

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

**Criminal Appeal (DB) No.55 of 2013**

Arising Out of PS.Case No. -5 Year- 2008 Thana -ANGARGHAT District-Samastipur

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Sunil Mahto, S/o Rajendra Mahto, Resident of Village- Chaita, P.S.- Angar Ghat,  
District Samastipur.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Ajit Kumar, Adv.  
Mr. Krishna Murari Raut, Adv.  
For the Respondent : Mr. S.N. Prasad, A.P.P.

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

**and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)**

**Date: 15-09-2015**

Heard learned counsel for the Appellant and learned  
Counsel for the State.

2. The sole Appellant has been convicted under Section  
304B/34 of the I.P.C. and sentenced to rigorous imprisonment for  
life by the 1<sup>st</sup> Additional District and Sessions Judge, Samastipur  
vide judgment and conviction dated 07.12.2012 and 17.12.2012  
respectively, in Sessions Trial No. 555 of 2008.

3. The case of the prosecution, according to Laloo  
Devi, mother of the deceased (P.W.5) is that her daughter Nirmala  
Kumari had been married to the Appellant Sunil Mahto about four  
years ago and he used to make demand of money by way of dowry.  
On 09.02.2008, she (informant) received a phone call from village

Chaita that her daughter had died, at which, she along with her husband went to village Chaita and found that her daughter dead. She fainted on seeing such a sight. Later, she learnt that the Appellant and his other family members had poisoned her daughter at night of 08.02.2008. The reason for poisoning was non-fulfillment of demand of dowry.

4. During trial, prosecution examined eight witnesses. P.W. 1 Rameshwar Sahni and P.W.2 Manju Devi, who belonged to the village of the Appellant, have not supported the case of the prosecution and have been declared hostile. P.W.3 Jageshwar Mahto is father of the deceased, P.W.4 Nathuni Mahto is uncle of the deceased whereas P.W. 5 Laloo Devi is mother of the deceased. P.W.6 Sunil Kumar Singh is the Investigating Officer and P.W.7 Suresh Paswan has proved the F.S.L. Report and P.W. 8 Dr. Birendra Prasad Rai has conducted the postmortem examination on the dead body of the deceased.

5. Since it is a case under Section 304B of the I.P.C., we have to examine the prosecution case in the light of the ingredients required for proving the charge under the aforesaid section. The first requirement is that the deceased should have been married within 7 years. We find from the evidence of P.W.3, P.W.4 and P.W.5 that they have consistently stated that she (deceased) had been married about 4 years before her death and hence, the

prosecution has succeeded in proving its judgment. The next ingredient that the death must be unnatural has also been proved by P.W.7 Suresh Paswan, who had deposed on the F.S.L. Report of the Viscera (Exhibit-5), which revealed that cause of death was on account of consumption of poison. P.W. 8, Dr. Birendra Prasad Rai, who conducted the postmortem, could not conclusively opine as to the cause of death but definitely it was an unnatural death. However, he did not find any external injury which would suggest a struggle.

6. The next ingredient is that as to whether demands of dowry were made “soon before death”. To verify the same, we have closely examined the evidence of P.W.3, P.W.4 and P.W.5.

7. P.W.3 Jageshwar Mahto, father of the deceased has stated that his daughter was kept well in her matrimonial home for about one and half years, after which in-laws tortured her for ends of dowry and started making demands of Rs. 50,000/-. He then gave Rs. 20,000/- and thereafter, Rs. 5,000/- at which it was said that deceased would be kept well and would not be assaulted. When his daughter was assaulted, he brought her home. However, the Appellant along with his family members came and after undertaking that they would keep her well took her to the matrimonial home. Thereafter, one week of her reaching the matrimonial home, he learnt his daughter had been killed.

8. His attention was drawn to the earlier statement with



regard to him having paid money to the accused in paragraph-31 as stated by him in Court. It was suggested to him that he had not said that he had paid Rs. 50,000/- as demanded by the in-laws and also paid Rs. 20,000/- and thereafter, Rs. 5,000/- but still she was being tortured and he had brought her home. It was then that the Appellant along with the rest of the family members had come on an undertaking that he would keep her well taken her to the matrimonial home and one week later, he learnt that his daughter had been killed.

9. P.W.6, the Investigating Officer, in paragraph-24 has stated that P.W.3 had not stated to him about the aforesaid fact in the statement recorded under Section 161 Cr. P.C. Hence, it will have to be rejected since it is a contradiction.

10. P.W.4, uncle of the deceased, has stated that after marriage, the in-laws used to make demand of Rs. 50,000/-, out of which, P.W. 3 had paid Rs. 20,000/- but the accused persons assaulted the deceased and drove her away. She then came to her maternal home after which the accused came and took her back. Within 8 days, they learnt that the deceased had been poisoned to death. Once again, his attention was drawn in paragraph -7 as to how he learnt about this fact and he stated that P.W.3 had told him about this transaction. However, this fact has not stated by P.W.3 in his evidence which makes this part of the evidence of P.W.4 inadmissible.

11. Further, his attention was drawn to the earlier statements in paragraph-13 that he had not stated these facts in the statement under Section 161 Cr. P.C. He, of course, denied it but the Investigating Officer, P.W.6, in paragraph-26 confirmed the fact that he had not stated these facts in his earlier statement. Hence, even his evidence in regard to the demands having been made soon before death has to be rejected.

12. P.W.5, mother of the deceased, stated that the Appellant used to assault the deceased for non-fulfillment of demands of Rs. 50,000/- so he had been paid Rs. 20,000/- after which she was kept well for sometime but once again, they started assaulting her so she brought her home. Then the Appellant along with the rest of the family came and took her back to the matrimonial home on undertaking that nothing will happen to the deceased. However, within 8 days they got information that the deceased had been murdered.

13. Her attention was drawn to the earlier statement in paragraphs- 3, 4, 5 and 15 with regard to the details of the financial transaction between her husband and Appellant and that she had not stated these facts in her statement recorded under Section 161 Cr. P.C. She, of course, denied such a suggestion but P.W.6 in paragraph- 23 stated that the informant had not stated about the details of financial transaction between the parties.

14. In such circumstances, we find that there is complete paucity of any material to suggest that the demand of dowry had been made soon before the death. Hence, charge under section 304B of the I.P.C. would have to necessarily fail.

15. We also find that even though the occurrence had taken place on 08.02.2008 at night, an immediate information was given to the family of the deceased upon which they came the next day and saw her dead body lying respectfully either on a cot or a Chatai. In this period, no effort was made by the accused to dispose off the dead body, which further points to their fair conduct.

16. In view of the discussions as above, we allow the appeal and set aside the judgment of conviction dated 07.12.2012 and order of sentence dated 17.12.2012 passed by the 1<sup>st</sup> Additional District and Sessions Judge, Samastipur in Sessions Trial No. 555 of 2008. The Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

**(Anjana Prakash, J.)**

**(Rajendra Kumar Mishra, J.)**

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