

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

**Criminal Appeal (SJ) No.616 of 2002**

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

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Anil Kumar Chaurasia, son of Late Rajendra Prasad Chaurasia, resident of village  
Tehta, P.S. Makhdumpur, District- Jehanabad

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate with  
Mr. R.K. Sinha-2, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**ORAL JUDGMENT**

**Date: 01-05-2018**

Appellant has been convicted under Sections 364/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years by judgment and order dated 29.8.2002 passed by Sri Syed Jafar Hussain, the then Additional Sessions Judge, F.T.C.No.3, Jehanabad in Sessions Trial No.215 of 2001/190 of 2002.

2. During pendency of this appeal it was informed that appellant No.1 Rajendra Prasad Chaurasia has died and, as such a report was called for from the Superintendent of Police, Jehanabad and from the report it appears that appellant No.1 has died and the appeal was ordered to be abated against him vide order dated 12.2.2015.

3. Prosecution case as per complaint petition filed by Sarju Prasad Chaurasia (PW 4), in short, is that his daughter Sima Kumari



was married to the appellant Anil Kumar Chaurasia on 27.4.1996 and after marriage the daughter of informant went to her Sasural and after 15-20 days the complainant got her back to her parents' house. It is alleged that at the time of marriage the appellant had demanded a gold chain and for that complainant had assured to give the same later on. It is further alleged that complainant had given Rs.25,000/- cash, a gold ring, watch at the time of marriage. Further case is that on 15.2.1997 the complainant received a letter written by the appellant demanding certain articles and complainant replied to the said letter stating that he was not in a position to fulfil the demand which annoyed the accused person. Further case is that on 13.4.1998 appellant along with others came to the house of complainant for 'Roksadi' of Sima Kumari and on insistence of accused persons the complainant performed the second marriage of his daughter. It is alleged that on 21.8.1998 the complainant received a letter from which he learnt that his daughter was being subjected to cruelty by her sasural people and on 24.8.1998 the complainant went to sasural of his daughter and her daughter told him that her sasural people were demanding Rs.40,000/- and threatening to kill her if demand was not fulfilled. It is alleged that she was assaulted by her sasural people and on 24.9.1998 the complainant was informed that his daughter Sima Kumari had been made to disappear by her husband, father-in-law,



mother-in-law, Devar, Nanad, etc. Thereafter the complainant and his wife along with others went to the village where he met Rajendra Prasad Chaurasia who told the complainant that his daughter Sima Kumari had run away on 22.9.1998 but he could not explain how she had run away and it was learnt that his daughter had been taken away elsewhere by her sasural people and killed her and her dead body was disappeared.

4. The aforesaid complaint was sent before police for registration under Section 156(3) Cr.P.C. and Makhdumpur P.S. Case No. 226 of 1998 was registered. Post investigation charge sheet has been submitted and cognizance has been taken and after commitment the case ultimately came to the file of learned Trial Judge for trial and disposal.

5. During trial five witnesses have been examined on behalf of prosecution, they are PW 1 Rudra Narain Prasad (declared hostile), PW 2 Umesh Prasad Chaurasia (declared hostile), PW 3 Manorama Devi (mother of Sima Kumari), who has proved Exts. 1 and 1/1, PW 4 Sarju Prasad Chaurasia (father of Sima Kumari and complainant) and PW 5 Asuthosh Kumar, second I.O. of this case. Apart from that, large number of letters have been brought on record as Ext.1 Series.

6. On behalf of defence two witnesses have been examined, they are DW 1 Kamla Devi, who gave information regarding



disappearance of Sima Devi to the complainant and DW 2 Arun Kumar, who is adjoining neighbour of the complainant, has supported that Sima Kumari was not being tortured by her sasural people, rather she had a habit of running away from her house.

7. It further appears on perusal of record that only PWs. 3 and 4 are the material witnesses apart from PW 5. Learned trial court relying upon the letters of the deceased and letters of PW 1 regarding demand and torture has convicted the appellant and father-in-law and mother-in-law under Section 364/34 IPC. Later on as father-in-law and mother-in-law died, the appeal has abated against them.

8. Learned counsel for the appellant has assailed the judgment on the ground that in this case there is absolutely no ingredient of Section 364 IPC as there is no evidence that she was forcibly abducted and killed, rather evidence is that some letters were written by the appellant in this connection. Further submission is that letters were not produced to the I.O. which is evident from the evidence of I.O. and he has stated that letters were never produced before him and so far PW 3 is concerned, she has stated in paragraph-11 of her evidence in cross examination that she had stated on the basis of what has been told to her, as such, she is a tutored witness and, as such, the conviction of the appellant under Section 364 IPC is not sustainable in the eye of law.



9. On the other hand, learned counsel for the State has defended the conviction of guilt against the appellant on the fact that large number of letters have been produced which clearly show that victim Sima Kumari was subjected to torture and cruelty due to demand of dowry and some letters have been written by appellant himself and further it appears that she was in the house of the appellant and from there she was traceless and no explanation has been given about whereabouts of the victim.

10. In the background of rival submission of the parties and on examination of the evidence available on record it appears that evidence of PWs. 3, 4 and 5 is material evidence and PWs.1 and 2 have been declared hostile and evidence of PW 3 also disclosed that she is a tutored witness and she has stated in her evidence on the basis of what has been stated to her by the family members. So far PW 4 is concerned, he has stated in his evidence that large number of letters purported to have written by Sima Kumari but letters have not been produced to the I.O. for verifying genuineness of the same, which is evident from the evidence of I.O. itself. Apart from that, though those letters also show only demand of dowry and torture but there is no evidence that she was kidnapped and forcibly taken away to cause her death.

11. Learned trial court though relied upon the letters written



by the victim as well as appellant but he failed to consider that those letters have not been produced before police and he has given finding that the same is laches on the part of police. However, if the letters could have been produced before I.O. he ought to have verified the same about their genuineness and in this case no conviction has been made either under Section 306 or 304B IPC, rather conviction has been made under Section 364 IPC without any evidence that she was abducted or anybody seen her taken by the appellants but learned trial court has convicted the appellant, and failed to consider that on the basis of prosecution evidence, appellant is entitled for benefit of doubt.

12. In view of above discussions, this appeal is allowed. The impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

**(Vinod Kumar Sinha, J)**

spa/-

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