

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

**Criminal Appeal (SJ) No.423 of 2015**

Arising Out of PS.Case No. -41 Year- 2013 Thana -CHANAN District- BANKA

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Deoki Devi Wife of Nepal Das Resident of Village Shekhpura Tarnd P.S. Chandan District Banka.

..... Appellant/s

Versus

The State of Bihar.

..... Respondent/s

with

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**Criminal Appeal (SJ) No. 433 of 2015**

Arising Out of PS.Case No. -41 Year- 2013 Thana -CHANAN District- BANKA

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Raghu Das Son of Nepal Das Resident of Village Shekhpura Tarnd, P.s Chandan District Banka.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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**Appearance :**

(In CR. APP (SJ) No.423 of 2015)

For the Appellant/s : Mr. Shivesh Chandra Mishra, Adv.

For the Respondent/s : Mr. Abhay Kumar, APP

(In CR. APP (SJ) No.433 of 2015)

For the Appellant/s : Mr. Shivesh Chandra Mishra, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

ORAL JUDGMENT

**Date: 22-11-2017**

Cr. Appeal 423/15 wherein Deoki Devi is the appellant and

Cr. Appeal 433/15 wherein Raghu Das is the appellant arise out of a

common judgment of conviction dated 23.06.2015 and order of

sentence dated 26.06.2015 passed by Additional District & Sessions



Judge 3<sup>rd</sup>, Banka in Sessions Trial No. 912/2013/24/2015 whereby and whereunder both the appellants have been found guilty for an offence punishable under Section 304B/34 of the Indian Penal Code and each one has been sentenced to undergo R.I. for ten years as well as to pay fine of Rs. 5,000/- in default thereof to undergo R.I. for two months, additionally, on account thereof have been heard together and are being disposed of by a common judgment.

2. P.W. 8 Meghu Das who happens to be father of the deceased Sabita Devi gave his fardbeyan on 01.07.2013 at about 5.10 p.m. near the dead-body of Sabita Devi which was lying in a courtyard disclosing therein that Sabita Devi was married with Raghu Das son of Nepal Das in the month of April, 2012. At the time of marriage he had gifted according to his means. After sometime, Raghu Das and his mother Deoki Devi began to torture his daughter Sabita and were provoking her to procure a motorcycle as well as a golden chain from her Naihar otherwise, she will be eliminated. His daughter used to inform over mobile. Due to poverty, he was unable to fulfill their demand. They were so adamant that his son-in-law himself contacted him over mobile and demanded motorcycle as well as chain. On 30.06.2013, his son-in-law Raghu Das and his mother Deoki Devi instructed him on mobile to fulfill the demand otherwise his daughter will face its ultimate consequence. After sometime, he



dialed his daughter who, quaveringly said that in case of non-fulfillment of the demand, she will be eliminated. Unfortunately, just a day after i.e., on 01.07.2013 there was call over mobile of his brother Kartik Das from a person of Shekhpura Tarnd (Sasural of deceased) who disclosed that Sabita has been murdered by her Sasuralwala and then her dead-body has been thrown in a well. Then thereafter, got the dead-body removed therefrom and has kept the same at their house. His brother immediately informed him whereupon they all rushed to her sasural and found the dead-body of his daughter. It has also been disclosed that after marriage of his daughter Sabita he came to know that Raghu Das was earlier married at Bhangiapahari. That girl was also tortured to such extent that lastly, she committed suicide.

3. On the basis of the aforesaid fardbeyan, Chandan P.S. Case no. 41/2013 was registered and on the basis thereof, the law rolled in motion by way of conduction of investigation as well as submission of charge-sheet which happens to be the basis of trial, meeting with the conclusion adverse to the appellants whereupon, the same has been challenged under these two appeals.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it is visualizing that in



half-hearted manner plea of accidental death has also been pleaded. However, neither oral nor documentary evidence has been adduced to substantiate such plea.

5. Because of the fact that conviction of appellants have been recorded under Section 304B/34 of the Indian Penal Code, on account thereof, first of all, the ingredients relating to application of sections 304B of the Indian Penal Code is to be taken note of. As the section speaks coupled with several authoritative judicial pronouncements, it has been settled at rest that in order to substantiate the case of dowry death, the prosecution has to substantiate

- (a.) there should be death on account of burn or bodily injury or otherwise than normal circumstance.
- (b.) it should be within seven years of marriage.
- (c.) soon before her death, the deceased was tortured with regard to fulfillment of demand of dowry.
- (d.) the aforesaid demand as well as torture must be at the hands of husband or relative of the husband.

After satisfying the aforesaid ingredients, the court will presume the occurrence to be an outcome of dowry death and then, in that circumstance the accused will have to rebut the presumption as provided under Section 113(B) of the Evidence Act.

6. Now coming to the evidence available on the record, it is



apparent that P.W. 1 to P.W. 6 who happens to be the co-villagers of appellants gone volte-face to the prosecution in expected manner whereupon they all were declared hostile. P.W. 7, the doctor during course of conduction of postmortem had not found any kind of ante-mortem injury external or internal and so, he was completely blank with regard to cause of death whereupon viscera was preserved and transmitted to Forensic Science Laboratory and the report is exhibit 4 which also did not speak regarding presence of any kind of poison to be responsible for causing death of the deceased. That means to say cause of death remained unascertained.

7. P.W. 8 is the father of the deceased as well as informant. He in his Examination-in-Chief, had stated that after marriage his daughter had gone to her Sasural where she was residing in good and congenial atmosphere. After spending a year, his daughter dialed him and requested him to come over which he disclosed that he will come after two days, but on the following day his son-in-law, his mother caused murder of his daughter and even dead-body was thrown in a well. Police had informed whereupon they have gone to police station where they have seen the dead-body. Documents were prepared relating thereto by the police whereupon, he had put his signature (inquest, Exhibited). His fardbeyan was also recorded (exhibited). At para 2 he had stated that his son-in-law had demanded one golden



chain as well as a motorcycle. During cross-examination at para 4 he had stated that during course of query from the co-villagers he came to know that his daughter died on account of drowning in a well. In para 7 he had reiterated that demand of dowry was by his son-in-law. In para 8 he had stated that he had visited Sasural of his daughter after marriage. He had gone twice before her death, one at the occasion of Chhath while later in the month of Jyeshtha. Demand of dowry commenced from the month of Ashadha. In para 9 he had stated that he had not seen mark of violence over the dead-body of his daughter.

8. P.W. 9 is the brother of P.W. 8. He in his Examination-in-Chief had stated that after one year spending at her Sasural by Sabita Devi (his niece), her husband as well as mother-in-law advanced demand of one chain and a motorcycle and the same was communicated by Sabita to her father. His brother informed him. It has also been disclosed that accused persons were threatening his niece to eliminate her, if their demands are not going to be fulfilled. On 01.07.2013, he received call from a person of Shekhpura Tarnd (Sasural of Sabita) who informed him that Sabita has died. He received information at about 4-5 p.m. On the following day he along with his brother Meghu Das had gone to Sasural of Sabita where they saw dead-body which was taken away by the Chandan Police at Chandan police station. On query villagers have disclosed that her



husband as well as mother-in-law murdered her and then put the dead-body in a well. Meghu Das had lodged the case whereupon he had also put his signature (exhibit). During cross-examination at para 6 he had stated that he had visited the place of Sabita only once. He stayed whole night. In para 7, he had further stated that at that very time there was congenial atmosphere. In para 8 he had stated that he had not seen any kind of ante-mortem injury present over the dead body of Sabita. I.O. has not been examined and on account thereof P.W. 10, an advocate clerk has come up to exhibit formal F.I.R.

9. From the evidence available on the record, it is evident that witness no. 9, the uncle of deceased had not claimed any kind of conversation with the deceased with regard to torture having inflicted upon her by her husband or mother-in-law for non-fulfillment of demand of dowry nor his assertion is found corroborated with the evidence P.W. 8, father/informant and that being so, there happens to be no conclusive evidence at the end of the prosecution over torture having at the hands of the husband as well as mother-in-law over the victim with regard to fulfillment of demand of dowry. Apart from this, from the evidence of P.W. 7 coupled with exhibit 4, the F.S.L. report, it is evident that cause of death is not at all exposed whereupon, the death to be an outcome of burn, bodily injury or otherwise than normal circumstance is not at all found duly proved. In likewise



manner information regarding demand as well as threatening having on the score of non-fulfillment thereof appear to be doubtful as means thereof has not been disclosed. At least it was expected at the end of prosecution to have mobile no. of deceased duly disclosed. Whatever been proved, is that the death has occasioned within seven years of marriage. That being so, the prosecution utterly failed to substantiate its case beyond all reasonable doubt. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is hereby set aside. Both the appeals are allowed. Both the appellants are on bail hence, are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vinita/-

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