

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1185 of 2016

Arising Out of PS. Case No. -101 Year- 2005 Thana -MADANPURA District- AURANGABAD

Suryadeo Mahto son of Late Nathuni Mahto, resident of village - Rasalpur,
Police Station - Madanpur, District - Aurangabad.

.... Appellant

Versus

- 1. The State of Bihar.
- 2. Ram Prasad Mahto son of Sukhdeo Mahto
- 3. Kanti Devi wife of Ram Prasad Mahto
- 4. Bijendra Prasad son of Ram Prasad Mahto
- 5. Manita Kumari daughter of Ram Prasad Mahto
- All resident of village - Ordiha, Police Station Madanpur, District - Aurangabad.
- 6. Dharmendra Kumar son of Asheshar Mahto @ Agya Mahto resident of village Bairao, Police Station - Simra, District - Aurangabad.

.... Respondents

Appearance:

For the Appellant : Mr. Kamendra Prasad Singh, Advocat
For the Respondents : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 20-01-2017

We have heard learned counsel for the appellant and Mr. Ajay Mishra, learned APP for the State.

2. We had asked learned counsel for the appellant to give a copy of the deposition of the prosecution witnesses to learned APP in order to assist us in the matter.

3. This appeal is against the judgment and order of acquittal as passed by the 7th Additional Sessions Judge, Aurangabad in Sessions Trail No. 241 of 2006 (T.R. No. 22 of 2016) whereby the five private



respondents have been acquitted of the charges under Section 304B , 201 and 120B of the Indian Penal Code. The trial Court has considered the evidence of the prosecution witnesses and has come to a finding that the witnesses had reached the place of the deceased in her matrimonial village prior to cremation. They had prior information about the death of the girl. They allowed the cremation to take place. Thereafter the First Information Report was lodged.

4. Learned counsel for the appellant submits that no doubt some of the witnesses further disclosed that they had reached when cremation was almost over.

5. In our view, when the prosecution witnesses themselves are not consistent on material facts in issue, the benefit has to go to the accused persons. The defence was that she died as a consequence of diarrhea and dehydration. Information was given to her parents. Some people did come and in their presence cremation was done. After cremation some differences are arose, which led to lodging of the First Information Report.

6. So far invocation of Section 304B is concerned, it is dependent of the demand of dowry and consequent torture for non-fulfillment thereof, soon before the death. Again here the evidence is not consistent at all, much less there is any allegation of torture. Thus, the invocation of Section 113B of the Evidence Act would not arise and consequently Section 304B would not apply.



7. In view of the aforesaid, merely because a different view on the facts can be taken, we would not be justified in interfering by altering the acquittal into conviction. This appeal is accordingly, dismissed.

(Navaniti Prasad Singh, J)

Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
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