

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Criminal Appeal (SJ) No.659 of 2015**

Arising Out of PS.Case No. -46 Year- 2013 Thana -CHANAN District- BANKA

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Dhaneshwar Das @ Dashar Das Son of Mahendra Das Resident of  
Village - Khirhar Tari, P.S. - Chandan, District - Banka.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance:**

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

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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

ORAL JUDGMENT

**Date: 18-08-2018**

Vide judgment of conviction and sentence dated 18-09-2015 passed by Fifth Additional Sessions Judge, Banka in Sessions Trial No.964/2013 whereby and whereunder appellant Dhaneshwar Das @ Dashar Das has been found guilty for an offence punishable under Section 304B of the IPC and sentenced to undergo R.I. for 10 years with a further direction that the period having undergone during course of trial be set off as provided under Section 428 of the Cr.P.C., convict/appellant named above has challenged the same under present appeal.

2. Bhola Das (PW.3) gave his fardbeyan on 10-07-2017 at about 02:30 PM at the Sasural of his daughter Pooja Devi lying at village-Khirhar Tari disclosing therein that his daughter Pooja was married with Dhaneshwar Das @ Dashar Das in the month of April 2012 and since thereafter, she was residing there. It has further been disclosed that after staying for sometime in good harmonious atmosphere his son-in-law advanced demand of a motorcycle, whereupon he has shown his inability on account of poverty and in



the aforesaid background he began to torture his daughter. His daughter used to inform him whereupon he had gone there and took back his daughter to his place. 8-9 days prior to the occurrence his son-in-law has come to his place and asked for *Bidai*. His daughter was not ready but, after consoling her he effected the *Bidai*. On 09-07-2013 his wife has talked with Pooja on mobile and during course thereof, she has disclosed that she again being severely tortured for motorcycle. In the morning of 10-07-2017 his daughter has informed that in the night she was brutally assaulted as a result of which, blood oozed from her nose. He was about to go to her place till then he received information from Sabita Devi that his daughter died on account of administering poison. They rushed and found the dead body lying in the Aagan. None of her family members (Sasuralwala) was present.

**3.** After registration of Chandan P.S. Case No.46 of 2013 investigation was taken up and after completing the same, charge sheet has been submitted whereupon trial commenced concluded in a manner, subject matter of instant appeal.

**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. However, nothing has been adduced in defence.

**5.** In order to substantiate its case prosecution had examined altogether six PWs who are Dukhi Das-PW.1, Rinku Das-PW.2, Bhola Das-PW.3, Neeraj-PW.4, Dr. Sohail Anjum-PW.5 and Sri Krishna Singh-PW.6. Side by side had also exhibited, Ext.1 Series-



Signature of informant/respective witnesses over fardbeyan, inquest report, Ext.2-Postmortem report, Ext.3-Endorsement over fardbeyan, Ext.4-Signature, Ext.5-Formal FIR and Ext.6-Inquest report. As stated above, nothing has been adduced on behalf of defence.

**6.** While challenging the judgment of conviction and sentence, it has been submitted at the end of the learned counsel for the appellant that although during course of evidence PW.3, informant had not disclosed and in likewise manner, there also happens to be some sort of slackness at the end of the accused during course of cross-examination but, the initial version speaks about a talk over the mobile in the night of 09-07-2013, as well as in the morning of date of occurrence on 10-07-2013 with regard to assault having over her person. From the postmortem report, it is apparent that no external/internal injury has been found over the dead body. In likewise manner, it has also been submitted that neither mother of deceased has been examined with whom deceased had conversation in the evening of 09-07-2013 nor the mobile number of the deceased has been disclosed. In similar way the mobile number through which prosecution received the call have not been disclosed. Apart from this, it has also been submitted that during course of investigation I.O. PW.6 could not be able to find out the SIM number as well as the call details concerning both sides. That being so, the assertion whatsoever been made at the end of the prosecution is found not at all substantiated. That means to say, the source of information is found completely blurred.

**7.** It has further been submitted that during course of postmortem, the doctor PW.5 failed to trace out the cause of death



and that happens to be reason behind that he handed over viscera to the I.O. for its examination. PW.6 the I.O. as is evident during course of investigation had not cared to get the viscera examined. That means to say, cause of death is not on the record. That means to say the cause of death as otherwise than normal circumstance could not be insistent upon at the end of prosecution due to own lapses.

**8.** It has also been submitted that save and except informant, PW.1, PW.2 and PW.4 refused to support the case of the prosecution whereupon they all were declared hostile. It has also been submitted that evidence of PW.5, doctor had not supported the case of the prosecution. PW.6, I.O. happens to be completely irresponsible. Now remains the evidence of PW.3 the informant who during course of examination-in-chief reiterated to his earlier version to some extent but, during course of cross-examination had specifically stated under para-7 that he had not disclosed that due to dowry demand murder has been committed. That being so, failure on the part of the learned lower court to perceive the eventualities persisting on the record, did not justify the finding whereupon, is fit to be set aside.

**9.** The learned Additional P.P. while opposing the submission has submitted that from the judgment impugned it is apparent, that the finding having been recorded by the learned lower court appears to be well reasoned whereupon, needs no interference.

**10.** From the evidence of PW.5, it is apparent that he had not found any kind of external or internal ante-mortem injury and



so, he was in dilemma with regard to cause of death. Accordingly, viscera was preserved handed over to the I.O., PW.6 who during course of his examination-in-chief at para-3 had disclosed on his own that he had not sent the viscera for examination. Apart from the same his objective finding relating to the place of occurrence as incorporated under para-2 of his examination-in-chief, he happens to be categorical in stating that no incriminating article was found.

**11.** Now coming to ocular evidence, it is apparent that PW.1, PW.2 and PW.4 (who happens to be brother-in-law of the deceased) have become volte-face to the prosecution, as refused to substantiate their earlier version. Even during cross-examination at the end of the prosecution, nothing substantial has been explicit at their end. Now remains the evidence of PW.3 the informant. During course of his examination-in-chief he had reiterated the version whatever been at his end at an initial stage save and except gave up presence of his wife, with whom victim had talked. He had not stated with regard to presence of any kind of mark, sign over the dead body. Police came recorded his fardbeyan, inquest report was also prepared in his presence (exhibited). During cross-examination at para-5 he had stated that he used to visit at the Sasural of his daughter where he was properly treated with due hospitality. He used to talk to his daughter. She had not complained anything against her Sasuralwala. In para-7 he had stated that he had not disclosed death due to demand of dowry.

**12.** Though during course of cross-examination, it is apparent that theme of talk having in between on 09-07-2013 as well as 10-07-2013 had not been properly tested but, on account of



failure at the end of the I.O. to have the SIM of both end properly identified along with procurement of call details happen to be additional ground which cast doubt over the conduct of the prosecution coupled with the fact that theme of assault having in the night of 09-07-2013 has completely been ruled out by the doctor who had conducted postmortem over the dead body of deceased on 10-07-2013. In the aforesaid facts and circumstances of the case and further, considering the infirmities having at the end of the prosecution as indicated hereinabove did not satisfy the ingredients so prescribed for attracting applicability of Section 304B of the IPC. Consequent thereupon, the judgment impugned would not survive. Accordingly, same is set aside. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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