

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sessions trial no. 107/1989 arising out of Bihta P.S. case no. 92/1987 District- PATNA

Criminal Appeal (DB) No. 105 of 1995

- 1. Bachu Singh son of Late Basant Singh resident of village Devkuli PS Bihta Dist. Patna
- 2. Krishna Singh
- 3. Devendra Singh both sons of Ram Janam Singh resident of village Porhav PS Bihta Dist. Patna

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No.138 of 1995

- 1. Jogendra Singh son of the Kabiraj Singh
- 2. Kabiraj Singh son of Ram Kumar Singh
Both resident of village Karhar PS Bihta Dist. Patna

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus curiae
For the Respondent/s : Mr. S.N. Prasad, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)
Date: 01-11-2018**

1. These criminal appeals have been preferred against the impugned judgment of conviction and sentence order dated 10.5.1995 and 15.5.1995 respectively passed by the learned Addl. Sessions Judge



XII, Patna in Sessions trial no. 107/1989 by which and whereunder the learned Addl. Sessions Judge XII, Patna convicted the appellants in Cr. Appeal no. 138/1995 and one co-accused, namely, Manoj Singh for the offences punishable under section 304B of the IPC and section 302 read with section 34 IPC and further convicted the appellants in Cr. Appeal no. 105/1995 and Jogendra Singh appellant no.1 in Cr. Appeal no. 138/1995 for the offences punishable under sections 201 read with section 34 IPC and accordingly, sentenced the appellants in Cr. Appeal no. 138/1995 to undergo rigorous imprisonment for life for the offence punishable under section 304B read with section 34 IPC and no separate sentence was awarded for the offence punishable under section 302 read with section 34 IPC. The learned Addl. Sessions Judge convicted the appellants in Cr. Appeal no. 105/1995 and appellant no.1, namely, Jogendra Singh in Cr. Appeal no. 138/1995 to undergo rigorous imprisonment for five years each for the offence punishable under section 201 part I of the IPC. However, the learned Addl. Sessions Judge ordered that sentences



awarded to appellant no.1, namely, Jogendra Singh in Cr. Appeal no. 138/1995 shall run concurrently.

2. Since both the aforesaid criminal appeals have arisen out of common judgment, the same are being disposed of by this common judgment.

3. P.W.2, Satyendra Kumar Singh gave his fardbeyan to officer-in-charge of Bihta Police Station in the evening of 21.4.1987 to this effect that on the same day at about 4.15 p.m. while he was at his line hotel situated at Pitambarpur village, his cousin uncle, namely, Awadhesh Kumar Singh (PW4) informed him that his sister, namely, Asha Devi aged about 21-22 years was badly beaten and killed by her husband, namely, Manoj Singh, his brother-in-law, namely, Jogendra Singh at her matrimonial home. Having got the aforesaid information, he along with PW1 rushed to matrimonial home of his sister where they met father-in-law of his sister, namely, Kaviraj Singh who gave threatening to kill them saying that they had not given to him 2 kathas of their land of Pitamberpur which he had demanded earlier, when they made enquiry about sister of PW2. PW2 further claimed



that he made attempt to enter inside the house of the aforesaid Kaviraj Singh but he was not allowed to enter into the house by the said Kaviraj Singh brandishing lathi and thereafter, he as well as PW1 gathered information from neighbours and came to learn that on the same day at about 12 noon, his sister was administered poison in her meal and poison spread in her body and when she started wriggling in pain, her husband, namely, Manoj Singh and her elder brother-in-law, namely, Jogendra Singh and father-in-law, namely, Kabiraj Singh beaten her causing internal injury as a result whereof she died and after her death, the aforesaid persons took away her dead body with the help of Butan Singh and Bachu Singh giving colour of her illness. PW2 further claims that two years back her sister had been badly beaten by in-laws but out of fear, no case was lodged against in-laws of his sister. He, further, claims that six years back, in-laws of her husband had demanded two kathas of his land situated near **Chauraha** at Pitamberpur and when the demand was not fulfilled, they quarreled with PW1 and PW2 but, any how, the aforesaid dispute was resolved.



PW2, further, claims that his sister was not liked by her husband. He, further, claims that marriage of his sister had taken place with Manoj Singh five years ago. He also claims that while he was going to Bihta police station to lodge the case, PW3, Sahdul Singh, Siyaram Singh met him on the way. He also claims that co-villagers of in-laws of his sister had seen the appellants and others carrying dead body of his sister.

4. On the basis of fardbeyan of P.W.2, Bihta P.S. case no. 92/1987 for the offences punishable under sections 328, 302 and 201/34 of the IPC was registered against appellant Jogendra Singh and others.

5. The above stated case was investigated and after investigation, charge sheet was submitted. Cognizance of the offence was taken and the case was committed to the court of sessions in usual way.

6. The appellants along with Manoj Singh were put on trial and accordingly, all the appellants in Cr. Appeal no. 138/1995 along with co-accused Manoj Singh stood charged for the offences punishable under sections 302/34 and 304B/34 of the IPC and furthermore, all the



above stated appellants and co-accused Manoj Singh stood charged for the offence punishable under section 201/34 IPC. The charges were read over and explained to appellants and co-accused Manoj Singh to which they denied and claimed to be tried.

7. In course of trial, prosecution examined, altogether, six prosecution witnesses and also got exhibited two letters as exhibit 1 series, signatures of PW2 and PW3 on FIR as exhibit 2 series, statement of Triveni Singh recorded under section 164 of the Cr.P.C as exhibit 3, FIR as exhibit 4, endorsement on FIR as exhibit 5, entire case diary as exhibit 6 series.

8. The statements of the appellants were recorded under section 313 of the Cr.P.C in which they denied the prosecution story and claimed their false implication. Appellants also got examined four witnesses and also got exhibited certain documents in support of their defence.

9. The learned trial court, after perusing and analyzing the evidences available on record, convicted and sentenced the appellants in the manner as stated



above.

10. It is pertinent to note here that co-accused Manoj Singh absconded when the case was posted for judgment and accordingly, judgment was pronounced against him in his absence under section 353(6) of the Cr.P.C.

11. Learned Amicus curiae, Ms. Surya Nilambari, appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that learned trial court committed error in convicting and sentencing the appellants. She, further, submitted that the learned trial court based his findings on the documents which were inadmissible in evidence. She, further, submitted that the learned trial court completely failed to take notice of this fact that the prosecution could not succeed to prove all essential ingredients of section 304B of the IPC. She, further, submitted that it is well settled principle of law that unless all essential ingredients of section 304B of the IPC are proved, no person can be convicted for the offence punishable under section 304B of the IPC. She, further, submitted that the



learned trial court heavily relied upon annexure 1 series but completely over-looked this fact that exhibit 1 series were not proved in accordance with law. She, further, submitted that admittedly, both letters (exhibit 1 series) were produced before the court in course of trial and the aforesaid letters were never handed over to Investigating officer nor the aforesaid letters were even mentioned in fardbeyan of PW2 and moreover, the aforesaid letters were not exhibited in accordance with relevant provision of Evidence Act nor any question regarding the aforesaid letters was asked from appellants in Cr. Appeal no. 138/1995 at the time of recording their statements under section 313 of the Cr.P.C. She, further, submitted that if exhibit 1 series are excluded from the evidence, there was nothing before the court below to come on conclusion that any illegal demand was made by appellants in Cr. Appeal no. 138/1995 from PW1 and PW2 and due to non-fulfillment of illegal demand, deceased was subjected to cruelty soon before her death. She, further, submitted that so far as charge under section 302 of the IPC is concerned, not a single prosecution witness



claimed to have seen so-called killing of the deceased and admittedly, material prosecution witnesses are hearsay witnesses. She, further, submitted that the learned trial court completely ignored the evidence of defence, particularly, in the circumstances, when witnesses examined on behalf of defence very fairly stated that the deceased was seriously ill and she was taken to Patna for her treatment but she died on her way and after that her dead body was cremated at Kurji Ghat. She, further, submitted that the above stated circumstance was fully established by oral as well as documentary evidence adduced on behalf of the appellants.

12. On the other hand, learned Addl. Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that all essential ingredients of section 304B of the IPC have been well proved by the prosecution and exhibit 1 series proved that the appellants in Cr. Appeal no. 138/1995 had made illegal demand from natal people of the deceased and when demand was not fulfilled, deceased was subjected to cruelty. He, further, submitted that PW1 and PW2,



specifically, stated in their respective depositions that whenever deceased came to her home, she gave information of her torturing at the hands of her in-laws due to non-fulfillment of illegal demand. Learned Addl. Public Prosecutor, further, submitted that it is admitted case of the appellants that deceased died at Patna and her dead body was cremated at Patna without giving any information to her natal people and, therefore, the aforesaid circumstance clearly indicates the guilt of the appellants.

13. As I have already stated that the prosecution has examined, altogether, six witnesses, out of them PW1 Kailash Singh is father of the deceased whereas PW2 Satyendra Kumar Singh is the informant and brother of the deceased, PW3, namely, Sahdul Singh and PW4 namely, Awdhesh Kumar Singh are co-villagers of PW2. PW5 Alakhdeo Singh is a formal witness who proved statement of Triveni Singh recorded under section 164 of the Cr.P.C whereas PW6 is a police official who had submitted charge sheet. PW6 states that when he took charge of investigation of Bihta P.S. case no. 92/1987,



investigation of the aforesaid case had already been completed and as per direction given in supervision note, he submitted charge sheet in Bihta P.S. case no. 92/1987. The above stated fact goes to show that Investigating officer, who had conducted investigation of Bihta P.S. case no. 92/1987, was not examined by the prosecution.

14. PW5 Alakhdeo Singh is a formal witness and claims that he was working as court master in the court of Sri M.L.Paswan, Judicial Magistrate, in the month of April, 1987. This witness identified writing and signature of Sri M.L.Paswan, Judicial Magistrate who had recorded statement of Triveni Singh under section 164 of the Cr.P.C. This witness also identified writing and signature of Triveni Singh as well as his own signature on the statement recorded under section 164 of the Cr.P.C which has been marked as exhibit 3. This witness also admits in his cross-examination that he has no personal knowledge of Bihta P.S. case no. 92/1987. It is obvious that the Magistrate, who had recorded the statement of Triveni Singh under section 164 of the Cr.P.C, has not been examined nor the witness Triveni Singh has been



examined by the prosecution.

15. PW1 Kailash Singh states that on 21.4.1987 at about 4 to 5 p.m., he along with his son Satyendra Kumar Singh (PW2) was at his line hotel situated at Bihta and in the meantime, PW3 and PW4 came there and informed that his daughter was killed by assaulting lathi, danta, rod and by administering poison. This witness, further, claims that having got the aforesaid information, he along with PW2, PW3 and PW4 went to matrimonial home of his daughter where he met Kabiraj Singh. This witness, further, claims that when he enquired about his daughter from Kabiraj Singh, he quarreled with him and gave threatening. This witness, further, claims that Kabiraj Singh also told that land had not been given in dowry. This witness, further, claims that he enquired from neighbours and learnt that Kabiraj Singh and his family members administered poison to the deceased and also assaulted her by means of lathi and after that deceased was taken by her in-laws on a jeep. This witness, further, claims that he made attempt to enter into the house but he was not allowed by Kabiraj Singh. This



witness, further, claims that he along with PW2 and PW3 went to police station where PW2 lodged the present case. This witness also claims that prior to the alleged occurrence, Kabiraj Singh and deceased had sent letters. This witness produced two letters before the court and identified writings and signature of Kabiraj Singh on one letter as well as writings of his daughter on another letter. The aforesaid letters were marked as exhibit 1 and 1/1 respectively. This witness claims that in course of investigation, he had shown the above stated letters to the police. This witness, further, claims that marriage of his daughter had taken place with accused, namely, Manoj Singh on 21.4.1984 and after marriage, his daughter used to visit his house and she always made complain to him about ill-treatment meted out to her by her in-laws due to non-fulfillment of their demand of dowry. This witness, further, claims that he several times went to matrimonial home of his daughter and requested her in-laws not to misbehave with his daughter but her in-laws did not pay any heed towards his request. This witness also claims that the appellants and other accused had not given



information about death of his daughter and they clandestinely and stealthily took away her dead body giving colour of serious illness of his daughter-in-law. He claims that his daughter was never ill. This witness also claims that in-laws of the deceased used to demand land in dowry and when their demand was not fulfilled, they committed murder of his daughter. On being cross-examined by the defence, this witness stated that he has near about 14½ kathas land in village Pitamberpur. This witness also states in his cross-examination that talk of marriage of his daughter started in the year 1982 and lastly, marriage was solemnized in the year 1984. He flatly denied the suggestion of the defence that marriage of his daughter had taken place in the year 1979. This witness, further, admits in his cross-examination that when he got information about death of his daughter, he along with PW2, his brother Lal Babu Singh, Nawal Singh, Rajbanshi Singh, co-villager Sahdul Singh (PW3) went directly to the village of the appellants. This witness, further, admits that near about 20-25 persons of his village accompanied him when he went to the village



of the appellants. This witness, further, admits that he as well as others directly went at the door of appellant Kaviraj Singh. This witness, further, admits that he did not enquire about his daughter from any other person. This witness also admits that he as well as others remained there for near about 15 to 20 minutes and had no talk with any co-villager of the appellants. This witness, further, admits that he as well as others came at the door of Ramanuj Singh who disclosed about alleged occurrence. This witness also admits that he as well as others returned from the village of the appellants and came to his line hotel and after due deliberation, it was decided to lodge case. This witness also admits that prior to the alleged occurrence, he had shown letters to his family members. This witness also admits that except the aforesaid letter (exhibit 1) he has no any other letter written by the appellant Kabiraj Singh. This witness also admits that the aforesaid letter was not written in his presence and he got the letter (exhibit 1) from post office. This witness, further, admits that he has no envelope of the aforesaid letter. This witness, further, admits that he



does not have any other document written by Kabiraj Singh. This witness, further, admits that prior to receipt of letter (exhibit 1), he had not seen the writing of Kabiraj Singh. He flatly denied that he got forged the aforesaid letter. This witness also admits that except exhibit 1/1, he does not have any other letter written by the deceased. This witness, further, states that he got letter of the deceased 2 ½ - 3 months prior to the alleged occurrence and the aforesaid letter was sent to him through post. This witness admits that he did not get any envelope of the aforesaid letter. This witness, further, says that after receipt of the letter written by the deceased, he did not give any information to any police official or his co-villager. In course of cross-examination, defence produced a letter before this witness but this witness refused to identify writing of the aforesaid letter and, specifically, denied that the aforesaid letter was not in the writing of the deceased. The aforesaid letter was marked as "X" for identification and envelope of aforesaid letter was marked as "X/1" for identification. However, again, another letter was shown to this witness in course of his



cross-examination and this witness admits that the aforesaid letter was in the writing of the deceased Asha Devi. The aforesaid letter as well as envelope of the aforesaid letter were marked as exhibits A and B respectively. This witness, further, admits that PW4 had given information to him about death of his daughter but PW4 had not disclosed the name of that person who had given above stated information to him. This witness also admits that he has no information regarding illness and treatment of the deceased. This witness, further, admits that the appellant Bachu Singh was known to him prior to the alleged occurrence and the aforesaid appellant Bachu Singh had played role of mediator in the marriage of the deceased. Similarly, this witness admits that the appellant Butan Singh was known to him since his childhood. This witness, further, admits that his relation with appellant Bachu Singh and Butan Singh was not cordial and similarly, his relation with Kabiraj Singh and Devendra Singh was also not cordial. This witness, further, admits that he came to know that the deceased was taken on a jeep and the aforesaid jeep belonged to a person of village



Maner but he did not have a talk with the owner of the aforesaid jeep and similarly, he did not have a talk with the driver of the jeep. This witness, further, admits that after occurrence, he had given written report to the police. This witness, further, admits that none had told him that his daughter was taken away in dead condition.

16. PW2, Satyendra Kumar Singh claims that at the time of the alleged occurrence, he was at his line hotel and in the meantime, PW4 came there and gave information about killing of the deceased. This witness claims that having got the aforesaid information, he as well as others went to matrimonial home of his sister but they were not allowed to go inside the house and after that he as well as others enquired from co-villagers of in-laws of his sister and came to know that in-laws of his sister provided poisonous meal to his sister and also assaulted her by means of lathi and danta. This witness, further, claims that he along with PW3 and others went to the police station and gave his fardbeyan. This witness proved his signature on fardbeyan as exhibit 2. This witness, further, claims that marriage of his sister was



solemnized three years ago prior to the alleged occurrence but after performance of **Gona**, his sister came to his house and informed that she was being tortured by her in-laws due to non-fulfillment of demand of dowry. This witness, further, claims that his sister had written a letter to his father in respect of her torturing. This witness, further, claims that in-laws of his sister were demanding two kathas of land at village Pitamberpur. This witness, further, claims that no information of death of his sister was given by in-laws of her sister. On being cross-examined, this witness admits that he lodged the case on the basis of information given to him by PW4. This witness, further, admits that when he as well as his father got information about death of his sister, they along with others discussed the matter and after that went to the house of in-laws of the deceased. This witness admits that he as well as others had no talk with co-villager of in-laws of his sister and they came straightway to police station from the house of in-laws of the deceased. However, this witness, again, states that he as well as others got information about the occurrence



from co-villager of in-laws of the deceased but he expressed his inability to disclose the names of those persons who had given information about the alleged occurrence to him as well as others. This witness, further, admits that in the year 1984, he got information about demand of in-laws of his sister from his father. This witness, further, admits that marriage of his sister was solemnized in the year 1984 and after two to three years of marriage, his sister came to his home. This witness, further, admits that envelopes of letters were not with him as he had lost envelopes of the letters. This witness, further, admits that having got the aforesaid letters, he did not give any information to any person. This witness denies that his sister died of her ailment and marriage of his sister had taken place in the year 1979.

17. PW3, Sahdul Singh claims that PW2 gave information to him about death of the deceased when he was at Bihta sugar factory. This witness further claims that PW2 disclosed that the deceased was killed by her in-laws due to non-fulfillment of dowry demand and in-laws of the deceased had taken away her dead body to Patna



for cremation. This witness claims that having got the aforesaid information, he along with PW2 went to Bihta police station where PW2 gave his statement. This witness, further, claims that after marriage of the deceased and prior to the alleged occurrence, PW1 had several times told him that in-laws of the deceased used to torture her and several times, deceased was ousted from her matrimonial home. This witness, further, claims that PW1 had disclosed before him that appellant Kabiraj Singh had written letter to him demanding land of Pitamberpur. This witness also admits in his cross-examination that his cousin niece had been married at village Bahadurpur of Arwalpur police station but her in-laws reside at village Karhar. This witness, further, states that two to four months prior to the alleged occurrence, PW1 had disclosed to him about torturing of the deceased as well as letter of the appellant Kabiraj Singh. This witness, further, admits that deceased was never met to him after her marriage nor he had any talk with in-laws and husband of the deceased.

18. PW4, Awdhesh Kumar Singh states that



one unknown person gave information to him about death of the deceased on 21.4.1987 when he was at line hotel but on being cross-examined by the defence, this witness expressed his inability to disclose name of that person who had given above stated information to him.

19. As I have stated earlier that the prosecution brought two letters (exhibit 1 series) in evidence to prove the factum of torturing as well as demand of dowry. The learned trial court has heavily relied upon the above stated letters but the defence challenged the genuiness of the aforesaid letters claiming that both the aforesaid letters were forged letters. Learned Amicus curiae appearing for the appellants, in course of argument, has challenged admissibility of the aforesaid letters in evidence on the ground that the aforesaid letters have not been proved in accordance with law.

20. Admittedly, both the aforesaid letters have been proved by PW1 but PW1 has admitted in his cross-examination that except exhibit 1 (letter said to be written by the appellant Kabiraj Singh) he has no other letter or document written by the appellant Kabiraj Singh nor he



got any opportunity to see the writing of the appellant Kabiraj Singh prior to receipt of the above stated letter (exhibit 1). Therefore, it is obvious that PW1 had never seen writing of the appellant Kabiraj Singh prior to receipt of exhibit 1.

21. Section 67 of the Evidence Act says that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. The above stated section says that signature and handwriting of person alleged to have signed and written a document must be proved by the evidence that handwriting and signature purporting to be that of executant or in his handwriting and signature. The section makes it clear that before admitting a document said to be written by a particular person, handwriting and signature of the aforesaid document must be proved by evidence.

22. No doubt section 67 of the Evidence Act does not prescribe any particular mode of proof of



document but section 47 of the Evidence Act provides that opinion of a person who is acquainted with writing of a particular person is a relevant fact. The signature and handwriting of a person can be proved by examination of an expert or by a person who is acquainted with the above stated handwriting and signature or the court can itself compare the disputed and admitted handwriting and signature. Here, I would like to refer section 47 of the Evidence Act which says that when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. Explanation annexed with section 47 of the Evidence Act says that a person is said to be acquainted with handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents



purporting to be written by that person have been habitually submitted to him.

23. Now, in the backdrop of the aforesaid provision, it has to be seen that exhibits 1 and 1/1 have been taken in evidence legally or not. As I have already stated that PW1 admits in his cross-examination that he had got no opportunity to see writing and signature of the appellant Kabiraj Singh before receipt of exhibit 1. Almost similar statement has been made by PW2. Therefore, it is obvious that neither PW1 nor PW2 was acquainted with writing of the appellant Kabiraj Singh prior to receipt of exhibit 1. It is not the case of PW1 that exhibit 1 was sent to him in response to any document written by him. Therefore, it is obvious that PW1 was not a competent person to prove handwriting and signature of the appellant Kabiraj Singh. Admittedly, writing and signature of exhibit 1 were not examined by any expert and, therefore, I have no hesitation to say that the prosecution failed to prove writing and signature of exhibit 1 in accordance with law and the aforesaid exhibit 1 was not legally admissible in evidence.



24. No doubt, PW1 being father of the deceased claimed to have identified writing and signature of the deceased on exhibit 1/1 but PW1 has, nowhere, stated in his deposition that he had seen writing and signature of the deceased. Furthermore, PW1 admitted that he had no any other letter or document in writing of the deceased. Therefore, there is nothing in the evidence of PW1 to show that he was acquainted with handwriting and signature of the deceased and only being father of the deceased, it can not be said that he must be acquainted with handwriting of the deceased. Therefore, in my view, exhibit 1/1 has also not been proved in accordance with law.

25. However, for the sake of convenience even if it is assumed that exhibit 1 series have been brought in evidence in accordance with law, then also, genuiness of both the aforesaid letters appears to be doubtful. Admittedly, both the aforesaid letters were produced before the court in course of trial. No doubt, PW1 claims that he had shown the aforesaid letters to the police in course of investigation but due to non-examination of



Investigating officer, the aforesaid claim of PW1 could not be verified. Furthermore, PW1 admitted that he got both the aforesaid letters through post but PW1 could not succeed to produce envelopes of both the aforesaid letters to show that the aforesaid letters were received by PW1 through post. However, perusal of exhibit 1 series goes to show that neither month nor year has been mentioned in both letters.

26. On the other hand, defence produced exhibit A and writing of the deceased has been admitted by PW1 and in the aforesaid exhibit A, deceased had not made any complain of her ill-treatment as well as demand of dowry by her in-laws. In the aforesaid circumstances, I am of the opinion that the learned trial court committed error in relying upon the above stated letters (exhibit 1 series) and if the aforesaid exhibit 1 series are excluded from the prosecution evidence, then except oral statement of PW1 and PW2, there is nothing on record to prove so-called torturing and illegal demand of the appellants. Moreover, exhibit A contradicts oral claim of PW1 and PW2 in respect of illegal demand and torturing because



exhibit A does not reflect any illegal demand of appellants as well as torturing of the deceased. Therefore, in my view, prosecution miserably failed to prove the factum of illegal demand of dowry as well as torturing of the deceased.

27. No doubt, PW1 and other material witnesses specifically, stated that marriage of the deceased was solemnized in the year 1984 and she died in the year 1987 i.e. within three years of her marriage but as I have already discussed that the prosecution could not succeed to prove the fact of torturing and illegal demand by the appellants and, therefore, in my view, learned trial court committed error in convicting the appellants in Cr. Appeal no. 138/1995 for the offence punishable under section 304B/34 of the IPC.

28. Appellants in Cr. Appeal no. 138/1995 have also been convicted for the offence punishable under section 302/34 of the IPC taking into consideration the testimonies of the prosecution witnesses and also relying upon circumstantial evidence. The learned trial court took into consideration statement of Triveni Singh recorded



under section 164 of the Cr.P.C which has been marked as exhibit 3.

29. Admittedly, the aforesaid Triveni Singh was neither examined nor the learned Magistrate, who recorded the above stated statement of Triveni Singh, was examined by the prosecution. Moreover, statement recorded under section 164 of the Cr.P.C can not be used as a substantive piece of evidence and the aforesaid statement can only be used to contradict or to impeach the credibility of the witnesses but in the present case, learned trial court used statement of Triveni Singh as substantive piece of evidence which is not in accordance with law.

30. Admittedly, none had seen the actual killing of the deceased nor any person came forward to say that they had seen the appellants taking away dead body of the deceased. Almost all material witnesses are hearsay witnesses and they even could not disclose name of that person who gave information regarding the alleged occurrence. Therefore, in my view, the prosecution could not succeed to prove charge framed under section 302 of



the IPC.

31. As I have already stated that the prosecution failed to prove all essential ingredients of section 304B of the IPC and the appellants in Cr. Appeal no. 138/1995 could not have been convicted under section 304B of the IPC, the burden was not upon the appellants in Cr. Appeal no. 138/1995 to prove as to how deceased died but even then, appellants had brought evidence on record to show that the deceased was suffering from ailment and on the alleged date of occurrence, she was being taken to hospital but unfortunately, she died on way and after that she was cremated at Patna.

32. On the basis of the aforesaid discussions, I am of the opinion that the trial court has committed error in convicting and sentencing the appellants and these criminal appeals are liable to be allowed and accordingly, both the above stated criminal appeals are allowed and impugned judgment of conviction and sentence order are, hereby, set aside. All the appellants are on bail. They are discharged from the liabilities of their respective bail bonds.



33. Let first and last page of the copy of this judgment be handed over to learned Amicus curiae, Ms Surya Nilambari, so that she could claim her remuneration from the competent authority.

(Hemant Kumar Srivastava, J)

Rajendra Kumar Mishra, J I agree

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	01.05.2018
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Transmission Date	02.11.18

Shahid/-

