

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.122 of 2016**

Arising Out of PS.Case No. -78 Year- 2012 Thana -AMDABAD District- KATIHAR

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Julkar Nain @ Md. Julkar Nain Son of Md. Murshid Ansari R/o Village -  
Pachimtola Amdabad, P.S. Amdabad, District – Katihar.

.... .... Appellant/s

Versus

1. The State of Bihar
2. Safikul Son of SK. Amjad
3. Md. Gyasuddin Son of SK. Amjad
4. Bibi Rojida W/o SK. Haroon
5. Md. Sabool Son of SK. Amjad
6. Bibi Adina W/o SK. Amjad
7. Bibi Tara Khatoon Wife of Md. Sabool
8. Md. Haroon Son of Md. Amjad
9. Bibi Sakina Wife of SK. Gyasuddin

All are resident of village - Pachimtola Amdabad, P.S. Ahedabad,  
Distt. Katihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Md. Fahimuddin

For the Respondent/s : Mr. A.Sharma(App)

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**C.A.V. ORDER**

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

3      20-04-2016      The present appeal assails the judgment and order,  
  
dated 09.11.2015 and 10.11.2015 respectively, passed by the  
  
learned Additional Sessions Judge, IV Katihar in Sessions Trail  
  
No. 673 of 2012/484 of 2013 (arising out of Amdabad P.S. Case  
  
No. 78 of 2012), whereby the learned Additional Sessions  
  
Judge, IV, has acquitted respondents No. 3 to 9 and has awarded  
  
a sentence of five years of rigorous imprisonment, only to one  
  
accused, namely Safikul, (i.e., respondent No. 2) for his

conviction under Section 306 of the Indian Penal Code even though the accused persons were facing trial for offences punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) Anwara Khatoon (since deceased) was sister of the informant and wife of accused Safikul, who, along with his other family members, namely, respondent Nos. 3 to 9 tortured and harassed the deceased for the inability of the deceased and her parental family to meet the demand of Rs. 20,000/- (twenty thousand) and for a share in the landed property of the deceased's father. As a consequence thereof, all the accused persons, with common intention, had committed the murder of the informant's sister by strangulating her neck by means of a rope and hanging her in their house.

(ii) Based on the written report given by the informant about the incident to Amdabad Police Station and, treating the same as First Information Report, Amdabad P.S. Case No.78 of 2012 was registered, under Section 302 read with Section 34 of the Indian Penal Code, against accused respondent Nos. 2 to 9 and, on completion of investigation, a *charge sheet*

was laid against the accused aforementioned.

**3.** At the trial, s charge, under Section 302 read with Section 34 of the Indian Penal Code, was framed against the accused respondent Nos. 2 to 9. The accused pleaded not guilty to the charge.

**4.** In support of their case, prosecution examined altogether 9 (nine) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. The defence also adduced evidence by examining two witnesses.

**5.** Having, however, arrived at the finding that the charge against the accused-respondent Nos. 3 to 9, under Section 302 read with Section 34 of the Indian Penal Code, had not been proved, the learned trial Court acquitted them; but convicted accused-respondent No.2, namely, Safikul, under Section 306 of the Indian Penal Code and sentenced him accordingly.

**6.** Aggrieved by the acquittal of respondent Nos. 3 to 9 and conviction of the respondent No. 2 only under Section 306 of the Indian Penal Code, the informant of the case has

preferred this appeal.

7. Heard Mr. Md. Fahimuddin, learned Counsel for the appellant, and Mr. A. Sharma, learned Additional Public Prosecutor for the respondent-State.

8. P.W. 1 is Jamal Ansari, who claims that the deceased, Anwara Khatoon, was the sister of his uncle. He has deposed, with respect to the demand of dowry, that accused Safikul had been demanding Rs. 30,000/- (thirty thousand) as *dowry* and, on her failure to meet the same, he used to torture and assault her (Anwara Khatoon). On the night of 14.04.2012, at around 02:00 O'clock, he woke up to attend the call of nature and heard noise coming from the house of Safikul and, on reaching there, along with his brother, Abdul Karim, they saw the accused persons assaulting Anwara Khatoon and hanging her by neck from the roof of their house. Thereafter, all accused persons ran away as it was perceived that Anwara Khatoon was already dead.

9. P.W. 2, Murshid Ansari, is the father of the deceased, who has deposed that the marriage was solemnized about 7-8 years ago. It is his evidence that his daughter, Anwara Khatoon, was being assaulted and tortured at her in-laws' house for not meeting a dowry demand of Rs. 20,000/- (twenty thousand). When he reached the house of Anwara Khatoon, he

heard that his daughter had been killed by the accused persons and that he had also seen the dead-body with a scar of rope on her neck.

**10.** P.W. 3, Abdul Rahman, is a co-villager and relative of the deceased Anwara Khatoon, who has deposed that after two years of her marriage, Anwara Khatoon was started being tortured by her husband, Safikul, and other members of his family raising a demand for dowry of Rs. 20,000/- (twenty thousand) and also for a share in her parental property. He has deposed that on 14.04.2012, which was Saturday night, accused persons had committed murder of deceased by hanging her by rope. While the accused persons were harassing Anwara Khatoon, the children and other family members started crying, and upon hearing the cries, when he came to the house of Anwara Khatoon, he saw that Anwara Khatoon was already dead and accused persons had fled away. Thereafter, they caught hold of Safikul and called the police.

**11.** P.Ws. 4, 5, 6 and 7 have deposed that they were familiar with the accused persons and the accused used to assault Anwara Khatoon raising a demand for dowry. It is their evidence that when they reached the house, the accused persons, namely, respondent Nos. 3 to 9 were seen running away. They

also deposed that Anwara Khatoon was murdered by hanging her by neck. However, P.W. 6 and 7 are hearsay witnesses of the occurrence.

**12.** So far as evidence of P.W. 8, Julkar Nain, the informant of the case, is concerned, he has deposed, in his examination-in-chief, that his sister, Anwara Khatoon, was married to accused Safikul ten years ago and that she was being tortured by raising a demand of rupees twenty thousand and the deceased had also been threatened to be killed and, hence, the accused Safikul had killed his sister, on 15.04.2012, at around 3-4 O'clock in the morning.

**13.** P.W. 8 has also deposed that his house is situated at a distance of one chain from in-laws' house of his sister. When he heard the sound of crying and shouting, he, along with his father, P.W. 2, went to his sister's house, where he saw all accused persons assaulting his sister and hanging her by tying a rope to her neck from the roof of their house. He has further deposed that when he tried to intervene, accused Safikul caught hold of him and the rest of accused persons fled away.

**14.** P.W. 9 is the doctor, who has conducted the *post mortem* examination on the deceased, on 15.04.2012, at 12:30 P.M., at Sadar Hospital, Katihar. The doctor has deposed that

death was caused by *asphyxia* due to hanging and injury Nos. 2 and 3 could have been caused by hard and blunt substance. He has deposed that *asphyxia*, often takes place, in suicidal cases. He has also deposed that in strangulation (para-5 to 8), distortion of trachea and presence of mark of ligature over neck happens; but protruding of tongue is not necessary and bruise over neck by finger nail is not necessary in all cases of strangulation.

**15.** The Investigating Officer of the case has not been examined.

**16.** It is the submission of Mr. Md. Fahimuddin, learned Counsel, appearing for the appellant, that P.W. 8 and P.Ws. 1 to 7 have consistently and cogently supported the prosecution's case with respect to the charge levelled against all the accused as regards commission of murder of Anwara Khatoon for non-fulfillment of dowry demand. Further, the testimony of the doctor and the *post mortem* report also prove the factum of death of Anwara Khatoon due to *asphyxia* caused by strangulation. Thus, the accused persons ought to have been held guilty for the charge framed against them under Section 302 read with Section 34 of the Indian Penal Code.

**17.** We notice that the learned trial Court, upon going deep into the evidence of the prosecution witnesses, has



come to the finding that the time of the occurrence was not been specified in the First Information Report and none of the prosecution witnesses, including the informant, can be said to be an eye-witness to the occurrence. This can be safely inferred in view of the contradictions and material inconsistencies available in the evidences of the informant (P.W. 8) and also P.Ws. 1 to 7. So far as the implication of the family members of accused Safikul is concerned, the learned trial Court has rightly come to the finding that the deceased and her husband, Safikul, had started living separately in a *pucca* house, which had been constructed by Safikul with the financial support of rupees twenty thousand given by the informant's family. Further-more, the informant had stated before the police that due to non-return of said Rs. 20,000/- (twenty thousand), there had been dispute between the husband and wife.

**18.** Further-more, the Court, on careful consideration of evidence, has come to the finding that in para 17 of his deposition, the informant (P.W. 8) has stated that when he reached the house of his sister, Anwara Khatoon, he found the accused persons there and saw the deceased hanging and she was dead. The learned trial Court has also noticed that the informant himself has deposed, contrary to his earlier statement





of being an eye witness by another statement, that he came to the house of the deceased in the morning hours at 3-4 O'clock, on 15.04.2012, on hearing the sound of children crying. P.W. 1 and P.W. 2 had confirmed that accused Safikul used to live separately from his family and that his brother and other family members had no concern with Safikul. P.W. 2, the father of the deceased, has confirmed that he had not seen the occurrence, rather, on *hulla*, he reached the house of Safikul and saw the dead body of his daughter with the children aged about 8 years and six years being present there. Further-more, P.Ws. 3, 4, 5, 6 and 7 have all confirmed that there was separation in the family of Safikul and that they were living separately. P.W. 7 has been declared hostile for not supporting the prosecution's case.

**19.** Thus, the learned trial Court has rightly come to the finding that the accused Safikul was residing with his wife, Anwara Khatoon, in a separate house and that she had committed suicide by hanging herself by a rope. The doctor has proved that the deceased had died an unnatural death as she was found dead hanging at her house. Since the dead body was found hanging in the house of Safikul, the other accused persons could not have been held, and has rightly not been held, guilty of charge under Section 302 of the Indian Penal Code. Evidence

has also come on record that prior to the occurrence, there was conflict and clash between deceased and her husband, Safikul, for money matters.

**20.** Thus, the learned trial Court has come to the finding that apart from Safikul, there is no cogent and corroborating evidence to prove the involvement of the other accused persons in the occurrence so as to establish a charge against them under Section 302 read with Section 34 of the Indian Penal Code. Accordingly, the appellant Nos. 3 to 9 have been acquitted of the charge framed against them under Section 302 read with Section 34 of the Indian Penal Code.

**21.** However, the learned trial Court has found that in view of the finding that there was an unnatural death and suicide by the deceased, accused Safikul, being the husband, who had been in conflict with his wife over money matters, could only justifiably be held guilty of an offence under Section 306 Indian Penal Code and convicted him accordingly.

**22.** While we do not find any infirmity, legal or factual, with the finding, arrived at by the learned trial Court, that the charge against none of the accused respondents, under Section 302 read with Section 34 of the Indian Penal Code could be proved beyond reasonable doubt. We, therefore, see no

reason to interfere with the acquittal of the accused respondents of the charges framed against them under Section 302 read with Section 32 of the Indian Penal Code.

**23.** We express no opinion with regard to the correctness or otherwise of the conviction of the accused Safikul under Section 306 of the Indian Penal Code inasmuch as no appeal has been preferred by the accused Safikul. We are, however, clearly of the view that in the face of the evidence on record, there was no cogent and reliable evidence to sustain the charge framed against accused Safikul, too, under Section 302 of the Indian Penal Code.

**24.** For the foregoing reasons, we do not find any merit in this appeal. This appeal is, therefore, dismissed.

**(Anjana Mishra, J)**

**I.A. Ansari, ACJ:** I agree.

**(I.A. Ansari, ACJ)**

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