan, considering them to be innocent.

44. The statements of D.Ws. 1 and 2 under Section 161 of the Cr.P.C. were recorded by P.W. 7, who, at the first instance, deposed about the ill health of the deceased and that her death occurred while she was undergoing treatment. Thus, the statements of D.Ws. 1 and 2 under Section 161 of the Cr.P.C. corroborate with the defence of the accused, though the statements were not marked before the trial Court.

45. Furthermore, the evidence of D.W. 3/Awadh Paswan clearly disclose that he accompanied the appellant/Ashok Paswan, along with the deceased, Sarita Devi, when she was shifted to the hospital, and also deposed about the treatment and death of Sarita Devi at Kurji Hospital.

46. D.W. 4/ Ramadhar Singh, is an advocate's clerk through whom the original copy of



the death certificate was marked as Ext. A. Further, two receipts of Kurji Hospital were marked as Exts. B and B/1, which clearly disclose that Ashok Kumar was the cashier who received the payments towards the medical expenses of the hospital. The evidence of D.W. 3 further disclose that after the death of the deceased, the dead body was taken back to the village, and he along with one Arun Paswan, went to the house of P.W. 6 and informed them about the death of Sarita Devi. Thereafter, P.W. 5 and P.W. 4 came to the village of the appellants, further, P.W. 4 accompanied them to Bodh Bigha village.

47. As per the evidence of the prosecution witnesses, at the time of the death of the deceased, P.W. 6 was not present at his house and was at Hazaribagh. He came to know about the death of the deceased only after three days, when he reached home. Later, after two days of refusal by the police to register the report, he went to the Jehanabad Court and preferred a complaint. As per the evidence of the Investigating Officer,



none of these witnesses have stated that deceased was murdered by the appellant. Therefore, it can be construed that the complaint was filed before the Court, as an afterthought.

48. It is also pertinent to mention that, even after receipt of death information of the deceased was given to the P.W. 5/ mother of the deceased, she did not go to the house of the appellants, to attend the last rites of her daughter. Being the natural parents, it was expected that P.W. 5 and P.W. 6 would attend the last rites of their daughter. If at all they attended, there is no explanation, as to why they did not lodge a report at the earliest point of time if the death of the deceased occurred under abnormal circumstances.

49. In the present case, neither the delay in lodging the complaint nor the failure to attend the last rites of the deceased by the parents, has been explained by the prosecution.

50. At this juncture, the Learned *amicus curiae* relied on the judgment of the Hon'ble Apex Court in the case of **Satbir Singh v. State of**



Haryana, reported in **(2021) 6 SCC 1**, wherein their Lordships have given a wide interpretation for the phrase “soon before” and held that “soon before” cannot be construed to mean “immediately before” and the prosecution must establish the existence of “proximate and live link” between the dowry death or dowry death and cruelty or harassment for dowry demand by the husband or his relatives. Their Lordships have categorically held that section 304-B of I.P.C. must be interpreted keeping in mind the legislative intent to curb the social evil, of bride burning and dowry demand. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, “soon before” they should not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quit varied, as it can range from physical, verbal or



even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down to define what exactly the phrase “soon before” entails.

51. Admittedly, in the present case, the deceased stayed with her in-laws for a period of only ten days at the first instance. There is a gap of ten months between her initial stay at her in-laws' house and her death. Upon her return, she stayed there only for two days before her death. During this gap of ten months, no allegation was made by any of the prosecution witnesses against the appellants regarding any demand for a gold chain weighing about two *tolas*. As stated supra, neither the deceased nor her parents preferred any report against the appellants for cruelty or demand for dowry. After *ruksati*, the deceased joined her husband, and within two days, her death occurred. The case of the prosecution is that the deceased was murdered by the appellants, whereas the case of the defence is that the deceased's health suddenly deteriorated, and all efforts were made to



provide her medical treatment by shifting her from Arwal to Patna. In view of a strike at the Government Hospital, she was taken to Kurji Hospital at midnight, i.e., on the intervening night of 28th February/1st March, 2001, where she died while undergoing treatment in the said hospital. In support of the defence, the oral evidence of D.Ws. 1 to 4, as well as the death certificate (Ext. A), clearly disclose that the deceased died due to cardio-respiratory failure. Although the doctor was not examined before the Court, the evidence of D.Ws. 1 to 3 corroborates to Ext. A as to the nature and cause of death of the deceased.

52. In order to attract the application of Section 304-B of the I.P.C., the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injuries, or otherwise than under normal circumstances.

(ii) Such 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 of the relative of her husband.

(iv) Such cruelty or harassment should be made for, or in connection with demand of dowry.

(v) Such cruelty or harassment which shown to have been meted out to the women soon before her death.

53. Admittedly, in the present case, the death of the deceased occurred within seven years of her marriage. The death of Sarita Devi occurred due to cardio-respiratory failure, and not by burns or bodily injuries, though it may be considered as otherwise than under normal circumstances. There is no evidence before the Court to show that the deceased/Sarita Devi, was subjected to cruelty or harassment during her lifetime. The entire evidence, insofar as cruelty or harassment is concerned, has been stated by the prosecution witnesses only after five days of her death and not during her lifetime. It is testified by P.Ws. 1 to 6 that the deceased was subjected to harassment, in



connection with the demand for a gold chain weighing about two *tolas*, however, there is no explanation from any of the witnesses as to why they did not disclose about such harassment to any independent witnesses or report it to the police during her lifetime. Therefore, the phrase “soon before” in this case cannot be said to have been established by the prosecution in any manner.

54. The judgment of the Hon'ble Apex Court in the case of **Satbir Singh** (Supra) categorically in paragraph no. 38.6, deals about the grave concern with respect to Section 313 of the Cr.P.C. Their Lordships have held as under:

38.6. *It is a matter of grave concern that, often, trial courts record the statement under Section 313 CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defence. It ought to be noted that the examination of an accused under Section 313 CrPC cannot be*



treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice "audi alteram partem" as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

55. On perusal of the examination of the appellants under Section 313 of the Cr.P.C. in the present case, it can be construed that the questions were asked in a very general and omnibus manner, and the important incriminating materials were not put to them. Therefore, it can be construed that the appellants were not given a fair opportunity to answer the incriminating material. The above judgment squarely applies to the present facts and circumstances of the case.

56. The Learned Amicus curiae, Mr. Ansh Prasad, further relied on the judgment of Hon'ble



Apex Court in case of ***Dharnidhar v. State of U.P.***, reported in **(2010) 7 SCC 759** wherein their Lordships have held as follows:

12. *There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the court. It will always depend upon the facts and circumstances of a given case. In Jayabalan v. UT of Pondicherry [(2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966] , this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under : (SCC p. 213, paras 23-24)*

“23. We are of the considered view that in cases where the court is called upon



to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

24. From a perusal of the record, we find that the evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. They have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. PWs 1 to 4 have



unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint.”

13. *Similar view was taken by this Court in Ram Bharosey v. State of U.P. [(2010) 1 SCC 722 : (2010) 1 SCC (Cri) 904 : AIR 2010 SC 917] , where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before*



accepting the same.

14. *In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so-called "interested witnesses" cannot be relied upon by the court.*

15. *In the present case, the circumstances are such that we cannot find any error in the concurrent findings of fact recorded by the trial court, as well as by the High Court that these*



two witnesses were present at the respective places and had actually seen the occurrence. Their statements about gunfires, as well as the injuries caused by the kulhari and spear respectively are duly supported by the medical evidence, as well as by the statements of the investigating officers. Thus, we find that the contention raised on behalf of the appellants is liable to be rejected.

57. Admittedly, all the witnesses are related to the deceased/Sarita Devi and they may be interested in getting the appellants convicted, however; merely on that ground, the Court cannot rule away their evidence. In the present case, none of the witnesses have any special or direct knowledge about the alleged harassment said to have been meted out to the deceased in the hands of the appellants. Therefore, their evidence may be treated as that of interested witnesses.

58. The Learned *Amicus curiae* also relied on the judgment of Hon'ble Apex Court in case of **Sanjiv Kumar v. State of Punjab**,



reported **(2009) 16 SCC 487**, wherein their Lordship has held as follows:

20. *We cannot lose sight of the principle that while the prosecution has to prove its case beyond reasonable doubt, the defence of the accused has to be tested on the touchstone of probability. The burden of proof lies on the prosecution in all criminal trials, though the onus may shift to the accused in given circumstances, and if so provided by law. Therefore, the evidence has to be appreciated to find out whether the defence set up by the appellant is probable and true.*

25. *Coming to the facts of this case we find that the defence set up by the appellant appears to be probable and sufficient to rebut the presumption against him. Apart from the appellant, DW 2 Mohinder Singh, Sarpanch who was a member of the panchayat deposed in favour of the*



appellant. These facts cannot be ignored altogether. On the touchstone of probability, and having regard to the facts of this case, the defence of the appellant appears to us to be probable.

26. *It cannot be lost sight of that the conviction of the appellant is based on the presumption drawn against him. There is no direct evidence to prove that he had administered any poisonous substance to the deceased. In all probability she had committed suicide. Ultimately, it is a matter of appreciation of evidence, and while we cannot say that the case of the prosecution is proved to be untrue, it is equally possible on the basis of the evidence on record to take the view that the defence case may also be true. Thus, applying the well-established principle that if on the basis of the same evidence, two views are reasonably possible, the one in favour of the accused should be preferred, we allow this*



appeal giving the benefit of doubt to the appellant.

59. Lastly, the Learned *amicus curiae* relied on the judgment of Patna High Court, in case of **Rubi Khatoon v. State of Bihar**, reported in **2006 SCC OnLine Pat 560** wherein, it has held as follows:

6. *So far as the second category is concerned that is on basis of charge-sheet, it is now well settled by series of decisions of this Court and other Courts including in the case of Kuli Singh v. State of Bihar [1978 PLJR 500 (FB).] , wherein it has been held that the Magistrate is not bound by the manner in which charge-sheet is submitted. That is in the charge-sheet, there may be three sets of persons. First who are sent up for trial, second who are not sent up for trial and third those against whom investigation is pending. The Magistrate may, on perusal of the case diary which is an integral part of the charge-sheet, find that there are materials in the case diary as against non-charge-sheeted persons, persons not sent up for trial, he may then disagree with the charge-sheet to that extent*



and take cognizance but the Magistrate is precluded from adopting a high breed system whereby for facts he cannot look into the protest petition but still proceed on basis of the charge-sheet. He has to proceed either on the protest petition exclusively or on the charge-sheet exclusively. He can reject the charge-sheet without passing any order and accept the protest petition and proceed on basis thereof.

60. All the citations, relied upon, are squarely applicable to the facts and circumstances of the case.

61. In the present case, there is no medical evidence corroborating the oral evidence of the witnesses to prove that the death of the deceased occurred otherwise than under normal circumstances. The death of the deceased occurred in the hospital, and post-mortem examination was not conducted. The evidence of some of the prosecution witnesses disclose that the deceased was administered poison; however, there is no such evidence on record to prove that



the death of the deceased occurred due to administration of poison by the appellants.

62. It was the specific contention of the Learned *amicus curiae* that the place of occurrence has not been established by the prosecution in any manner to support their case. As far as this aspect is concerned, this Court is of the view that the prosecution need not establish the place of occurrence, as the death occurred in the hospital and not at the house of the appellants.

63. The conduct of the defence clearly disclose that the appellant/Ashok Paswan, made every effort to save the deceased by taking her from Arval to Patna for treatment, which is corroborated by the evidence of D.Ws. 1 to 3. The death certificate of the deceased (Ext. A) clearly disclose that she was admitted in the hospital on 01.03.2001 at 2:45 A.M., and the doctors made every effort to treat her, but the deceased succumbed to death while undergoing treatment.

64. The cardinal principle of criminal law is that the prosecution has to prove the guilt of the



appellants beyond reasonable doubt, and the appellants shall be presumed to be innocent until their guilt is proven. The burden or onus does not shift upon the appellants to prove that they are innocent. In the absence of proper evidence, the trial Court ought not to have convicted the appellants for the aforesaid offences. The record also reveals that initially the charge-sheet was filed only against Ashok Paswan and not against the other appellants. In view of the protest petition, the Judicial Magistrate, 1st Class, without passing any appropriate order, took cognizance of the offences against all the accused and committed the case to the Court of Sessions, which is illegal per se. Furthermore, no specific incidents were narrated by any of the witnesses as to the alleged harassment for additional dowry or demand of dowry. It is admitted by P.W. 5 that they did not give any items at *ruksati*, as they were extremely poor, and further, the evidence of P.W. 7 also favours the defence that no dowry was given at the time of marriage.



65. Admittedly, there is no direct evidence in the case, and the entire case is based on circumstantial evidence. Therefore, the duty is casted upon the prosecution to establish the complete chain of circumstances. It is also the duty of the trial Court to frame charges properly and to examine the accused u/s 313 of Cr.P.C. and seek their explanation with regard to the incriminating evidence. Further, it is the case of prosecution that P.W. 5 received information about the death of the deceased on 01.03.2001 at about 08:00 A.M. However, the complaint was made on 05.03.2001 before the Chief Judicial Magistrate, Jehanabad. The delay of four days has not been properly explained by the prosecution in any manner; therefore, it can be construed that the private complaint was filed before the Chief Judicial Magistrate as an afterthought. This fact is admitted by P.W. 5 that the complaint was preferred by her husband only after discussion. Furthermore, Section 201 of the I.P.C. clearly envisages that, in order to screen away the offender, the accused



should cause the disappearance of evidence. There is no evidence on record to prove that the appellants have caused the disappearance of evidence. In the absence of such evidence, the trial Court ought not to have convicted and sentenced the appellants for the said offence punishable u/s 201 of I.P.C.

66. In view of the aforesaid discussions, this Court is of the considerable view that the trial Court has erred in convicting the appellants for the offence punishable u/s 304-B and 201 I.P.C. and that the prosecution has miserably failed to prove the guilt of the appellants, and as such, the judgment of trial Court is liable to be set aside.

67. Accordingly, the judgment of conviction dated 01.04.2004 and order of sentence dated 05.04.2004, on the file of the Learned 1st Additional Sessions Judge, Jehanabad, in Sessions Trial No. 111 of 200/ 56 of 2004 arising out of Mehendiya P.S. Case No. 18 of 2001, is hereby set aside, and the appellants are acquitted for the aforesaid offences.



68. In result, both the appeals are hereby allowed.

69. The record reveals that appellant/Kalawati Devi, (in Cr. App. (SJ) No. 323 of 2004), was released on bail by this Court vide order dated 31.08.2004, and appellant/Ashok Paswan (in Cr. App. (SJ) No. 398 of 2004), was released on bail by this Court vide order dated 28.03.2005. In view of the acquittal of the appellants, the bail bonds of both the appellants shall stand cancelled, and sureties will be discharged. Let the records be transmitted to the trial Court.

(G. Anupama Chakravarthy, J)

AMANDEEP/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.04.2026
Transmission Date	28.04.2026

