

(2007) 05 JH CK 0018

Jharkhand High Court

Case No: Criminal Appeal No. 44 of 2000

Daulti Devi, Sunil Kumar Singh
and Anil Kumar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: May 10, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 113B, 133A
- Penal Code, 1860 (IPC) - Section 304B, 34

Citation: (2007) 2 BLJR 1956 : (2007) CriLJ 3563

Hon'ble Judges: Dilip Kumar Sinha, J

Bench: Single Bench

Advocate: R.S. Majumdar and B.N. Triwary, for the Appellant; Tapas Roy , Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

D.K.Sinha,J.

1. The present appeal is directed against the judgment of conviction u/s 304B/34 I.P.C. passed by the 3rd Additional Sessions Judge, Hazaribagh in Sessions Trial No. 135/1996 whereby and whereunder each of the appellants viz. Daulti Devi, Sunil Kumar Singh and Anil Kumar Singh was sentenced to undergo rigorous imprisonment for 7 years.

2. The prosecution case as it stands narrated in the Ferd Beyan of the informant Ranjeet Singh P.W. 1 before the police at the Sadar Hospital, Hazaribagh was that he belonged to village Amarua Police Station, Barachatti, Dobhi within the District of Gaya. His sister Sadhana @ Pinki aged about 22 years was married to the appellant Anil Singh of village Maktama in the year 1991. Appellant Anil Singh was a constable

in the Border Security Force and after some time of the marriage he started putting pressure upon Sadhana @ Pinki to bring a motorcycle as well as colour T.V. as the dowry. When the informant and the other members of his family could not be able to provide a motorcycle, it was alleged that the appellant Anil Singh with other two appellants and accused persons started assaulting her and such torture was communicated by Sadhana to her parental home, through letters. In the year 1993 when he had been to the matrimonial village home of Sadhana, her Bidai was refused and the informant with other members who had been there to take away Sadhana to her parental home were not allowed to meet her. At that very occasion the appellant Sunil Singh who was the brother of the husband of Sadhana had threatened to commit her murder. However, in the year 1994 the prosecution party could be able to manage her Bidai from her matrimonial home and she was taken to her parental home where she narrated her miseries and expressed her apprehension that she might be killed by them failing to fulfill their demands. In the month of June, 1995 the husband appellant Anil Singh came and took away his wife Sadhana with him on assurance that she will be treated properly. The informant further narrated that on 27.9.95 he came to learn that Sadhana was set on fire by the appellants as well as other in laws and was brought to Sadar Hospital, Hazaribagh. Pursuant to such information the informant with the members of his family came to the Hospital in the mid night and found her admitted in the Hospital. Her body was completely burnt and on query she narrated that her husband Anil Singh, husband's brother Sunil Singh, mother-in-law, father-in-law, her Nanad and Nanad's husband Dilip Singh all with the meeting of minds tied her limbs and after pouring K. Oil set her body on fire, as a result of which she was badly burnt. Thereafter, to screen themselves, she was brought to the Hospital for treatment. She succumbed her injuries in the same night at about 4 O'clock. On the basis of the Ferd Beyan of the informant, Ichak P.S. Case No. 74/95 was registered on 29.9.95 on the receipt of the Ferd Beyan from Hazaribagh Sadar Police Station for the offence u/s 304B/34 I.P.C. against six named accused persons including the appellants.

3. The police after investigation submitted charge-sheet u/s 304B/34 I.P.C. and accordingly after framing of charge, in those sections the accused persons were put on trial. After examination of the witnesses the trial court came to finding that the charge u/s 304B/34 I.P.C. could be established only against the appellants herein and accordingly each were convicted and sentenced as referred to hereinabove.

4. The specific defence in the statements of the appellants recorded u/s 313 Cr.P.C. was denial of the guilt with the explanation of the appellant, Anil Kumar Singh that Sadhana had sustained burn injury on account of burst of the kerosene stove while she was preparing tea. On the other hand the defence of the appellant Daulti Devi, mother-in-law was that the Sari of Sadhana caught fire from the flame of the stove while she was preparing tea.

5. As many as 9 witnesses were produced and examined on behalf of the prosecution. Whereas the defence produced the solitary witness Prem Das who treated Sadhana at Sadar Hospital, Hazaribagh of her burn injuries.
6. Besides, the prosecution has proved the Ferd Beyan Ext. 1 inland letter- Ext. 2, another letter Ext. 2/1, signature of the witness on production-cum-seizure list Ext. 3, another production-cum-seizure list Ext. 3/1, carbon copy of postmortem report Ext. 4, seizure list Ext. 5, signature on seizure list Ext. 3/2 and the formal F.I.R. Ext. 6. D.W. 1 Dr. Prem Das proved the bed head tickets of Sadar Hospital, Hazaribagh Ext. A and Ext. A/1.
7. P.W. 1 Ranjeet Kumar Singh is the informant and is an important witness. Without disclosing the source of information he testified that on 26.9.95 he came to learn at his village that his sister Sadhana @ Pinki was burnt by the appellants and other accused persons. Pursuant to such information he in the same night went to Sadar Hospital Hazaribagh where he found his sister Sadhana in a state of complete burnt. On query she apprised that her husband, Devar, Nanad, mother-in-law and father-in-law poured K. Oil on her body after tying her hands and legs and set her body on fire. In the same night at about 4 O'clock she succumbed her injuries at the Sadar Hospital, Hazaribagh. He further testified that his Ferd Beyan was recorded by the police, which was read over and on finding it correct he put his signature and proved his Ferd Beyan Ext. 1. The witness further testified that Sadhana was married to the Appellant Anil Singh in the year 1991 and soon after the marriage Sadhana was being tortured by the people of her matrimonial home for a motorcycle and colour T.V. and such demand was communicated by Sadhana through letters. The witness volunteered that he had presented two letters before the police. He proved the first inland letter, which was written by the Appellant Sunil Kumar to the grandfather of the witness Tulsi Singh. The letter was proved and marked Ext. 2. He further proved the second letter in the pen and signature of his sister Sadhana (since deceased) which was marked Ext. 2/1. The production-cum-seizure list of the above letters were proved and marked Ext. 3. He identified the appellants and other accused in the dock. In the cross-examination the witness asserted that though the letters were presented at the Ichak Police Station within 15 days of the death of his sister but he fairly admitted that none of the letters was written in his presence. He further explained that the letter, which was written by Sunil was received about 2 years prior to the occurrence whereas the letter of Sadhana was received only within 15/20 days prior to the occurrence. He admitted that he had not mentioned about such letters in his statement before the police. Though he was communicated about the occurrence by his cousin Sanjay of his village but he had not mentioned this fact in his Ferd Beyan. He set out from his village at about 5.30 p.m. and arrived Hazaribagh at about 11.00 p.m. He witnessed the appellants Sunil, Anil and Geeta in the Hospital yet he admitted having not sated before the police that the mother-in-law of Sadhana was also there in the Hospital. He had no interaction with the accused persons in the Hospital. At that time Sadhana was conscious and was

able to speak. She narrated in presence of the accused persons that these people (Present in the Hospital) had set her body on fire on 22nd September, 1995 and thereafter she was removed to Hospital by them. The witness admitted having not informed the police about the occurrence. He delivered his Ferd Beyan at about 8-9 O'clock in the morning at the police station, which was situated at the distance of about 10 minutes. He had no documentary evidence at the time of his deposition with respect to the marriage of Sadhana with the Appellant Anil Singh, which was solemnized in the year 1991. He admitted having not complained the matter in respect of demand of dowry by the accused to the police station or in the Court prior to the incidence. He denied that Tapeswar Singh was working in a factory in Rajstan as watch man at the relevant time.

8. P.W.-2 Tapeswar Singh (not the father-in-law of deceased) is different person of village Bhusair who testified that in the year 1993 Tulsi Singh (P.W3) came to his home and asked him to accompany for Ruksadi of Sadhana from her matrimonial home village Muklama. He accompanied him to that village and on interaction with the father-in-law of Sadhana namely Tapeswar Singh, the appellants Anil Singh, Sunil Singh their mother and sister who were present there, demanded extending caution that so long as a motorcycle and a colour T.V. would not be given to them. Ruksadi would not be performed. They had also extended threat of dire consequences failing to fulfill their demand within a week. In the year 1995, upon having learnt about the burn injuries of Sadhana, when he went to the Hospital and enquired, she replied that her husband, Devar and mother-in-law set her body on fire after pouring K. Oil and thereafter she died. He proved his signature on the production-cum-seizure list of two letters produced by Ranjeet Singh (P.W. 1) before the police and signature was marked Ext. 3/1. In the cross-examination the witness admitted that Tulsi Singh is the brother-in-law of his brother who was on visiting terms, often used to come to his house. The matrimonial village home of the victim from his village was about 10 K.M. He admitted having narrated before the police u/s 161 Cr.P.C. that he had been to the village Muklama for Ruksadi. He has given the description of the house of the appellants and testified that when he accompanied the other prosecution witnesses to village Muklama for Bidai of Sadhana, the negotiation took place in the courtyard of the appellants and at that time only male members of the house were present in interaction and no female member of the house was there to participate in conversation. He exhorted having stated before the police that the accused persons had refused to execute Bidai of the Sadhana unless a colour TV. and motorcycle were given to them and such refusal was specifically made by the appellants Anil Singh, Sunil Singh and their mother. He had also narrated before the police about threat of dire consequences failing to fulfill their demand. Though he had visited Hazaribagh Sadar Hospital at about 11.00 p.m. and stayed there half an hour in presence of the appellants but he had no interaction with any of them. He further admitted having not informed the police that the victim girl was able to speak and that her in-laws had got her burnt.

He denied the suggestion that on account of being relative of the deceased he was deposing false evidence.

9. P.W. 3 Tulsi Singh is the grandfather of the deceased. His statement was recorded on 3rd December, 1998. He testified that Sadhana was married to the Appellant Anil Singh about 7 years ago. After the marriage she was ill treated by her in-laws and after two years of her marriage when he had been to her matrimonial home village with P.W. 2 Tapeswar Singh for Bidai of Sadhana. The accused persons including the appellants had put condition that only on delivery of a motorcycle and a colour T.V. Sadhana would be permitted to go to her parental home. Upon such condition put by the appellants and other accused persons the witness returned back. About 2 1/2 -3 years ago he learnt that Sadhana was burnt and was admitted in the Hospital who narrated the cause of her burnt injuries to Ranjeet. This witness very fairly conceded that he had no knowledge as to what Sadhana had narrated as to the cause of her burn injury to Ranjeet. In the cross-examination the witness could not say the specific year or Sambat of the marriage between Anil Singh and Sadhana and he speculated that it was solemnized some 7-8 years ago. He further testified that after 3-4 days staying at her matrimonial home after her marriage, she returned back to her parental home and after two years her "Gauna" was performed. Again she returned after a year to her parental home. Her last visit to her parental home was about 2- 2 1/2 years prior to her death and after staying there 4-6 months she returned back. Only 20-25 days prior to her death he along with Tapeswar Singh P.W. 2 had visited matrimonial home of Sadhana for Bidai and at that time also the accused persons had put demand of T.V. and motorcycle before them. The witness further testified that pursuant to information he immediately proceeded at about 6/7 O'clock in the evening with Ranjeet in the night and both arrived at Hazaribagh at about 11 p.m. where he stayed for half an hour near Sadhana and thereafter he returned to his home village and communicated the occurrence there. The Police was informed by Ranjeet.

10. P.W. 4 Dr. Saroj Kumar while was posted as Civil Assistant Surgeon at Sadar Hospital, Hazaribagh held postmortem examination on the body of Sadhana @ Pinki aged about 22 years on 27.9.95. He found the following.

- (i) Hair burns an anterior part of scalp and eyebrow.
- (ii) Burn over lower part of chin, neck, chest wall and abdomen.
- (iii) Burn on the lower part of the abdomen, pubic hairs, both thigh and upper part of both the legs.
- (iv) Burn on both the upper arms.
- (v) Burn over the lower part of the back and hips.

On dissection the witness found the following:

Heart- intact, blood clot and fluid in right chamber.

Lungs- intact and congested.

Spleen, liver and kidney intact and congested, stomach contained mucofluid about one ounce.

Uterus- non gravid.

Urinary bladder empty.

11. The time elapsed since death was assessed within 48 hours of the postmortem examination and in the opinion of this witness the cause of death was shock and infection due to above extensive burn injuries. The postmortem report was proved Ext. 4. The witness further testified that the patient was suffering extensive burn injuries and was admitted in the Hospital. The line of treatment as her indoor patient was maintained in bed head ticket so long as the patient was treated in the Hospital and in case of death the time of death of such patient was maintained in the bed head ticket. He admitted that in the cases burn injuries of the patients the police used to be informed immediately. Yet the witness could not be able to satisfy the age of burn injuries found on the body.

12. P.W. 5 Kamaldeo Singh testified the marriage of deceased Sadhana with the son of Tapeswar Singh. He further testified that the informant Ranjeet Singh came across in the Ichak market some three years ago and he apprised that Sadhana was burnt by her in-laws and that she was admitted in the Hospital. In the cross-examination the witness testified that he met him at about 10-11 a.m. in the market but he had not apprised the name of the accused persons who had burnt Sadhana. He further deposed that Sadhana was married some 8-9 years ago of the occurrence and that the informant Ranjeet happened to be his nephew in relation.

13. P.W. 6 Satya Narayan Singh belong to the matrimonial village of Sadhana. He testified that on 29.5.95 the Sub-Inspector of Police Upendra Singh of Ichak Police Station seized a stove in broken condition and a seizure list was prepared and he put his signature on the seizure list. In his presence another witness Mohar Mahto attested in the seizure list. The seizure list was marked Ext. 2. In the cross-examination the witness testified that much prior to the seizure of stove Tapeswar Singh was working in Rajasthan in a factory and he returned back to his village after hearing the death of his daughter-in-law. In his knowledge the accused persons had never ill-treated Sadhana and neither the father nor the brother of the deceased had complained against the accused persons about the ill-treatment perpetrated to Sadhna. The witness admitted being the "Sarpanch" of Bariyarpur Panchayat and that the village of the accused where the occurrence took place was within his Panchayat.

14. P.W. 7 Mohar Mahto admitted in his deposition about the seizure of stove by the A.S.I. of police from the house of Tapeswar Singh and further admitted having put

his signature on the seizure list. He testified in the cross-examination that at the time of seizure of the stove, Tapeswar Singh was not in his village home rather he had been to Rajasthan much prior to that where he was working in the factory, who came later on information regarding the death of his daughter-in-law. The accused Geeta Devi was already married much prior to the occurrence and she was living in her matrimonial village. The accused persons were never ill-treated Sadhana and no demand of dowry was ever made either from Sadhana or from the people of her parental home.

15. P.W. 8 Upendra Singh is the Investigating Officer of the case. He testified that he received the Ferd Beyan of the informant Ranjeet Kumar Singh from Hazaribagh Sadar Police Station while he was posted at Ichak Police Station on 27.9.95 and he lodged the F.I.R. He took up the charge of investigation, recorded the restatement of the informant and visited the place of occurrence. The place of occurrence as pointed out was the matrimonial home of Sadhana @ Pinki made of mud and tiles with its front opening towards north. Sadhana used to reside in a room prior to her death, situated towards north in the house surrounded by Varandah from three sides which was used as passage. A kitchen was situated towards east in the house connected with Varandah constructed by raising walls. He found the kitchen swept and washed a fresh with the help of soil and dung. He found an old stove fully covered with cobweb. The stove was seized in presence of the witnesses and seizure list was prepared. After recording the statements of the witnesses he submitted charge-sheet. In the cross-examination the witness admitted that he did not visit Sadar Hospital (Hazaribagh) to find out as to on which date the deceased was admitted in the Hospital or what was the nature of her treatment or after how many days of her admission she died. He further admitted having not being in receipt of the injury report of the deceased but the death certificate from the hospital.

16. He further testified that the witness P.W. 2 Tapeswar Singh had not narrated before him (Under Section 161 Cr.P.C.) that the accused persons had refused to execute Bidai of Sadhana without delivering them a colour T.V. and a motorcycle and also that they had extended threat of dire consequence. On the other hand, the witness admitted that P.W. 2 Tapeswar Singh had narrated before him that the accused persons had raised demand of a colour T.V. and a motorcycle who further narrated before him that she was killed for not giving those articles to them.

17. P.W. 9 Jagdish Mahto was declared hostile and nothing material could be elicited in his cross-examination.

18. The appellants were examined and their statements were recorded u/s 313 Cr.P.C. by placing the incriminating materials produced on the record in course of trial and their defence was specific denial of committing dowry death of Sadhana by setting her body on fire. The appellant Anil Kumar Singh stated that Sadhana sustained fire on account of burst of the stove while she was preparing tea. On the

other hand, the appellant Sunil Kumar Singh when called upon to explain that he had sent letter demanding dowry, his reply was specific denial. He further denied having set Sadhana @ Pinki on fire. The appellant Daulti Devi was specific that Sadhana sustained fire from the flames of the stove while she was preparing tea. In this manner I find vital contradiction in the statements of the appellant Anil Kumar Singh with that of the appellant Daulti Devi as to the cause of sustaining fire by Sadhana @ Pinki which resulted into her death.

19. The solitary witness produced and examined on behalf of the defence D.W. 1 Dr. Prem Das testified that he was posted at Sadar Hospital, Hazaribagh since 18.12.91. He presented bed head tickets of the indoor patient Sadhana Singh wife of Anil Kumar Singh of village Moktama on the demand of the court and according to bed head ticket Sadhana Singh was admitted in the Hospital on 22.9.95 at about 9.20 p.m. He examined the victim on 23.9.95 and provided medical treatment. All the entries made in the bed head tickets from 23.9.95 to 26.9.95 were in his pen and signature which he proved and it was marked Ext. A. The bed head ticket of 22.9.95 was in the pen and signature of Dr. Saroj Kumar which was marked Ext. A/1. Sadhana Singh succumbed her injuries in course of her treatment on 27.9.95 at 5.05 a.m. on account of failure of cardio respiratory system. She was conscious in course of her treatment but her condition started deteriorating since 24.9.95 and the kidneys started malfunctioning. He testified that keeping in view her unstable condition she was referred to Ranchi on 26.9.95 itself for better management of her injuries. In such cases the police used to be informed and in this case also the police was already informed. In the cross-examination the witness admitted that Sadhana Singh was admitted in the hospital in a state of completely burnt. The nature of burn injuries which was found on the person of Sadhana was possible by setting the body on fire after pouring K. Oil. There was possibility of her survival if taken to Ranchi on reference for better treatment. He could not say as to whether the police had recorded her statement or not though she was able to deliver her statement on 24.9.95 and that the police station from the Sadar Hospital was situated at the distance of half k.m.

20. Mr. B.M. Tripathy, learned Counsel submitted that the conviction and the sentence passed thereto against the appellants sustainable as they have been convicted without legal evidence and only on surmises and conjectures, though on the same set of fact, allegations and evidence the trial court acquitted the other three accused viz. Tapeswar Singh (father-in-law) Geeta Devi (Nanad) and Dilip Singh (Husband of Geeta Devi). The specific defence of the appellants was that Sadhana died sustaining burn injuries from the fire which engulfed her sari while she was preparing tea in the kitchen on stove. The inmates of the house immediately rushed to rescue her by extinguishing fire and she was immediately removed to Hospital in no time for treatment with the intention to save her life. It was unfortunate part that she died after four days. Soon after such accidental fire information was sent to her parental home but with the ulterior motive, a false case

was concocted by the informant and other prosecution witnesses and the appellants have been convicted for the alleged charge u/s 304B/34 I.P.C without rhyme and reason.

21. The next point which Mr. Tripathy emphatically stressed was that had there been any apprehension of the prosecution witnesses that Sadhana Devi would be killed in her matrimonial home for dowry, they might not have permitted Sadhana to return to her matrimonial village with her husband. The allegation against the appellants was general and omnibus without specific attribution against individual appellant and therefore, their conviction is unsustainable.

22. Mr. Tripathy exhorted, advancing his argument, that the prosecution miserably failed to establish that Sadhana Devi suffered unnatural death within 7 years of her marriage so as to attract the charge u/s 304B I.P.C. P.W. 1 Rajeet Kumar Singh testified that when he arrived at the Sadar Hospital Hazaribagh in the night of 26.9.95, he found that Sadhana @ Pinki was conscious who narrated the cause of her burn injuries but the informant never took pain to inform the police for requisition of any Magistrate for recording her dying declaration. As a matter of fact, she never gained her senses after 24.9.95 as would be evident from the statement of D.W. 1 who attended and treated Sadhana at the Sado Hospital, Hazaribagh as the indoor patient.

23. The defence advanced the argument that though the trial court relied and believed the fact that the co-accused Tapeswar Singh i.e. the father-in-law of the victim was working in Rajasthan as the watch man at the relevant time of alleged occurrence but denied that his wife Daulti Devi, one of the appellants was there in Rajasthan with her husband and not at village Mukutama. The statement of the informant Rajeet Singh was partly disbelieved by the trial court on the basis of which three other accused were acquitted by the trial court but the defence of the appellant Daulti Devi could not be considered. So far as complicity of the appellant Sunil Kumar Singh is concerned, the learned Counsel submitted that he was not at all concerned with the family matters of his elder brother Anil Kumar Singh who was living separately and that he was not the ultimate beneficiary of the alleged demand of a motorcycle and a colour T.V. Yet when he came to know that his sister-in-law (Sadhana Singh) sustained injury on account of accidental fire, he immediately rushed there and took her to the Hospital for treatment. The complicity of the appellant Sunil Singh (Devar) was inferred by the trial court on the basis of the letters Exts. 2/1 and 2 alleged to be written by Sadhana Singh and Sunil Singh but such letters were never sent for examination by any expert so as to establish its scribes and its genuineness. Therefore, on erroneous consideration the appellants Sunil Singh has been convicted.

24. Finally Mr. Tripathy submitted that though an old stove was seized by the Investigating Officer but the same was not sent to any expert to testify as to whether it was in a working condition or not or that it sustained explosion on

account of high air pressure or otherwise and in this manner Investigating Officer did not take pain to explore the fact and therefore, the prosecution case was not fool proof. It is settled law that upon failure on the part of the appellants to prove a particular defence, the prosecution case cannot succeed and that the burden of proof is always heavy upon the prosecution to prove its case. In this case the prosecution failed to prove as to under what circumstances Sadhana sustained burn injuries whether it was accidental fire or she was set ablaze after pouring K. Oil on her body. The Doctor was silent about the smell of K. Oil emitting from the body of the victim and no incriminating article what so ever was recovered from the kitchen of the appellants to establish that she was set on fire. Admittedly there is no eye witness of the occurrence and it is settled law that suspicion howsoever may be strong, cannot take the place of proof.

25. Having regard to the facts and circumstances of the case and perusal of the materials on the record in appeal I find that admittedly Sadhana Singh @ Pinki died on 27.9.95 at about 5 a.m. Her age was assessed by the Doctor about 22 years and it was admitted case that she died of sustaining burn injuries at the Sadar Hospital Hazaribagh in course of her treatment as indoor patient from 22.9.95 until her death on 27.9.95 at about 5 a.m.

26. I take up the issue as to whether marriage of Sadhana @ Pinki was solemnized with the Appellant Anil Kumar Singh within 7 years of her unnatural death or not. P.W. 1 Ranjeet Kumar Singh is consistent that his sister Sadhana Singh was married to the Appellant Anil Kumar Singh in the year 1991 and he stood to the test of cross-examination since no attempt was made to shatter his credence on the issue of the period of the marriage of Sadhana before her death. P.W. 1 Ranjeet Kumar Singh did not produce any documentary evidence with regard to the exact date or year of marriage of Sadhana with the Appellant Anil Kumar Singh but no suggestion was made on behalf of the defence that she died beyond 7 years of her marriage. P.W. 3 Tulsi Singh was the grand father of Sadhana who testified that Sadhana was married to Anil Kumar Singh some 7-8 years ago from the date of his deposition which was recorded on 3rd December, 1998 and the occurrence as alleged took place on 22.12.95 which indicates that she died within 7 years of her marriage. On the other hand, P.W. 5 Kamaldeo Singh is neither the co-villager of the informant Ranjeet Kumar Singh nor closely related to him. He testified in the cross-examination that the informant Ranjeet Singh happened to be his nephew in relation and that Sadhana was married some 8-9 years prior to the occurrence. In my view this witness P.W. 5 Kamaldeo Singh is not the authority to explain and disclose the exact date or year of her marriage and no question was put to him as to whether he had attended the marriage of Sadhana with Anil Kumar Singh?. P.W. 1 Ranjeet Kumar Singh being the elder brother of the informant and P.W. 3 Tulsi Singh being the grand father of the deceased were the authorities being the elderly members of her parental home to testify the year of the marriage of Sadhana @ Pinki and both are consistent in the testimonies that Sadhana @ Pinki sustained

unnatural death within 7 years of her marriage and this fact fulfills one of the important ingredients of the charge u/s 304 IPC.

27. The next point which requires consideration is that as to whether the appellants had actively or passively demanded dowry in kind of a motorcycle and a colour T.V. Sadhana Singh during her life time as also from her brother and grand father (P.W.3) and in this connection they perpetrated torture to her mentally and physically. In support of that P.W. 1 Ranjeet Kumar Singh informant as the elder brother of the deceased and other witnesses narrated a detailed account of demand made by the appellants as discussed herein above while dealing with the evidence of P.W.1. P.W.2, P.W.3 and P.W.5.

28. Admittedly Sadhana suffered unnatural death on account of severe burn injuries on her person which finds support from the testimonies of P.W. 1 Ranjeet Kumar Singh P.W. 2 Tapeswar Singh, P.W. 3 Tulsi Singh, P.W. 4 Dr. Saroj Kumar and P.W. 5 Kamaldeo Singh. Even D.W 1 Dr. Prem Das who was produced and examined on behalf of the defence and had treated Sadhana at the Sadar Hospital, Hazaribagh testified that she was admitted in the Hospital as the indoor patient in the evening of 22.9.95 but she died due to burn injuries in the early hours of 27.9.95. The fact of unnatural death of Sadhana finds support from her postmortem report Ext. 4 and her bed head tickets Ext. A and Ext. 4/1 The appellants have admitted the unnatural death of Sadhana @ Pinki in their statements recorded by the trial court u/s 313 of the Code of Criminal Procedure. The statements of the prosecution witnesses are indicative that Sadhana suffered unnatural death on account of burn injuries at her matrimonial home village and it was not under normal circumstances.

29. The next point which requires consideration is as to whether Sadhana was subjected to cruelty or harassment by the appellants for or in connection with any demand for dowry. In this connection the testimony of P.W. 1 Ranjeet Kumar Singh is elaborate that the appellant Anil Singh was pressuring his wife Sadhana @ Pinki for bringing a motorcycle and a colour T.V. from her parental home and for that they had made the life of Sadhana miserable. The witness further testified that Sadhana used to communicate the demand of dowry as made by the appellants to the people of her parental home time to time and torture in this connection used to be perpetrated to her at her matrimonial home. She also used to send letters communicating her miseries and one of such letters written by Sadhana was proved Ext. 2/1. The letter was written a few days prior to her unnatural death narrating her miseries and torture sustained at the hands of her in-laws and husband which is a valuable piece of evidence against the appellants The next letter Ext. 2 sent to P.W. 3 (Inland letter) by the appellant No. 2 Sunil Kumar Singh also indicates the miserable life condition of Sadhana at her matrimonial home as in that letter allegation was made against her chastity. The contents of the letter (Ext.2) indicates that she was tortured at her matrimonial home and the informant and his grandfather were asked to take away Sadhana to her parental home but with the condition that she

would not be permitted to carry her jewellery and clothes except her wearings on the body. P.W. 1 Ranjeet Kumar Singh P.W. 2 Tapeswar Singh and P.W. 3 Tulsi Singh are consistent in their testimonies about the demand of dowry in the kind of motorcycle and colour T.V. made by the appellants and the torture extended to Sadhana in this connection. The defence in course of argument raised the points that no independent witness has come forward in support of the allegation of demand of dowry against the appellants and torture extended to Sadhana prior to her death. The trial court below in the judgment explained:

In such cases, ordinarily, independent witnesses are not available to witness such torture and harassment meted out to the newly married girls because such torture and harassment are confined to the four walls of the house of the Sasural of newly married girl where ordinarily the access of independent witnesses is not possible.

30. As regards investigation of the case by P.W. 8 Upendra Singh, is concerned, I find that it was done in a very slipshod manner yet, I find that when he visited the place of occurrence which was the matrimonial home of the victim Sadhana, he seized an old stove with cobwebs appeared to be not in use since long as inferred by the Investigating Officer on the basis of the dust collected on the stove. The defence of the appellant-husband in the statement recorded u/s 313 was that Sadhana sustained fire in her sari on account of burst of the stove, (probably by kerosene air pressure stove) but the Investigating Officer recovered an old stove which was not in use since long. Similarly no injury was found on the person of victim caused by splinters of the burst of the stove. On the other hand, the mother-in-law Daulti Devi in her statement recorded u/s 313 Cr.P.C. narrated that Sadhana sustained fire in her sari from the flames of the stove while she was preparing tea. Both the defence are contradictory to each other and therefore, such defence cannot sustain.

31. From the evidence on the record I find the following facts proved:

(i) Death of Sadhana was caused by burn injury otherwise than under normal circumstances.

(ii) Such death was occurred within 7 years of her marriage.

(iii) She was subjected to cruelty and harassment by the appellants in connection with the demand of additional dowry in the kind of a motorcycle and a colour T.V. soon after her marriage.

32. The learned Counsel for the appellants strongly contended that the appellant No. 1 Daulti Devi was not present at the place of occurrence since she had been to Rajasthan with her husband and that her husband co-accused was acquitted by the trial court on conscious consideration of his alibi. I find that the statement of P.W. 1 is relevant who narrated that when he visited the Sadar Hospital Hazaribagh in the night of 26.9.95, his sister Sadhana apprised that accused persons including the appellant Daulti Devi after pouring K. Oil set her body on fire. P.W. 2 Tapeswar

Singh narrated that he along with Tulsi Singh when visited the matrimonial village home of Sadhana, the appellants had demanded a colour T.V. and a motorcycle and that Daulati Devi firmly stated that she would not permit Sadhana to go to her parental home without delivery of such articles. P.W. 3 Tulsi Singh is consistent that 20-25 days prior to her death he with Tapeswar Singh (P.W. 2) had visited the matrimonial village home of Sadhana for her Bidai and at that time also the accused persons had raised the demand of T.V. and motorcycle.

33. I find that the prosecution has been able to establish the circumstances set out u/s 304B of the I.P.C. by raising a presumption u/s 113B of the India Evidence Act, 1872. Section 113B deals with presumption as to dowry death which runs there:

[113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation- For the purpose of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).

34. In [The State of Punjab Vs. Iqbal Singh and others](#), the Supreme Court observed:

The legislative intent is to curb the menace of dowry deaths with a firm hand. We must keep in mind this legislation intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Section 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within 7 years of marriage.

35. Though in the instant case there was no eye-witness of the occurrence but the ingredients required for the offence u/s 304B as against the appellants is proved in view of the presumption u/s 113B of the Indian Evidence Act.

36. Therefore, the judgment of conviction and order of sentence passed against the appellants are well discussed by the learned 3rd Additional Sessions Judge, Hazaribagh in Sessions Trial No. 135/1996 which do not call for interference in appeal.

37. In the result, this appeal is dismissed and the judgment and order passed in Sessions Trial No. 135/1996 is upheld and maintained. The bail bonds of the appellants stand vacated to serve out the remaining period of sentence. The court below is directed to take effective steps in this regard.