

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2347 of 2017

Arising Out of PS.Case No. -535 Year- 2016 Thana -BANKA District- BANKA

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Dilip Das Son of Jaldhar Das resident of village Bari Bishar, Police Station - Barahat, District - Banka.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikram Deo Singh
Mr. FirozAhmad
Mr. Mirza Abdul Asad
For the State : Mr. Ziaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 23-01-2018

Dilip Das, the appellant has been convicted by judgment and order dated 16.06.2017 under Sections 304(B) and 201 of the Indian Penal Code by the learned Adhoc Additional Sessions Judge, I, Banka in Sessions Trial No. 347 of 2016, arising out of Banka (Barahat) P.S. Case No. 535 of 2016 and by order dated 21.06.2017, he has been directed to undergo rigorous imprisonment for a period of seven years for the offence under Section 304(B) of the Indian Penal Code and rigorous imprisonment for a period of three years, to pay fine of Rs. 1000/- and in default to payment of fine, to further suffer simple imprisonment for one month for the offence under Section 201 of the Indian Penal Code; the sentences having been ordered to run concurrently.

2. The appellant is husband of the deceased



Neelam Devi with whom he was married about one and half years before her death.

3. Tetri Devi who has been examined as P.W. 3 has alleged that she had married her daughter Neelam Devi to the appellant, in accordance with the Hindu religious rites and had paid Rs. 85,000/- in cash and some ornaments at the time of marriage. After the marriage, it was alleged by aforesaid P.W. 3 in the F.I.R that the appellant had demanded one LED T.V. for which also Rs. 13,000/- was given by the informant, a month prior to the lodging of the case. From the wedlock, a child was born. On 24.06.2016, it has been alleged by P.W. 3 that her daughter telephonically informed her that her in-laws and the appellant always fought with her. On the next day, at about 7:30 A.M. in the morning, the appellant is said to have telephonically informed P.W. 3 that the deceased had run away from the house. An attempt was made to search her but to no avail. On 26.06.2016, in course of search, the dead body of the daughter of the informant (P.W.3) was seen floating in a well belonging to one Anik Lal Das. It was, therefore, alleged by P.W. 3 that all the accused persons including the appellant had killed the deceased.

4. On the aforesaid allegation, Banka (Barahat) P.S. Case No. 535 of 2016 dated 27.06.2016 was instituted against the appellant and others for the offences under Sections 304(B), 201 and 34 of the Indian Penal Code.



5. The police, after investigation submitted charge-sheet only against the appellant, whereas the other accused persons were not sent up for trial. The Trial Court, after examining eight witnesses on behalf of the prosecution and none on behalf of the defence has convicted and sentenced the appellant as aforesaid.

6. Mr. Vikram Deo Singh, learned counsel for the appellant has submitted that not a single witness has supported the prosecution version and even P.W. 3 has not supported her own fardbeyan statement that there was a demand of money and that the deceased was not treated well at her matrimonial home.

7. In order to appreciate the case of the appellant, it is necessary first to go through the deposition of the informant P.W. 3, who is mother of the deceased. She has stated that she had lodged the case against the appellant and others on the death of her daughter. However, during her cross examination, she has clearly stated that two months prior to her death, the deceased had delivered a child. The aforesaid child is staying with his grandparents. After the marriage, the deceased and the appellant had come to the house of P.W. 3 several times and the relationship between them was very cordial. She has also categorically stated that the deceased never complained against any ill treatment or demand of dowry. She has also deposed before the Trial Court that no case was lodged by her with regard to her daughter going missing from



24.06.2016. Thus, it appears that P.W. 3 has not at all supported the prosecution version and has also not been declared hostile.

8. The father of the deceased viz. Jogindar Das has been examined as P.W. 1. At the time of death of the deceased, he claims to have gone to Delhi. He has also categorically stated that no demand of any dowry was made and he had also not seen the dead body being taken out from the well. The child born to the deceased is staying with his grand-parents. The uncle of P.W. 1 viz. Naresh Das, one of the brothers of the deceased viz. Suraj Kumar, co-villagers Devendra Das and Ruda Devi have been examined by the Trial Court as P.W.s. 2, 4, 5 and 6 respectively and none of them have supported the prosecution version.

9. Dr. Shailendra Kumar has been examined as P.W. 7. He has conducted the autopsy on the dead body. He did not find any ante-mortem injuries on the person of the deceased. The cause of death has been opined by him to be asphyxia due to drowning. He has further stated before the Trial Court that trachea was found full of froth. Thus from the deposition of P.W.7, it does not even appear to be a case of homicidal death.

10. The Investigating Officer who has been examined as P.W. 8 has deposed that he had taken the statement of the witnesses during the course of investigation and had submitted charge-sheet. The place from where the dead body was recovered is



stated to be a well in the village.

11. Thus, for all practical purposes, there is no material on record to suggest that prior to her death, the deceased was subjected to any ill-treatment or was tortured for dowry. Admittedly the informant, P.W. 3, has also stated that on 25.06.2016, the appellant had informed her that the deceased had run away from home. No clue could be found till the finding of the dead body in the well of one Anik Lal Das.

12. From the circumstances, it appears that the deceased either fell down in the well or deliberately committed suicide. This is only a presumption but so far as the appellant is concerned, there is nothing on record to suggest that he had taken any part in killing the deceased by throwing her in the well. Even with respect to the treatment meted out to the deceased soon before her death, there is no allegation of any kind whatsoever.

13. The Court below appears to have convicted and sentenced the appellant on the basis of presumption of causing death of a female who was wedded to the appellant within seven years of her marriage. Though the rules of evidence in dowry death cases are different, but there ought to be some evidence on record to connect the appellant with the crime. Finding nothing against the appellant, it is difficult to sustain the judgment and order of conviction passed against the appellant.



14. For the reasons aforesaid, the judgment dated 16.06.2017 and order of sentence dated 21.06.2017 passed by the learned Adhoc Additional Sessions Judge, I, Banka in Sessions Trial No. 347 of 2016, arising out of Banka (Barahat) P.S. Case No. 535 of 2016 are set aside and the appellant is acquitted of the charges.

15. The appellant is in custody. He is directed to be released from the custody forthwith, if not wanted in any other case.

16. A copy of the judgment be communicated to the Superintendent of the concerned Jail for compliance and record.

17. The appeal stands allowed.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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