

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

**Criminal Appeal (SJ) No.636 of 2002**

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

- =====
1. Ram Bahadur Yadav, son of Duni Lal Yadav
  2. Sanjay Kumar Yadav
  3. Ashok Yadav, both sons of Ram Bahadur Yadav, all residents of village Bishanpur, P.S. Sour Bazar, district Saharsa .... Appellants

Versus

The State of Bihar

.... Respondent

with

=====

**Criminal Appeal (SJ) No. 640 of 2002**

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

=====

Manoj Yadav, son of Ram Bahadur Yadav, resident of village Bishanpur, P.S. Sour Bazar, district Saharsa .... Appellant

Versus

State of Bihar

.... Respondent

=====

**Appearance :**

(in both the appeals)

For the Appellants : Mr. Krishna Prasad Singh, Sr. Adv. with  
M/S Manindra Kishore Singh & Meena Kumar, Advs.

For the Respondent : Mr.

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**ORAL JUDGMENT**

**Date: 05-01-2018**

Both appeals arise out of a common judgment rendered by the third Additional Sessions Judge, Saharsa, in Sessions Trial No. 156 of 2000 decided on 20<sup>th</sup> November, 2002, convicting the appellants to undergo seven years rigorous imprisonment for offence under Section 304B/34 of the Indian Penal Code.

2. Appellants have filed two separate appeals. Appellants Ram Bahadur Yadav, Sanjay Kumar Yadav and Ashok Yadav in Criminal Appeal (Sessions Judge) No. 636 of 2002 are the father-in-law and brothers-in-law of the deceased lady and appellant, Manoj Yadav in



Criminal Appeal (SJ) No. 640 of 2002 is the husband of the deceased lady.

3. It is a case of the prosecution that the informant, Baijnath Yadav, P.W. 8, recorded a fardbeyan to the effect that he has got four daughters, all of whom have been married. His third daughter, referred to as deceased herein, was married to one Manoj Yadav, appellant in Criminal Appeal (SJ) No. 640 of 2002, more than five years back from the date of occurrence and a day before recording of the fardbeyan, he has been informed that the appellants have poured kerosene oil on his daughter and killed her. It is stated that the incident took place on the previous day when the appellants were sitting in a tea shop and they were informed of the incident.

4. Based on the aforesaid information, first information report was lodged, investigation was conducted and after trial the appellants convicted as indicated here-in-above.

5. In the trial altogether ten witnesses were examined. P.W. 1, Badri Yadav, P.W.2, Jitendra Yadav, P.W. 3, Lallan Yadav, P.W. 4, Pulkit Paswan, P.W. 5, Satrugan Paswan and P.W. 6, Umesh Yadav, have all turned hostile and have not supported the case of the prosecution. P.W. 7, Bidyanand Prasad, is not the eye witness to the incident. He is brother of the deceased and his statement is only to the effect that he has been informed while he was sitting with his father, P.W. 8, Baijnath



Yadav, in a tea shop that his sister has been burnt by her in-laws. P.W. 8 is the informant and P.W. 9, Arbind Kumar and P.W. 10, Sushil Kumar Yadav, are the investigating officers.

6. From the fardbeyan and the first information report that is come on record and the statements of P.W. 8, Baijnath Yadav, and P.W. 7, Bidyanand Prasad, it is crystal clear that they do not specify the date on which the marriage of the deceased was solemnized. In the fardbeyan it is stated that the incident took place yesterday and the marriage had taken place more than five years back.

7. It is the case of the defence that the marriage was solemnized in the year 1990, which is more than seven years prior to the occurrence and, therefore, the basic ingredient for prosecution of holding the appellants guilty for an offence under Section 304B of the Indian Penal Code is not made out. From the totally reading of the evidence that is come on record, it is clear that no specific date with regard to the marriage is indicated in the fardbeyan and also in the statement recorded in the Court. P.W. 7 and P.W. 8 are unable to give any specific date with regard to the date on which the marriage was solemnized for upholding a conviction under Section 304B of the Indian Penal Code of the prosecution. It was incumbent upon the prosecution to prove the date on which the marriage was solemnized and, thereafter, the ingredients necessary for commission of an offence under Section 304B of the Indian



Penal Code could be made out. If the detailed judgment rendered by the learned trial Court, in this regard, is analyzed, it is surprising to note that the learned trial Court from paragraph 30 onwards discusses materials to record the specific finding to say that in absence of there being specific date on which marriage was solemnized, the question of applicability of Section 304B of the Indian Penal Code becomes very doubtful. Thereafter, in detail, he discusses the evidence as has come apart and merely on the basis of the statement it comes to show the fact that the marriage was solemnized within seven years of date of occurrence is doubtful and has not been proved.

8. In my considered view, this is an absurd and perverse finding which can not be upheld in accordance with law for making out an offence under Section 304B of the Indian Penal Code as detailed herein-above. The first and foremost evidence that was to come on record, i.e., marriage was solemnized seven years prior to the occurrence in the incident in question. There is no iota of material to establish this fact. On the contrary, the date of the marriage is not at all disclosed by P.W. 8, the father of the deceased, nor by P.W. 7 the brother of the deceased. On the contrary, they only make a vague allegation that the marriage was solemnized five years back. In the absence of there being any specific evidence to show that the marriage was solemnized seven years prior to the date of the incident, the conviction, in my view, for an offence, cannot



be made out the totality available on record having not been established the commission of an offence under Section 304B of the Indian Penal Code.

9. I am of the view that it is a fit case where the appeals should be allowed and the conviction of the appellants are set aside and the appellants are directed to be set free forthwith after cancellation of their bail bonds.

10. In the result, these appeals are allowed.

**(Rajendra Menon, CJ)**

SA/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 10.01.2018 |
| Transmission Date | N/A        |

