

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.397 of 2013

Arising out of PS. Case No. -112 Year- 2004 Thana -DHAKA
District- EAST CHAMPARAN (MOTIHARI)

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1.Wazul Haque son of Late Daroga Ali Shah
2.Nazbool Nisha @ Nazmool Nisha @ Najboon Nisha @ Mazboon
Nisha wife of Wazul Haque

Both residents of village-Dhaka Ramchandra, Police Station-
Dhaka, District-East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (SJ) No. 539 of 2013

Arising out of PS. Case No. -112 Year- 2004 Thana -DHAKA
District- EAST CHAMPARAN (MOTIHARI)

=====

Abdul Khalique son of Wazul Haque, Resident of Village-Dhaka
Ramchandra, P.S.-Dhaka, District-East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No. 397 of 2013)

For the Appellant/s : Mr. Md. Salahuddin Khan, Advocate
: Mr. Md. Sufiyan, Advocate
: Mr. Thakur Brajesh Singh, Advocate

For the State : Mr. S.N. Prasad, A.P.P.

(In CR. APP (SJ) No. 539 of 2013)

For the Appellant/s : Mr. Mr. Md. Salahuddin Khan, Advocate
: Mr. Md. Sufiyan, Advocate
: Mr. Thakur Brajesh Singh, Advocate

For the State : Mr. S.A.Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

C.A.V. JUDGMENT

Date: 30-01-2015



These two appeals filed under section 374(2) of the Code of Criminal Procedure are directed against the judgment dated 25th April, 2013 and sentence dated 7th May, 2013 passed by the learned 5th Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No.219 of 2005 whereby all the appellants have been convicted under section 304-B read with 34 of the Indian Penal Code and section 201 of the Indian Penal Code and the appellant Abdul Khaliq (Cr. Appeal (SJ) No.539 of 2013) has been sentenced to undergo rigorous imprisonment for ten years for his conviction under section 304-B read with 34 of the Indian Penal Code, rigorous imprisonment for two years and to pay a fine of Rs.10,000/- for his conviction under section 201 of the Indian Penal Code and, in default of payment of fine, to undergo simple imprisonment for six months and the appellants Wazul Haque and Najboon Nisha (Cr. Appeal (SJ) No.397 of 2013) have been sentenced to undergo rigorous imprisonment for seven years each under section 304-B read with 34 of the Indian Penal Code, rigorous imprisonment for one year each and a fine of Rs.5,000/- each for their conviction under section 201 of the Indian Penal Code and, in default of payment of fine, to undergo simple imprisonment for three months. The sentences awarded to the appellants have been directed to run concurrently.

2. Since the same judgment of conviction dated 25th April, 2013 and order of sentence dated 7th May, 2013 passed in Sessions

Trial No.219 of 2005 by the learned 5th Additional Sessions Judge, East Champaran, Motihari have been impugned in these two appeals, they have been heard together for the purposes of final disposal and are being disposed of accordingly.

3. The informant Nasiruddin Shah (P.W.4) in his written report submitted before the Officer-in-Charge of Dhaka Police Station on 30th September, 2004 at 4.30 p.m. has alleged that his daughter Shamima Khatoon, aged about 24 years, was married to the appellant Abdul Khalique about six years ago. After three days of the marriage her mother-in-law Najibun Nisha, sister-in-laws (Nanads) Shahida Khatoon wife of Nasiruddin, Sajda Khatoon, wife of Ilyas and Sadiqua Khatoon started subjecting her to mental and physical cruelty for bringing inadequate dowry. They demanded one Hero Honda Motorcycle and Rs.50,000/- as dowry. When he came to know about the demand of dowry, he went to the Sasural of his daughter and told them that though he had already given dowry as per his capacity but if they give him adequate time, he would endeavour to fulfill their demand of motorcycle and cash. Subsequently, the appellant Abdul Khalique went to South Africa in order to earn his livelihood and in his absence due to the harassment caused by the in-laws, his daughter came to her parental home. Later on, Abdul Khalique came back from South Africa and took his wife back to her marital home. The brother-in-law of Abdul Khalique namely Md. Ilyas communicated the



informant that since his son-in-law Abdul Khalique had come back, he should fulfill the demand of a motorcycle and Rs.50,000/- in cash. It has further been alleged in the written report of the informant that as he was busy in arranging money in order to fulfill the demand but in the meantime some unknown person informed him on telephone of one of his villagers that his daughter has been killed and her dead body has been disposed of. Thereafter, he went to the Sasural of his daughter Shamima Khatoon along with several other co-villagers and on enquiry several persons of the neighborhood including one Khurshid told him that his daughter had been killed a day before. He came to know through them that Abdul Khalique, Shahida Khatoon, Sajda Khatoon, Ilyas, Sadiqua Khatoon, Najbun Nisha and Molvi Nasir in conspiracy with each other killed his daughter and in order to conceal the evidence, they disposed of her dead body in the night intervening between 29-30 September, 2004 with aid of one Aas Mohammad and one Md. Muslim Shah.

4. On the basis of the aforesaid allegations, Dhaka P.S. Case No.112 of 2004 was registered on 30th September, 2004 at 4.30 p.m. against nine persons including the appellants for the offences punishable under sections 304-B and 201 read with 34 of the Indian Penal Code and the investigation was taken up. On 30th December, 2004, a report under section 173 of the Code of Criminal Procedure was submitted in the court by the Investigating Officer of the case.

All the three appellants of the present case were sent up for trial by the police for having committed the offences punishable under sections 302 and 201 read with 34 of the Indian Penal Code. However, the investigation was kept open in respect of other accused persons named in the first information report.

5. Since the offences alleged are exclusively triable by the court of Sessions, the learned Magistrate committed the case to the Court of Sessions for trial after taking cognizance of the offence and after complying with the mandatory provisions prescribed under section 207 of the Code of Criminal Procedure.

6. Initially, the Sessions Court framed charges for the offences punishable under sections 304-B read with 34 and 201 of the Indian Penal Code against the appellants to which they pleaded not guilty and claimed to be tried. However, in course of trial, the trial court framed an alternative charge against the appellants for the offence punishable under section 302 read with 34 of the Indian Penal Code.

7. In course of trial, the prosecution examined altogether ten witnesses. Out of them, P.W.1 Hasina Akhtar and P.W.2 Naushad Ali have been declared hostile by the prosecution. P.W.6 Arun Lal is a formal witness who has proved certain paragraphs of the case diary in course of trial which has been marked as Ext.3. P.W.3 Kalim Akhtar is brother of the deceased and P.W.4 Nasiruddin Shah is father



of the deceased, who is also informant of the present case. P.W.5 Ayasha Khatoon is the daughter of the deceased and the appellant Abdul Khalique. P.W.7 Dr. Sachidanand Choudhary, P.W.8 Dr. S.L. Das and P.W.9 Dr. Narendra Kishore Singh are the doctors of Sadar Hospital, Madhubani, who had conducted the postmortem examination on the dead body of the deceased being the members of the Medical Board. P.W.10 Hari Shankar Mishra is the Investigating Officer of the case, who had examined the place of occurrence, recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure and submitted charge sheet in the case on conclusion of investigation.

8. Apart from the oral testimony, P.W.4 Nasiruddin Shah has identified his signature on the written report, which has been marked as Ext.1. P.W.5 Ayasha Khatoon has proved her signature on the statement made under section 164 of the Code of Criminal Procedure which has been marked as Ext.2. P.W.6 Arun Lal has proved the writing and signature of the Officer-in-Charge of the police station, namely, Hari Shankar Mishra which has been marked as Ext.3. The postmortem report has been proved by P.W.9 Dr. N.K. Singh and the same has been marked as Ext.4. P.W.7 Dr. Sachidanand Singh and P.W.8 Dr. S.L. Das proved their respective signatures on the postmortem report which have been marked as Exts. 5 and 6 respectively. P.W.10 Hari Shankar Mishra has proved the



written report which has been marked as Ext.7, the formal first information report which has been marked as Ext.8 and the seizure list which has been marked as Ext.9. The signature made by him on an application submitted to the Subdivisional Officer, Sikarahana seeking permission to exhume the dead body of the deceased from the graveyard has been marked as Ext.10 and the carbon copy of the inquest report prepared by him has been marked as Ext.11.

9. After the prosecution evidence was closed, the appellants were examined under section 313 of the Code of Criminal Procedure. They have pleaded their innocence in the matter. In order to prove their innocence, the defence has also examined two witnesses, namely, D.W.1 Wasim Akhtar and D.W.2 Reyaz Ahmad.

10. On conclusion of trial, the trial court has acquitted the appellants of the charge under section 302 read with 34 of the Indian Penal Code but convicted them under sections 304-B read with 34 and 201 of the Indian Penal Code.

11. I have heard Mr. Salahuddin Khan, learned counsel for the appellants and Mr. S.A. Ahmad, learned Additional Public Prosecutor for the State.

12. Learned counsel for the appellants has submitted that the prosecution has failed to prove its case beyond all reasonable doubts. It has developed its case from stage to stage. The evidence of the prosecution witnesses in court are contrary to allegations made in



the first information report and the statements made under section 161 of the Code of Criminal Procedure. He has submitted that the prosecution has failed to prove the actual date of marriage of the deceased and consequently failed to establish that the death occurred within seven years of marriage. It has also been submitted that there is no evidence to prove the demand of dowry and/or subjecting the victim to cruelty for non-fulfillment of demand of dowry soon before her death. The independent witnesses have not been examined in course of trial and the interested and related witnesses examined on behalf of prosecution namely, P.W.3 Kalim Akhtar, P.W.4 Nasiruddin Shah (informant) and P.W.5 Ayesha Khatoon have not only contradicted themselves but have also contradicted each other on every vital points involved in the case.

13. Mr. Khan, has submitted that the trial court has erred to appreciate not only the facts transpired in course of trial but also the law involved in the case. He has submitted that since the essential ingredients of the offence punishable under section 304-B of the Indian Penal Code were not proved to the hilt, the appellants could not have been held guilty for the offence punishable under section 304-B read with 34 of the Indian Penal Code.

14. On the contrary, Mr. S.A. Ahmad, learned Additional Public Prosecutor for the State has submitted that there is enough evidence on record to hold the appellants guilty for the offences



punishable under sections 304 read with 34 and 201 of the Indian Penal Code. The witnesses examined on behalf of the prosecution have fully corroborated the prosecution case. The doctor, who conducted the postmortem examination on the dead body of the deceased, has also found that death of the victim was homicidal one. According to him, all the ingredients of the offence punishable under section 304-B of the Indian Penal Code were proved by adducing reliable and trustworthy evidence.

15. Before reaching to any conclusion in respect of the findings of the trial court, I think it proper to discuss the evidence adduced by the prosecution in course of trial. According to the prosecution case, upon coming to know about murder of his daughter, the informant went to her *Sasural* along with several co-villagers but not even one of them has been examined by the prosecution in course of trial. The written report of the informant has been identified and witnessed by one Rahmatullah Khan but said Rahmatullah Khan has also not been examined in course of trial. I further find that in the written report submitted by the informant, the informant claims that he came to know about the alleged killing of his daughter from several persons of the marital home of his daughter including one Khurshid but neither Khurshid nor any one else of the village of marital home of the deceased was examined in course of trial. I also find that in the written report of the informant there is no allegation of

demand of dowry or of subjecting the deceased to cruelty against the appellant Abdul Khalique. In the written report it has been alleged that it was the in-laws of the deceased, who had made demand of motorcycle and cash.

16. In the first information report no specific date and year of the marriage of the deceased has been given. However, it has been alleged that the deceased was married to the appellant Abdul Khalique six years ago. The inquest report as contained in Ext.11, indicates that the dead body of the deceased was exhumed from the *Qabristan* on 2nd October, 2004 at 10.45 a.m. At that time, the dead body was wrapped in white clothe.

17. The postmortem examination report as contained in Ext. 4 would disclose that the postmortem examination on the dead body of the deceased was conducted on 2nd October, 2004 at 3.35 p.m. Dr. N.K. Singh, P.W.9 has stated in his deposition that on 2.10.2004 he was posted at Sadar Hospital, Motihari as a Medical Officer and on that day he conducted postmortem examination on the dead body of the deceased along with doctor S.N.Chaudhary (P.W.7) and doctor S.L.Das (P.W.8) being members of the Medical Board. The dead body was identified by Constable No.6/9 (Md. Islam Khan), Chaukidar 7/10 (Rameshwar Paswan), Chaukidar 8/8 (Rajindra Paswan) and Md. Nasiruddin. None of the Chaukidars or Md. Nassiruddin has been examined by the prosecution in course of trial.



18. On external examination, P.W.9 has stated that he found sign of putrefication on the dead body and the whole body was swollen with peeling of skin all over. Tongue was protruded and cyanosed and caught between teeth. Frothy fluids mixed with blood were coming out from nostril. In his opinion, death was caused by asphyxia due to throttling. In cross-examination he has stated that asphyxia is not possible by any disease but is possible by throttling, hanging, strangulation and drowning. He has admitted that in cases of throttling by hand impression of nails and fingers will appear on the neck. He further admits that strangulation may also be caused by Lathi and by any hard blunt substance but he has not described the mode of strangulation nor has mentioned the object by which strangulation was caused. He further admits that he had not taken X-ray of the neck to determine the position of pharynx, trachea and esophagus. He further admits that even in the case of some natural death due to pressure of gas tongue protrudes. The other two doctors, who were examined by the prosecution, have simply proved their respective signatures over the postmortem report as described hereinabove.

19. P.W.3 Salim Akhtar who is brother of the deceased has stated in examination of Chief that the accused persons used to torture his sister for demand of Hero Honda motorcycle and Rs. 50,000/- in cash and when he visited her *Sasural* she narrated him about the

cruelty being meted out to her. He has further stated that subsequently he had come to know that the accused persons had assaulted his sister with *Lathi* and when she fell down they pressed her neck with *Lathi* as a result of which she died and thereafter, they threw her dead body in a ditch of *Baswari*.

20. P.W.3 has not disclosed the date and year of the marriage of the deceased in his examination-in-chief. He has not even mentioned the names of the accused, who were demanding Hero Honda motorcycle and cash amounting to Rs.50,000/-. Though he disclosed that he came to know that his sister has been assaulted by the accused persons with *Lathi* but he has not disclosed the name of any person from whom he came to know about the manner of occurrence. In his evidence, he has not stated anything about the presence of P.W.5 Ayesha Khatoon on the date of occurrence in the house of the appellants. In cross-examination, he has stated that his deceased sister Shamima Khatoon used to live in her *Maike* and his brother-in-law had gone to South Africa in order to earn his livelihood. He has also admitted that during the period his brother-in-law was in South Africa, his sister used to live with him in Delhi. He also admits that his brother-in-law used to send money regularly from South Africa to his wife for expenses.

21. P.W.4 Nasiruddin Shah has stated in his examination-in-chief that his daughter was married to the appellant Abdul



Khalique about 6-7 years ago and after her marriage she went to *Sasural*. He has stated that the appellant Abdul Khalique and in-laws of the deceased made a demand of Rs.50.000/- in cash and a motorcycle. When he came to know about it, he expressed his inability to fulfill their demand as a result of which she was being subjected to cruelty in her marital home. He has stated that when his son-in-law Abdul Khalique went to South Africa in order to earn his livelihood, he brought his daughter back from *Sasural*. She started living at Delhi with her brother Kalim Akhtar. It is relevant to note here that Kalim Akhtar has not been examined by the prosecution in course of trial.

22. According to P.W.4, after three years of his stay in South Africa, when the appellant Abdul Khalique came back, he went to Delhi and came together with his wife to his *Sasural* and from there he took her to marital home at Dhaka. Only three days thereafter, he received news that his daughter has been killed and her dead body has been disposed of. On that information, he went to Dhaka with co-villagers and enquired about the veracity of the occurrence and came to know that the accused persons named in the first information report had fatally assaulted his daughter and buried her. According to him, at the relevant time of occurrence, his grand daughter Ayesha Khatoon (P.W.5) aged about seven years was living with her parents. On enquiry, she disclosed that the accused persons

killed her mother by pressing her neck with *Lathi* in the room.

23. It would be relevant to note it here that P.W.4 has not stated a word about the presence of his grand daughter Ayesha Khatoon (P.W.5) at her parents' house in the first information report. Though he has stated in the first information report that he had gone to the marital home of his daughter with co-villagers but he has not disclosed identity of any of his co-villagers. He has also not disclosed identity of the person from whom he enquired about the incident of occurrence.

24. In cross-examination, P.W.4 has categorically admitted that his daughter was married about 7-8 years ago. He has also admitted that after marriage his daughter resided in her *Sasural* only for a period of nearly six months and rest of the time she used to live with him. He also admits that his son-in-law used to live in South Africa and from there he regularly sent money to his wife for expenses. I find that in the first information report the informant alleges that marriage of his daughter had taken place six years ago but in examination-in-chief he states that his daughter was married to the appellant Abdul Khalique 6-7 years ago whereas in cross-examination he states that the marriage in question had taken place about 7-8 years ago. I further find from the evidence that P.W.4 has categorically admitted that at the time of occurrence P.W.5 Ayesha Khatoon was aged about seven years. I find that in cross-examination he has

admitted that on receipt of information regarding murder of his daughter, he went to Dhaka along with his grand daughter Ayesha Khatoon (P.W.5). This would make it clear that P.W.5 was not residing with the appellants when the death of the deceased took place.

25. P.W.5 Ayesha Khatoon, daughter of the deceased, has stated in her examination-in-chief that she along with her father, mother and younger brother came to the house of Nana (maternal grand father) from Delhi and they lived there for twenty days. Thereafter, she came to the house of *Abba* (father) and in the house of *Abba* there was quarrel between her mother and grand mother. Her father intervened. She has further stated that her father was asking from her mother to bring a Hero Honda motorcycle and Rs.50,000/- in cash. She has stated that in the morning Iliyas, Nazir, Ishaque, Sadika Khatoon, Sajda Khatoon, Shahida Khatoon, Kamrun along with one unknown person came. Her mother cooked food for them. They took her mother into a room and in the room her grand father and grand mother were present from before. A demand of Rs.50,000/- and a motorcycle was made once again and, thereafter, they started assaulting her mother with *Lathi*. Iliyas and her father pressed the neck of her mother with *Lathi* whereas rest of the persons had caught her legs and hands. Her mother died. They kept her dead body in a trunk and locked it. She has stated that she had given her statement

before the police and her statement was also recorded in the court.

26. In cross-examination, P.W.5 has categorically stated that she loved her father and her father used to send money when she was living in Delhi with her mother at her maternal uncle's residence. She has also stated that when she came back from Delhi along with her parents, she stayed in the house of her Nana, Nasiruddin Shah (P.W.4) for about twenty days. Her mother and father went to Dhaka but she continued to live with her *Nana*. When she came to know about the death of her mother she went to her father's house along with her *Nana*. At that time, the police had come but they did not make any enquiry from her. She further admits that after four days of the alleged date of occurrence her *Nana* took her to the police station and got her statement recorded. She has admitted that she made her statement before the police and the Magistrate as taught by her *Nana*. She has categorically admitted that she had not seen the occurrence from her own eyes and whatever she had stated earlier in the Court was based on the tutoring made by her *Nana*.

27. Thus, I find that at the time of incident, P.W.5 Ayesha Khatoon was living with P.W.4, Nasiruddin Shah. She admits that she had given a tutored statement before the police and in the court as per the dictates of her *Nana*.

28. The investigating officer of the case has admitted in cross-examination that prior to the incident no information regarding



torture or cruelty being meted out to the daughter of the informant was ever received in the police station. He also admits that on the date of institution of the first information report no minor girl was seen by him either in the police station or at the time of inspection of the place of occurrence. He admits that the informant had come together with his grand daughter Ayesha Khatoon (P.W.5) on 4th October, 2004 and on that date her statement was recorded in the police station. He admits that in course of investigation he came to know that the husband of the deceased was earning his livelihood in South Africa and he regularly used to send money to his wife, who used to live with her children at the place of her brother in Delhi.

29. Having considered the evidence on record, I find that there is no reliable, legal and cogent evidence on record to convict the appellants for the offence punishable under section 304-B read with 34 of the Indian Penal Code.

30. The law as it exists now provides that where the death of a woman is caused by any harms or bodily injury or occurrence otherwise than under normal circumstance within seven years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or by any relative for or in connection with any demand of dowry such death shall be punishable under section 304-B of the Indian Penal Code. In order to seek a conviction against a person for the offence of dowry death, the

prosecution is obliged to prove that;

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within seven years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

31. As and when the aforesaid circumstances are established, a presumption of dowry death is attracted against the accused under section 113-B of the Evidence Act. By now, it is well settled that even if one of the ingredients of the offence of dowry death is found missing or is not proved to the hilt, the penal provision as contained in section 304-B of the Indian Penal Code would not be attracted.

32. Keeping in mind the above aspect of law, when I turn to the evidence on record I find that the informant (P.W.4), father of the deceased Shamima Khatoon, has categorically admitted in his deposition that at the time of occurrence daughter of the deceased, namely, Ayesha Khatoon was aged about seven years and marriage of

his daughter Shamima Khatoon had taken place about 7-8 years ago.

33. In the circumstances indicated above, there is no doubt in my mind that the death of the deceased Shamima Khatoon had not taken place within seven years of marriage with the appellant Abdul Khalique.

34. Thus, the very first ingredient of the dowry death, as described by section 304-B of the Indian Penal Code, was not attracted in the present case. Under such circumstance, the appellants could not have been convicted of the charge under section 304-B read with 34 of the Indian Penal Code.

35. Moreover, I do find that the witnesses are consistent on the point that the appellant Abdul Khalique used to live in South Africa in order to earn his livelihood and his wife Shamima Khatoon was either living at Delhi with her brother or at her parents' home along with her children and the appellant Abdul Khalique regularly used to send money to his wife for expenses. If that is so, there was no occasion for the accused persons to demand dowry. I also find that there is no reliable evidence on record to believe that the deceased was subjected to cruelty or harassment by her husband or by any relatives of her husband in connection with demand of dowry. Hence, even the other ingredients of the offence of dowry death are not satisfied in the present case.

36. So far as the conviction of the accused-appellants under

section 201 of the Indian Penal Code is concerned, it is to be noted that in order to make a person liable to conviction under section 201 of the Indian Penal Code, knowledge or reason to believe on the part of an accused that an offence has been committed is imperative. The essential ingredients of the offence punishable under section 201 of the Indian Penal Code are as follows:-

- (a)an offence has been committed;
- (b)the accused knew or had reason to believe that such offence has been committed;
- (c)the accused caused disappearance of the evidence thereof; or should have given false information regarding the main offence;
- (d)the accused gave false information in respect thereof;
- (e)The accused knew or had reason to believe the same to be false;
- (f)The accused did so with the intention of screening the offender from legal punishment.

37. Section 201 of the Indian Penal Code punishes any person who knowing that any offence has been committed, destroys the evidence or gives false information in order to screen the offender from legal punishment. Section 201 of the Indian Penal Code is designed to penalize “attempts to frustrate the course of justice”.

38. The offence of causing disappearance of the evidence is sustainable in law even if the main offence of dowry death punishable

under section 304-B of the Indian Penal Code is not established.

39. As noted above, two witnesses were examined on behalf of the defence in this case. They have categorically stated in their deposition that the deceased had committed suicide by hanging herself after tying a rope around her neck. Admittedly, the parents and family members of the deceased were not informed. The doctor who had conducted the post mortem examination on the dead body had opined that death of the deceased was caused due to asphyxia as a result of strangulation. However, other corroborative materials to show the death of the deceased as homicidal one are wanting in the present case. The trial Court has also acquitted the appellants of the charge under Section 302 read with Section 34 of the Indian Penal Code. The State has not filed any appeal against the judgment of the trial Court. The doctor has not ruled out the possibility of death in the present case due to hanging. No other bodily injury has been found in the post mortem examination on the person of the deceased.

40. The sum and substance of the above discussion is that the death of Shamima Khatoon had taken place in suspicious circumstances. The defence of the accused that the victim committed suicide would not absolve them from the penal provision under Section 201 of the Indian Penal Code. The Hon'ble Supreme Court pointed out in *Bhagwan Swarup vs. State of Rajasthan, 1991 Cri.L.J. 3123* that in the case of every suicide there is an abetment

inherent and whether ultimately it is proved or not is a different aspect and, therefore, failure to give information to police would be punishable under Section 202 of the Indian Penal Code.

41. In the instant case, I find that the deceased Shamima Khatoon died in suspicious circumstances in her marital home. Her dead body was buried without informing anyone from her parents' side in utter haste and no report of her unnatural death was made at the Police Station. The knowledge or reason to believe on the part of the husband of the deceased Abdul Khalique that the death was not natural one and he tried to conceal the evidence in this regard are telling materials against him. Admittedly, the victim was married to him and being husband of the deceased he can not take plea of ignorance of the suicidal death of his wife.

42. However, there is nothing on record on the basis of which it can be held that the appellants Wazul Haque and Najboon Nisha knew or had reason to believe regarding the unnatural death of the deceased and having got this knowledge, they tried to screen the offender by disposing of the dead body. Merely because they are father-in-law and mother-in-law of Shamima Khatoon, it cannot be presumed as a matter of legal proof that they must be deemed to have the knowledge of unnatural death of Shamima Khatoon.

43. For these reasons, I allow Cr. Appeal (SJ) No. 397 of 2013, set aside the conviction and sentences passed against the

appellants Wazul Haque and Najboon Nisha and acquit them of the charges framed against them. The appellant Wazul Haque is directed to be released forthwith unless he is required in any other case and the appellant Nazbool Nisha @ Nazmool Nisha @ Najboon Nisha @ Mazboon Nisha, who is on bail, shall be discharged from her bail bond. For the reasons discussed, hereinabove, I allow Cr. Appeal (SJ) No. 539 of 2013 in part. The appellant Abdul Khalique is acquitted of the charge framed against him under Section 304-B read with Section 34 of the Indian Penal Code but his conviction under Section 201 of the Indian Penal Code and sentence awarded by the trial Court for the said charge are upheld. The trial Court has sentenced him for two years and to pay a fine of Rs 10,000/- for his conviction under Section 201 of the Indian Penal Code and, in default of payment of fine, to undergo simple imprisonment for six months. It would appear from the records that the appellant Abdul Khalique has already remained in custody over five years. In that view of the matter, he has already served out the sentence awarded to him. Accordingly, he is also directed to be released forthwith unless required in any other case.

(Ashwani Kumar Singh, J)

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