

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 241 of 2015

Against the judgment of conviction dated 01.04.2015 and order of sentence dated 02.04.2015 passed in Sessions Trial No. 163 of 2013 arising out of Athamal Gola P.S. Case No. 163 of 2011 corresponding to G.R. No. 1255 of 2011 by Shri Paras Nath Rai, learned 3rd Additional District & Sessions Judge, Barh, Patna

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Ravi Shankar @ Ravi Shankar Singh @ Karoo Singh @ Karoo @ Shiv Shankar Singh, Son of Late Kameshwar Singh, Resident of Village - Sabnima, P.S. - Athmalgola, District - Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Ramakant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate
For the Respondent : Mr. Syed Ashfaq Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

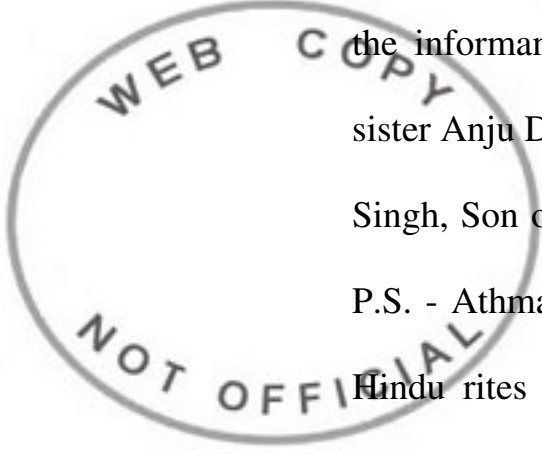
ORAL JUDGMENT

Date: 24-02-2016

Heard Shri Ramakant Sharma, learned Senior Counsel for the appellant and Mr. Syed Ashfaq Ahmad, learned Counsel for the State.

2. The appellant has been convicted under Sections 304B, 498A, 201/34 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for ten years for the offence under Section 304B of the Indian Penal Code, three years for the offence under Section 498A of the Indian Penal Code with a fine of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for six months and one year for the offence under Section 201 of the Indian Penal Code with a fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for three months.

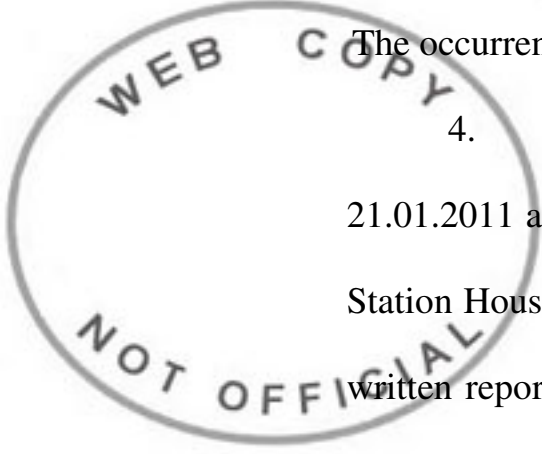
3. The prosecution case, as alleged in the written report of the informant Manoj Sharma (the brother of the victim), is that his sister Anju Devi was married with the appellant Ravi Shankar @ Karoo Singh, Son of Late Kameshwar Singh, Resident of Village - Sabnima, P.S. - Athmalgola, District – Patna in the year 2006, according to the Hindu rites and rituals. At the time of marriage sufficient gifts i.e. jewelry, utensil were given. It is alleged that when his sister went to her in-law's house, then the appellant (Ravi Shankar @ Ravi Shankar Singh @ Karoo Singh @ Karoo @ Shiv Shankar Singh), Ranjeet Singh, Kunti Devi, Kundan Devi (mother of the appellant), Mahesh Singh and Naresh Singh along with others pressurized his sister to bring Hero Honda Motorcycle from her Naihara. It is further alleged that this fact was narrated by her to the informant and his mother from time to time. It is also alleged that from time to time the informant went to her matrimonial house and showed her inability in giving motorcycle, but they did pressurize her to bring motorcycle till last month. In the meantime, his sister was blessed with a male child which is about two years of age and his name is Balaji. It is also alleged that on 21.10.2011, he received information that his sister has been done to death by pressing her neck by her in-laws and, thereafter, he proceeded to Sabnima and reached there in the afternoon and found none of them present at the house. He enquired about the matter from neighbours and learnt that the above-named persons have done his sister Anju Devi to



death by pressing her neck and also made to disappear her dead body.

The occurrence took place in the last night i.e. on 20.10.2011.

4. The said written report was handed over to the police on 21.01.2011 and consequently an endorsement was made thereon by the Station House Officer, Atmalgola Police to investigate the case. On the written report by Manoj Sharma, First Information Report was lodged and investigation proceeded. During investigation, the Investigating Officer recorded the further statement of the informant, inspected the place of occurrence at Sabnima which is a double storied house of the appellant with opened door facing North in which there were two rooms at the ground floor facing North and the deceased was living in a room towards West at upper floor. He has given the description of the boundary and after completion of the investigation, submitted charge-sheet. The dead body of the victim was not recovered in the case and consequent upon post-mortem was not done. On the submission of the charge-sheet, cognizance was taken and case was committed to the Court of Sessions. During trial, 15 witnesses were examined by the prosecution who are P.W.1 Jagdish Sharma, P.W.2 Anil Kumar, P.W.3 Anil Sahu, P.W.4 Bambam Singh, P.W.5 Jago Ram, P.W.6 Bhaso Sahu @ Pramod Sah, P.W.7 Prem Chand Paswan, P.W.8 Umesh Sahu, P.W.9 Madhusudan Singh, P.W.10 Santosh Singh, P.W.11 Manoj Sharma, P.W.12 Dina Nath Singh, P.W.13 Birendra Kumar, P.W.14 Pappu Singh and P.W.15 Subodh Singh. Out of them P.W.11 is the



informant of this case. No evidence has been adduced on behalf of the defence.

5. P.Ws.1, 2, 4, 5, 7 and 8 have been declared hostile by the prosecution as they have not supported the prosecution case. They have also deposed to the effect that Anju Devi died due to illness since two years ago as she was taken to the Doctor where she died and her last rites were performed by the family members along with the other co-villagers. P.Ws.3, 6, 9 and 10 have been tendered and hence, tendering the witnesses amounts to abandoning the witnesses and hence, P.Ws. 3, 6, 9 and 10 have not come to support the prosecution case.

6. P.Ws. 13, 14 and 15 are the witnesses who are said to have not been examined by the police and a petition was filed by them in the Court that they are witnesses to the occurrence and ready to depose before the Court and accordingly, the petition was allowed and they were examined as witness nos. 13, 14 and 15.

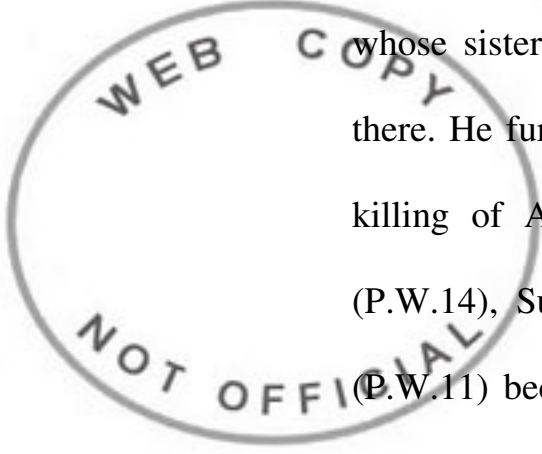
7. P.W.11 the brother of the deceased Anju Devi has stated in his deposition that Anju Devi was his younger sister who was married with the appellant in the year 2006 at Sabnima, according to Hindu rites and customs and after marriage when she went to her Sasural where Shiv Shankar Singh @ Ravi Shankar Singh (the appellant), Ranjit Singh, Naresh Singh, Mahesh Singh, Kunti Devi, Kundan Devi and Saro Devi subjected her to cruelty and tortured for the demand of motorcycle as dowry for which they had entered into

compromise. He further deposed that prior to the occurrence, he along with other witnesses came to Sabnima and compromised the matter in which accused persons assured to keep her with dignity. He further stated that Pappu, Gopal, Subodh Sharma and Birendra were accompanied with him. Thereafter, he received information that his sister has been killed by pressing her neck and then he proceeded to Sabnima where he did not find any person.

8. P.W. 12 the Investigating Officer who recorded the statement of the witnesses, inspected the place of occurrence and submitted charge-sheet showing the other accused as absconder. However, in his cross-examination, he has stated that he arrived at the conclusion that Anju Devi was married with the appellant about ten years prior and during inquiry found that Anju Devi was very smart and the appellant was rustic so she remained annoyed as her wants were not fulfilled and there was economical problem and thus Anju Devi took poison and died. However, it is strange that though the Investigating Officer has filed the charge-sheet against the accused, but his deposition to the effect in his cross-examination is totally contradictory and ridiculous.

9. P.Ws. 13, 14 and 15 are the witnesses whose statements were not recorded and they admitted that their statements have not been recorded by the police. They come with a petition to depose in the case claiming to be the witness.

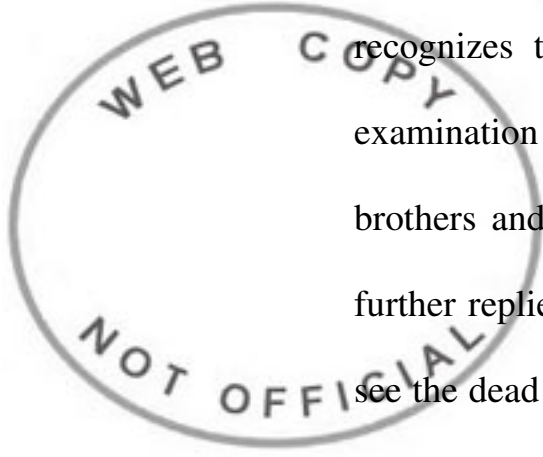
10. P.W. 13 deposed that he knew Manoj Sharma (P.W.11) whose sister was married with the appellant in which he was present there. He further stated that he had gone to the village Sabnima before killing of Anju with Gopal Kumar (not examined), Pappu Sharma (P.W.14), Subodh Sharma (P.W.15), Shambhu Singh, Manoj Sharma (P.W.11) because the family members of matrimonial house including her husband always subjected her to assault and torture and they had also demanded a motorcycle. He had given his statement to the police, but the police did not write his statement nor the police contacted with him on the mobile phone while number of mobile was given in the written report. He identified the accused. In cross-examination this witness has replied that Anju Devi was not murdered before him and he does not know who treated her injuries. He also cannot say the injuries on her person as he had not seen the injuries of Anju Devi. He also cannot say the exact date of assault on Anju Devi. He had learnt from villager about the assault on Anju Devi. He met with Anju Devi for the last time on 05.10.2011 at Anju's Naihara house. He also replied that Anju came to her Naihara 2-3 days prior to the occurrence (05.10.2011). He further said that father, brother and mother went to her matrimonial house for Bidaai. He further said that Anju Devi had one male child aged about 5-6 years. Her husband and Manoj Sharma are farmer. He came to know regarding murder of Anju Devi from villagers and he went to her Sasural with Manoj Sharma. He further stated that dead body of Anju Devi was



not found. P.W. 13 has also stated in his cross-examination that he had not seen Anju Devi being assaulted, but this information was given on 21.10.2011. He had read over the written report at Athamal Gola Police Station and at that time Subodh Kumar, Gopal Kumar, Pappu Sharma and Manoj Sharma (P.W.11) were present there. He has further said that Gopal Kumar, Pappu and this witness were named as witnesses. His statement was not recorded by any police officer, but he himself went to the Superintendent of Police, Patna for giving statement. He further stated that there was a protest petition in which it was written that his statement was not written by the police officer. Manoj Sharma has brought him for evidence. Hence, the evidence of this witness is hit by hearsay and his evidence suffers from credibility.

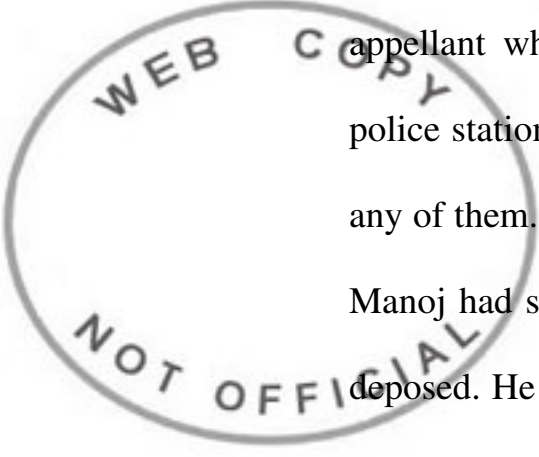
11. P.W. 14 deposed that Anju Devi was the sister of Manoj Sharma whose marriage was solemnized at Sabnima with the appellant eight years prior. He further stated that in the marriage he was also present there, but Anju Devi was murdered. He received information regarding her murder on 21.10.2011 in the morning. He further deposed that eight days prior he had gone to Sabnima with Gopal Kumar, Subodh Singh, Birendra Singh and Manoj Sharma. This witness has also deposed that Anju Devi was always subjected to torture for demand of motorcycle. He further deposed that demand of motorcycle was made by the appellant and his family members. There was his mobile number on the written report and another number was of Subodh Singh, but the

police never enquired into the matter on the said mobile numbers. He recognizes the accused-appellant who is present in Court. In cross-examination this witness has replied that Anju had three sisters and two brothers and wedding cards were printed in the marriage of Anju. He further replied that Anju Devi was not murdered before him nor did he see the dead body of Anju. He further asserted that Anju was brought in Bidaai by her brother and father. He further said that she lived at her Naihara some times for eight days or some times for two months. The birth of the son of Anju was at Biharsharif Hospital while she was living at Naihara. He further stated that he had gone to her Sasural in Sagun, Faldan. He had gone to her Sasural eight days prior to her death. He further stated that treatment of Anju was done by her brother at Bakhtiyarpur. He also stated that accused persons had demanded motorcycle just after the marriage, but he cannot say that date. This fact was narrated by Manoj Sharma. He did not remember as to on which date Manoj Sharma had stated the fact of demand of motorcycle, but there were several people present there. He further stated that he along with Subodh, Pappu, Gopal and Manoj Sharma went to the house of the appellant and convinced them. When his statement was not written by the police in the case diary a protest petition was filed. He himself has come to Court for evidence. He has denied the suggestions asked by the defence. However, the assertion of this witness is that he went to the Sasural of Anju Devi about eight days prior to the occurrence, but on the



contrary the evidence of P.W.13 that last time he visited the Sasural of Anju Devi during her lifetime in the winter season. However, the death of the victim is alleged to be on 21.10.2011 in the month of October and the last winter must have been in January or February i.e. about 7 to 8 months prior and hence, his evidence does not inspire confidence.

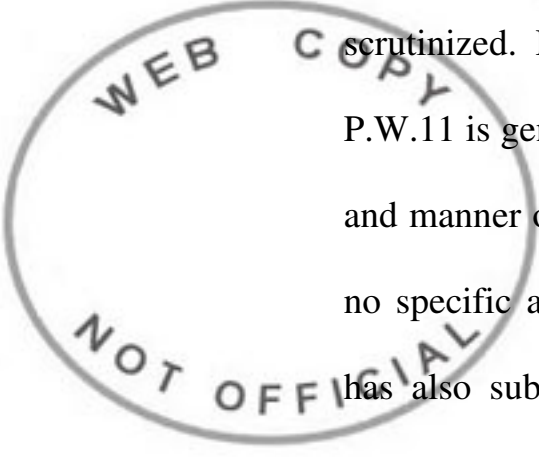
12. P.W.15 has stated in his examination in chief that he knows Manoj Sharma and his sister was married with the appellant in the year 2006 at Sabnima but she died. He further stated that she has been murdered on 20.10.2011. He further deposed that on the point of demand of motorcycle he had gone to the village Sabnima for compromise before her death. He further deposed that this witness, Pappu Singh, Birendra Singh, Gopal Kumar, Manoj Sharma had convinced the members of Anju's matrimonial's house. He had also gone to the Police Station at the time of lodging of the First Information Report and stated all the facts there. He further stated that he and Pappu Singh had given their mobile numbers over the fardbeyan but the police never enquired into the matter on mobile phone nor heard them for which an affidavit was filed in the Court. On the point of identification he replied in affirmative. In cross-examination this witness has replied that he had gone to the village Sabnima only for the first time at the time of compromise. He does not know the name of Mukhiya, Sarpanch and Ward Punch. He cannot say the boundaries of the matrimonial house of Anju. In para 3 this witness has said that there were five persons while going to Police



Station by motorcycle but first of all they reached at the house of the appellant where he did not meet anyone. Thereafter he stayed at the police station for one hour where police did not record any statement of any of them. He has not seen the occurrence alleged. He further said that Manoj had stated the date for evidence on which he came to Court and deposed. He has denied the suggestions asked by the defence. However, there is no averment either in the First Information Report or in the evidence of P.W.11 nor was a question asked in Section 313 of the Cr.P.C. about the demand and subjecting cruelty for non-fulfilment of the demand for which the victim was done to death.

13. The trial Court taking into consideration the evidence of the witnesses convicted the appellant holding that the offence under Section 304B of the Indian Penal Code is made out as the death of the victim is within seven years of the marriage and there is allegation of dowry demand and subjecting cruelty for non-fulfilment of the demand of dowry.

14. Learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence recorded by the trial Court. He has submitted that P.Ws. 13, 14 and 15 are the witnesses who have neither deposed before the police nor they have filed any protest at the relevant time and their statements were not recorded under Section 161 Cr.P.C. They had come for the first time in Court after the statement of the accused persons recorded under Section 313 of the



Cr.P.C. and hence, their evidences are required to be strictly scrutinized. He has further submitted that the evidence adduced by P.W.11 is general and omnibus without any reference of the time, place and manner of subjecting cruelty or date of the occurrence and there is no specific assertion/allegation as to what cruelty was permeated. He has also submitted that the evidence of the witnesses regarding the demand and subjecting cruelty is suffered from the vice which is most general and omnibus without any reference of time, place, date or even the manner and their evidences neither inspire confidence nor worthy of credence nor trustworthy to be relied upon to record a conviction in view of the nature of the offence. It has also been submitted that the Investigating Officer has also not supported the prosecution case rather has gone against the prosecution and further evidence of P.W.13 is suffered from the vice of being a hearsay witness.

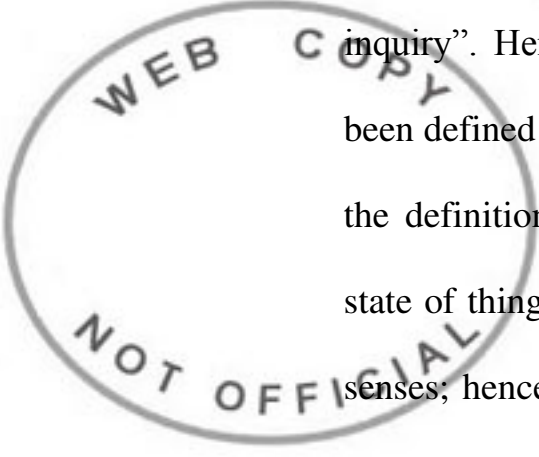
15. Learned counsel for the State, however, contended that evidence of the prosecution has been able to prove the charges against the appellant beyond all reasonable doubts as the witnesses have deposed to the effect that the marriage was solemnized within seven years prior to the occurrence and there was demand of dowry and subjecting cruelty and on non-fulfilment of the demand of dowry death of the victim may be presumed to be in suspicious circumstance as neither the dead body has been recovered nor any explanation has been given.

16. However, it is apparent that to prove a case under Section 304-B of the Indian Penal Code, the prosecution is required 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 7 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 soon before her death.

17. However, coming to the case of the prosecution, it appears that P.W.11 has deposed that the marriage was solemnized in the year 2006 and the occurrence took place in the year 2011. There is no evidence that any one has seen the dead body and how the death has been occurred, though there is allegation that the victim was done to death, but there is neither any eye-witness to the occurrence nor is there any witness, who said that he saw the victim in dead state. There is no evidence that the victim died by pressing of the neck or by burn injury or by any other reasons. There is no evidence at all, except the oral deposition that the victim has been done to death by pressing the neck but they are neither the eye-witness nor disclosed from whom they learnt and hence, on the basis of evidence, it can be inferred that the death of the victim was caused by pressing her neck. However, it is not

in dispute that the victim has not died, but there is no evidence to the effect as to whether she died a natural death or her death was in suspicious circumstance and the only inference is to be drawn for the reason that the victim was not informed to the police or the police not conducted the post-mortem nor the doctor examined her.

18. However, so far the evidence regarding the demand of dowry and subjecting cruelty is concerned, in the evidence of P.W.11 it is stated that his sister went to Sasural then her in-laws used to demand motorcycle as a dowry and used to subject her to cruelty by assault and in this connection P.W.11 went several times to have a compromise. However, there is no mention about this part of the evidence as to whether the witness P.W.11 has seen the occurrence. There is no evidence as to whether he heard by his own senses. There is no evidence that the victim ever disclosed him about this fact and now the question arose as to whether this evidence is to be relied upon. The evidence has been defined under the provisions of Section 3 of the Evidence Act as "Evidence". ----- "Evidence" means and includes ----- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence (2) [all documents including electronic records produced for the inspection of the Court]; such documents are called documentary evidence. Hence, it is apparent that the evidence is "all statements which the Court permits or required to



be made before it by witnesses, in relation to matter of fact under inquiry”. Here the emphasis is on the word “fact”. Word “fact” has been defined in Section 3 of the Evidence Act and it is relevant to quote the definition of “Fact”. --- “Fact” means and includes (1) anything, state of things, or relation of things, capable of being perceived by the senses; hence, it is apparent that a “fact” means and includes nothing, state of things, or relation of things, capable of being perceived by the senses. In the illustration itself it has been mentioned that a person heard or saw something is a “fact”, a man said certain words is a “fact”.

19. However, here there is no mention as to whether the evidence adduced to the effect that when the sister of the informant (P.W.11) went to Sasural then his in-laws used to demand motorcycle and they used to subject her to cruelty and hence, the evidence of this witness is general and omnibus in nature. He has neither stated that he heard the demand being made. This witness has further stated that after the murder he has not seen the dead body of the victim as the dead body was not found. P.Ws.13, 14 and 15 have stated that after eight days prior to the occurrence they went to the Sasural at village Subnima in connection with demand of motorcycle as dowry. However, this part of evidence does not inspire confidence as this story has been developed at the subsequent stage as this fact has not been mentioned either in the First Information Report or in the evidence of the witness P.W.11. However, the evidence of P.W.11 is general and omnibus that he went

several times to have a compromise, but neither the date nor the time has been mentioned. This witness P.W.11 has stated that when he last time went to the Sasural of Anju Devi prior to the death of his sister he does not remember. Hence, his evidence does not inspire confidence.

20. Hence, having regard to the fact that the entire evidence adduced on behalf of the prosecution, it is apparent that the ingredients for the offence under Section 304B of the Indian Penal Code have not been established by cogent, reliable and unimpeachable evidence, except the ingredient that marriage was solemnized in year 2006 and the other circumstances that the death of the victim was in suspicious circumstance. However, the ingredient that there was demand and subjecting cruelty soon before the death of the victim has not been established and hence, the prosecution has failed to establish the ingredients for offence under Section 304B of the Indian Penal Code to record a presumption under Section 304B read with 113B of the Evidence Act to infer the dowry death. Hence, I find that the trial Court misdirected itself in holding the appellant guilty for the offence under Section 304B of the Indian Penal Code without going into the basic question whether the ingredients for the offence under Section 304B of the Indian Penal Code are established.

21. Hence, I find and hold that the prosecution has not been able to prove the charges against the appellant beyond all reasonable doubts and the judgment of conviction dated 01.04.2015 and order of

sentence dated 02.04.2015 passed in Sessions Trial No. 163 of 2013 arising out of Athamal Gola P.S. Case No. 163 of 2011 corresponding to G.R. No. 1255 of 2011 by Shri Paras Nath Rai, learned 3rd Additional District & Sessions Judge, Barh, Patna are hereby set aside and the appeal is allowed. Let the appellant, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

Kundan Sharma

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