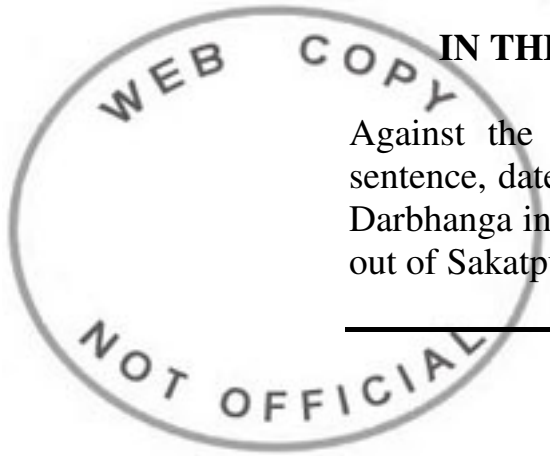




IN THE HIGH COURT OF JUDICATURE AT PATNA

Against the judgment of conviction, dated 7.7.2007 and order of sentence, dated 10.7.2007, passed by the 1st Additional Sessions Judge, Darbhanga in Sessions Trial Nos.234 of 1996 and 234A of 1996 arising out of Sakatpur P.S. Case No.37 of 1994)

Criminal Appeal (DB) No.986 of 2007

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Gopaljee Singh		 Appellant
	Versus	
State of Bihar		 Respondent
	with	

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Criminal Appeal (DB) No. 1267 of 2007

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Lalan Kumar Singh		 Appellant
	Versus	
State of Bihar		 Respondent

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Appearance :
(In both Cr. App (DB) Nos. 986 of 2007 & 1267 of 2007)
For the Appellant/s : Mr. Bipin Bihari Singh, Advocate
Mr. Kamendra Pd. Singh, Advocate
Mr. Shyama Kant Singh, Advocate
For the State : Mr. Abhimanyu Sharma, APP
Mr. Satya Narayan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and
HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: 10-04-2015

Criminal Appeal No.986 of 2007 has been preferred against the judgment of conviction and order of sentence, dated 7.7.2007 passed in Sessions Trial No.234 of 1996, whereby the sole



appellant Gopalji Singh has been convicted under Sections 302/34, 201 of the Indian Penal Code and sentenced him to undergo life imprisonment under section 302/34 IPC and imprisonment for three years under section 201 IPC. However, both the sentences have been directed to run concurrently.

2. Criminal Appeal No. 1267 of 2007 has been preferred by Lalan Kumar Singh, who has been convicted by judgment, dated 7.7.2007 passed in separate Sessions Trial No.234A of 1996, whereby the learned Trial Court convicted him under Sections 302 and 201 I.P.C and sentenced him to undergo life imprisonment under section 302 I.P.C. and imprisonment for three years under section 201 IPC. Both the sentences were too directed to run concurrently.

3. We have heard both the appeals together, as they arise out of Sakatpur P.S. Case No.37 of 1994, dated 25.12.1994 under Sections 498A/364 I.P.C. and Sections 3/4 of Dowry Prohibition Act and as such they are being disposed of by this common judgment.

4. The prosecution case, in short, as made out in the written report of Sukdeo Singh, grandfather of the victim, resident of Village Narayanpur, P.S. Sakatpur, District Darbhanga is as follows; According to the informant, his grand daughter Poonam



Devi was married 2 ½ years before with the appellant Lalan Kumar Singh son of other appellant Gopalji Singh of village-Navtol, P.S. Saketpur, District Darbhanga. However, after a year of marriage she was subjected to torture at the hands of her husband, in-laws including Amresh Kumar Singh, younger brother of her husband which reflected in different letters addressed to her parents. She stated that they threatened her with life and threat of contracting second marriage of Lalan Kumar Singh. In view of repeated complaints from her grand daughter, the informant along with his Samdhi, Sitai Singh (P.W.5) went to the sasural of Poonam Devi to console her and also to interact with her in-laws. For consoling her, the informant took the deceased to her Nanihal at village Bhatohar. After sometime, accused Gopalji Singh and his son Lalan Kumar Singh came to village Bhatohar for Ruksadi of the deceased and assured to keep her with affection and love. On their assurance, the informant allowed the deceased Poonam Devi to go with them on 12.12.1994. After a week on 23.12.1994, when P.W.5 Sitai Singh went to the Sasural of Poonam Devi to meet her, he did not find her there and on enquiry no satisfactory explanations came from her in-laws. Thereafter, informant along with the Sitai Singh made hectic search for her but having failed to locate her, lodged a written report on 25.12.1994. The informant further stated that the accused Lalan

Kumar Singh was making regular demand of cycle and wrist watch etc and as he could not fulfill the same, the accused persons have got her daughter disappeared in order to kill her.

5. On the basis of written report, Saketpur P.S. Case No.37 of 1994 was registered on 25.12.1994. The investigation of the case was handed over to P.W. 14 Chandrama Singh who arrested Gopalji Singh, the father-in-law of the victim on the next day i.e. 26.12.1994. Thereafter, he took statement of the informant and others. In course of investigation, he heard a rumour that a dead body was floating in the pond of Sukhlal Mandal in village Navtol. On hearing the rumour, he came to the pond and found the headless body covered with aquatic plant floating in the pond. On the request of the Investigating Officer, P.W. 14, the Block Development Officer, Manigachi deputed Block Agriculture Officer for retrieving the dead body. The Investigation Officer in presence of Block Agriculture Officer drew out the dead body from the pond and prepared inquest report which is marked as Ext.7. The Investigating Officer found the left breast of the dead body cut and noted in detail the apparels on her body. He noticed that the deceased was wearing green and red colour of bangles in her hand. The Investigating Officer after preparing inquest report, dispatched the dead body for post mortem examination. On learning that Lalan Kumar Singh, the



husband of the victim, has surrendered in the Court. On 27.1.1995, he prayed for police remand and secured it for a few days. Lalan Kumar Singh in his confessional statement stated that he had cut the head of his wife Poonam Devi and buried it in the corner of the field of Nursing Singh. On 29.1.1995, as per information given by accused Lalan Kumar Singh, he along with accused Lalan Kumar Singh, Block Development Officer Ramesh Chandra Jha and some armed police force, proceeded for the place, where the head of the deceased was buried. On the way as they came in the Mango orchard of Gopalji Choudhary, the accused Lalan Kumar Singh also showed the place, where he raped the deceased and slit her neck. The police recovered broken pieces of bangles from the said place. Thereafter, on information of accused Lalan Kumar Singh, the skull was recovered from underneath the field of Nursing Singh. The Investigating Officer prepared the inquest report which was marked as Ext. 7/1. He also made seizure list of skull to which Lalan Kumar Singh was a signatory. The signature of Lalan Kumar Singh on seizure list is marked as Ext.9.

6. The police after investigation, submitted charge sheet against both the appellants under sections 498A, 376, 302, 364, 304B, 301 and 120B of the Indian Penal Code.

7. It is relevant to state herein that the appellant Lalan



Kumar Singh was granted provisional bail on 21.7.1998 for a period of three months. However, he misused the privilege of bail and absconded. As such, Sessions trial of Lalan Kumar Singh was separated from that of appellant Gopalji Singh and was numbered as Sessions Trial No.234A of 1996. The Sessions Trial of Gopalji Singh was numbered as Sessions Trial No.234 of 1996 and proceeded accordingly. Charge against Gopalji Singh was framed under Sections 498A, 376, 364, 120B, 304B, 302 and 201 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

8. It would be also relevant to state herein that while trial of Gopalji Singh was proceeding, accused Lalan Kumar Singh was arrested on 18.2.2006 and his trial too commenced and proceeded simultaneously with that of his father Gopalji Singh. Charges were framed against him under Sections 304B, 302 and 201 Indian Penal Code.

9. The prosecution in support of its case examined altogether 14 witnesses, out of whom, save and except, P.W. 4 Ramdeo Singh, a formal witness, P.W. 5 Sitai Singh, Nana of the deceased, P.W. 13 Dr. Akahuri Rabindra Kishore and P.W. 14 Chandrama Singh, the Investigating Officer of the case, were declared hostile.

10. It is also important to state herein that the set of



witnesses examined in both the Sessions trial are the same. As the trial of Lalan Kumar Singh has begun during the trial of Gopalji Singh, both the cases were heard together by the learned Trial Court and they were convicted by separate judgments, both dated 7.7.2007. The trial court found the charge proved against the appellant Gopalji Singh under Sections 302/34 and 201 I.P.C., whereas he found the charge proved against the appellant Lalan Kumar Singh under Section 302 and 201 I.P.C. Both the appellants were acquitted of other charges. Being aggrieved, both the appellants have preferred separate appeals against the judgment of conviction and sentence.

11. The appellants before us have broadly raised the following common points in their defence:

i) The skeleton i.e. headless portion of the body as well as head was not in identifiable position and no one could identify it beyond all reasonable doubt after 35 days of the occurrence.

ii) The head or the skull and the headless body received from the beneath the earth as well as from the Pond respectively may not be of the same person.

iii) The detailed portion of the findings recorded by the Doctor on a plane paper has not been produced before the Court.

iv) As there was examination of skeleton remains, no

entry was made with respect to autopsy done on the dead body in the post mortem register.

v) Further more, the accused having been acquitted of charge under section 304B of the Indian Penal Code, section 113 B of the Indian Evidence Act would not apply and burden of proof would be on prosecution to prove the charge and not on accused to rebut the presumption of guilt.

vi) There is no direct evidence for convicting the appellants either under section 302 or under section 302/34 of the Indian Penal Code and the circumstances pleaded by prosecution are weak.

vii) There is no material to sustain the conviction of the appellant Gopalji Singh under Section 201 of the Indian Penal Code.

12. Having set out the defence of the appellants in nut shell, we would now proceed to examine whether the prosecution has been able to bring home the charge against the appellants beyond all reasonable doubts. For sake of convenience, we would take up first Criminal Appeal (DB) No.1267 of 2007 filed by appellant Lalan Kumar Singh.

13. The prosecution case, as noticed above, is that the deceased Poonam Devi was admittedly married with appellant Lalan Kumar Singh of village Navtol under Saketpur P.S. After a year of



marriage, the appellant Lalan Kumar Singh and his brother Amresh Kumar Singh, his father Gopalji Singh begun to torture her and threatened her with second marriage of her husband Lalan Kumar Singh. The victim Poonam Devi disclosed all these facts to her parents through her several letters written to them. There upon, her father along with grand father and maternal grand father came to her maternal house and tried to explain the things to her in-laws. In order to console Poonam Devi, she was brought to village Bhatohar at the place of her maternal grand father (P.W.5). After sometime, the appellants came to village Bhatohar for Ruksadi of the victim and assured P.W. 5 and others of good behaviour with the victim. On their assurance, the informant allowed the victim to go with them. After a week, P.W. 5 in order to enquire about the condition of victim went to her Sasural, but she was found missing there. On enquiry, when no satisfactory answer came from her in-laws, he lodged the present First Information Report. As by the time the trial proceeded, the father, grand father and mother of the victim passed away and as such they could not be examined in the trial.

14. P.W.5, the maternal grand father who had gone along with the informant to the maternal house of the victim in his Examination-in-Chief has supported the prosecution case and following facts emerge from his evidence which are summarized as

under:

i) Poonam Devi was married to appellant Lalan Kumar Singh 2 ½ years prior to the incident. She was tortured both by her husband, father-in-law and other family members. Besides this, they had to intervene and even in order to console the victim had brought her to her Nanihal. However, on the assurance given by the appellants of not repeating ill treatment to her and to keep the victim with full dignity, the victim was allowed to go with them. On 23.12.1995 when P.W. 5 visited the matrimonial house of Poonam Devi, she was found traceless for which no explanation worth the name was given by the appellants. Subsequently, it was learnt that the dead body of Poonam Devi was buried in the nearby pond. On receiving the information, P.W. 5 informed the police who subsequently recovered the headless body of Poonam Devi from the nearby pond.

ii) P.W.10 Dr. Akahuri Rabindra Kishore who examined the headless body and skull of the deceased stated that both parts of the body was of a female aged about 20-22 years. He conducted post mortem of the trunk on 19.1.1995, whereas the post mortem examination of the head portion was conducted on 30.1.1995. In paragraph 5 of his deposition, he stated that he



found sharp cuts in the fourth and fifth cervical vertebra along with corresponding injuries in the adjacent tissues. There were infiltration of blood in and around in this area indicating vital reactions. This injury was ante-mortem, grievous and dangerous to life and was caused by some heavy sharp cutting weapon. In the opinion of the Doctor, the decomposed head less skeleton remain, sent for medico legal examination belonged to a female age between 18 to 20 years. The sharp cuts around neck were dangerous to life and the death was caused on account of hemorrhage and shock as a result of such injuries. In paragraph 6 of his deposition, he stated that the stage of decomposition and conditions of bones and ligaments indicate that this lady might have died between 30 to 45 days from the date of post mortem examination report.

iii) The medical report of the Doctor tallies with the prosecution case with respect to time of occurrence and that the dead body was of a female aged between 20-22 years which tallies with the age of Poonam Devi.

iv) P.W. 10 in paragraph 7 stated that on 30.1.1995 he examined the skull of a female body. On examination of skull, he opined that the head was of a lady aged between 17-22 years. However, he did not find any ante mortem injuries. The

examination of skull too propagates the prosecution case that the same was of Poonam Devi whose head was severed from her body.

v) The inquest report dated 18.1.1995 prepared by the Police also supported the prosecution case that the dead body was of a female aged about 19 years and at the time of death she was wearing Saree and sweater. It further appears from the inquest report that the body found was without head, which is exactly the prosecution case.

15. The prosecution has examined the Investigating Officer of the case in order to establish that the appellant after killing his wife cut her head and buried in the field of Nursing Singh. On 25.1.1995, the Investigating Officer learnt that Lalan Kumar Singh surrendered in the Court. Immediately thereafter, he was taken on police remand on 28.1.1995. The appellant in his confessional statement disclosed that after strangulating and killing Poonam Devi, he severed her head and buried in the field of Nursing Singh. On such information, the police after seeking deputation of a Magistrate and in presence of the witnesses including the appellant recovered the skull from the field of Nursing Singh.

16. On the strength of these evidences, the prosecution argued that the relationship between Poonam Devi and this appellant and her

in-laws were strained on account of which they tortured the deceased and subsequently did away with her life. On the confession of appellant Lalan Kumar Singh, the head of the victim was recovered which in fact clinches the case against the appellant, and his father Gopaljee Singh who is an appellant in other case.

17. The defence has argued that the evidence of P.W.8 Sitai Singh is not consistent with his earlier deposition made in Sessions Trial No.234 of 1996. He submits that P.W. 8 in his evidence stated that he learnt that the dead body of the victim was buried in the Pokhar, (pond) where after he informed the Police who arrested the accused Lalan Kumar Singh and on whose confessional statement the head was recovered from the pond. Learned counsel submits that the evidence of P.W.8 does not find corroboration from the statement of the Investigating officer who stated that in course of investigation, he secured police remand of appellant Lalan Kumar Singh, who in his confessional statement disclosed that the head was buried in the field of Nursing Singh. Learned counsel as such argued that the evidence of P.W. 8 should not be relied upon.

18. We find that P.W. 8 in his Examination-in-Chief has fully supported the prosecution case set out in the First Information Report regarding torture of the victim girl and her missing from her in-laws house. It is true that there is some discrepancies in his



statement but the same would not take away the credibility of his entire statement as the contradiction is of a minor nature. P.W. 8 in his statement too has stated that on confession of Lalan Kumar Singh, the head was recovered though there is some discrepancy in his statement regarding the place from where it was recovered. The Investigating Officer in his evidence has proved the written report of the informant. Further more, we find that on confession of Lalan Kumar Singh the dead of the deceased Poonam Devi was recovered from the field of Nursing Singh. The appellant Lalan Kumar Singh specifically stated in his confession that he strangled the victim under Mango tree in the orchard of Gopaji Sahay and thereafter he cut the head and buried it in the field of Nursing Singh, whereas the body was thrown in the nearby Pond. On the confession of Lalan Kumar Singh the head of the victim was recovered.

19. The recovery of severed skull on the disclosure made by appellant Lalan Kumar Singh is admissible under Section 27 of the Indian Evidence Act. Further more, accused Lalan Kumar Singh also disclosed that the head was of his wife which he had severed from her body. The recovery of skull and the recovery of other portion of the body from a nearby pond and the confession of Lalan Kumar Singh that head which he had buried was of his wife, all establishes a chain of circumstances unmistakably pointing to the hypothesis that

he had buried the head of his wife Poonam Devi after killing her with a motive to cause disappearance of her body in order to wipe out evidence.

20. Further more, the evidence of P.W. 8 clearly establishes that the accused Lalan Kumar Singh used to torture his wife with respect to which she has made numerous complaints in her letter to her parents.

21. For the reasons discussed above, though there is no direct evidence with respect to commission of murder, but the chain of circumstances are complete in itself and unerringly point to the guilt of the appellant Lalan Kumar Singh and no one else. We find that the prosecution has been able to fully prove the charge against the appellant Lalan Kumar Singh under Section 302 and 201 of the Indian Penal Code.

22. In the result, Criminal Appeal (DB) No.1267 of 2007 fails and it is accordingly dismissed. The appellant Lalan Kumar Singh would remain in custody to serve out the remainder of his sentence.

23. We would now take up Criminal Appeal (DB) No.986 of 2007. The appellant Gopaljee Singh is the father of Lalan Kuamr Singh and father-in-law of victim Poonam Devi. He has been convicted under Sections 302/34 and 201 of the Indian Penal Code. As the prosecution case has already been set out in detail while



dealing with the case of appellant Lalan Kumar Singh, we do not find it appropriate to burden the record with the repetition of those facts again and again. It would only be relevant that P.W. 5 Sitai Singh, the maternal-grand father of the victim who was examined as P.W. 8 in Sessions Trial No.234A of 1996 was examined as P.W. 5 in the instant case. Similarly, the Investigating Officer Chandrama Singh who was examined as P.W. 9 in Sessions Trial No.234A of 1996 was examined as P.W. 14 in Sessions Trial No.234 of 1996. The evidence of Investigating Officer in both the cases are similar. In fact, the deposition of P.W. 5 Sitai Singh in the instant case stands fully corroborated from the evidence of the Investigating Officer. It would be relevant to notice in brief the evidence of P.W. 5 Sitai Singh. He supported the entire prosecution case as narrated in the First Information Report. In his evidence he stated that he heard rumour that a dead body was floating in the nearby pond whereupon he gave information to the police, who took confessional statement of accused Lalan Kumar Singh and on whose statement the skull was recovered from the field of Nursing Singh after few days.

24. The defence has not been able to elicit any material contradictions to render his evidence unreliable. We, however, do not find anything in the statement of P.W. 5 or any other witness to come to the conclusion that the appellant Gopaljee Singh had shared



common intention with his son or any one else to do away with the life of Poonam Devi. The only material against him is a bald allegations that all the accused used to torture the victim. There is no allegation of demand of dowry against him. The other incriminating circumstance against him is that when P.W. 5 did not find the victim at her matrimonial, this appellant could not provide any satisfactory answer.

25. Thus, we have no hesitation in coming to the conclusion that the prosecution has not been able to establish that the appellant shared common intention of murdering the victim with his son or any one else in prosecution whereof she was done to death.

26. For the reasons discussed above, we accord him the benefit of doubt and the conviction and sentence of the appellant Gopaljee Singh under section 302/34 of the Indian Penal Code is set aside. He is acquitted of the charge. However, as the appellant Gopaljee Singh did not disclose the disappearance of the victim girl to P.W. 5, there are sufficient reasons to come to the conclusion that he had full knowledge that Poonam Devi had disappeared. He is, therefore, rightly held guilty under section 201 I.P.C. As such, we do not find any fault with the judgment of learned trial court convicting him under section 201 of the Indian Penal Code, for which he has been sentenced to three years rigorous imprisonment. We find that this

appellant was aged about 52 years on the date of judgment and there is no previous conviction against him. He has stood rigors of the protracted proceeding since 1994-95. Besides this, he has already remained in custody for a period of one year and as such in our opinion, the period under gone by him would meet the ends of justice.

27. In the result the judgment under appeal is modified to the extent indicated above. Since the accused appellant Gopaljee Singh is on bail, he is discharged from the liabilities thereof.

28. Send back the Lower Court Records along with a copy of this judgment and order.

(Samarendra Pratap Singh, J)

Kishore Kumar Mandal, J

(Kishore Kumar Mandal, J)

Md.Jamaluddin Khan

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