

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.2185 of 2017**

Arising Out of PS. Case No.-397 Year-2011 Thana- HILSA District- Nalanda

Kedar Prasad son of Jawahar Prasad, Resident of Village- Bhagatpur, P.S.  
Hilsa, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |                                                                                              |
|----------------------|----------------------------------------------------------------------------------------------|
| For the Appellant    | : Mr. Ajay Kumar Thakur, Advocate<br>Mr. Nilesh Kumar, Advocate<br>Ms. Swati Sinha, Advocate |
| For the Respondent/s | : Mr. Parmeshwar Mehta, APP                                                                  |

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 26-07-2018**

Heard learned counsel for the appellant and the State.

**2.** The appellant has been convicted under Sections 304B and 201 of the Indian Penal code by judgment dated 27.05.2017 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Hilsa at Nalanda in Sessions Trial No. 35 of 2013 and by order dated 31.05.2017 he has been sentenced to undergo R.I. for seven years for the offence under Section 304B of the Indian Penal Code and R.I. for three years and fine of Rs. 2000/- and in default of payment of fine to further suffer S.I. for a period of three months for the offence under Section 201 of the Indian Penal Code. The sentences have been ordered to concurrently.

**3.** The appellant is the husband of the deceased



who is said to have killed her by poisoning. The case of the prosecution is based on the written report of Kishori Prasad, father of the deceased who has been examined as P.W. 5 at the trial. He has alleged that he had married his daughter with the appellant about 5-6 years ago. At the time of marriage, sufficient cash and articles were given by way of dowry. His daughter gave birth to two female children; one of whom was two years of age whereas other was two months old. It was further alleged by aforesaid P.W. 5 that the appellant as well as his other family members always troubled her and insisted upon her to bring Rs. 50,000/- for the purposes of investing in business. On 01.12.2011, at about 12 O' Clock in the day, the son of the informant viz. Ajay Kumar received a telephonic information from Indrajeet Prasad that the appellant and others have administered poison to the deceased and after her death, they have disposed off the dead body. On this information, the informant/P.W. 5 went to the matrimonial home of the deceased where he was threatened of being killed. The deceased was not available in the house. It was therefore requested by the P.W. 5 that necessary action be taken against the accused persons. On the basis of the aforesaid written report lodged on 03.12.2011 a case vide Hilsa P.S. Case No. 397 of 2011 dated 03.12.2011 was registered for investigation for the



offences under Sections 304B and 201 of the Indian Penal Code.

**4.** The police after investigation submitted charge sheet only against the appellant whereupon cognizance was taken and the case was committed to the court of Sessions for trial.

**5.** The learned trial court, after examining eight witnesses on behalf of the prosecution and two on behalf of the defence convicted and sentenced the appellant as aforesaid.

**6.** Mr. Ajay Thakur, learned advocate for the appellant has argued that the judgment and order of conviction and sentence is based only on conjectures and surmises and the basic principles of receiving and appreciating the evidence has been thrown to the winds. Thus, it has been argued, the verdict of guilt returned by the trial court is against the weight of overwhelming evidence.

**7.** In support of the aforesaid proposition, Mr. Thakur has submitted that for the appellant to be convicted and sentenced for the offence under Section 304B of the IPC, it was essential for the prosecution to have established that the death of the deceased took place within seven years of her marriage with the appellant and that there was close proximity of the demand of money and resultant torture and the death of



the deceased. It has been submitted that neither of the aforesaid two requirements could be established by the prosecution beyond reasonable doubts. In that view of the matter, it was absolutely unjustified, it has been argued, for convicting and sentencing the appellant under Section 304B IPC.

**8.** It has then been argued on behalf of the appellant that if the charge under Section 304B was not established, the trial court ought to have seen whether the appellant was guilty of the offence under Section 302 of the IPC for having killed his wife. In that event also, the trial court was required to give its consideration over the allegation of demand of dowry and torture. With respect to the aforesaid aspect viz. allegation of demand, Mr. Thakur has argued that the evidence in that regard is highly discrepant. The two brothers of the deceased viz. P.Ws. 1 and 4, the informant himself (P.W. 5) and the uncle of the deceased (P.W. 6) have not at all been able to sufficiently establish that the deceased has been pressurized for money and since the aforesaid amount of Rs. 50,000/- was not paid by the family members of the deceased, she was done to death. While assailing the judgment and order of conviction, it has further been argued that there is no direct or indirect evidence for holding that the appellant had killed the deceased. The allegation of administration of poison



has also not been established. The dead body has not been recovered and in the absence of *corpus delicti*, even the cause of death has not been ascertained. He has further submitted that non-examination of the police officer who investigated the case has caused serious prejudice to the appellant. The police officer who only submitted charge sheet after the investigation was carried out by somebody else, has been examined as P.W. 8. His deposition is of no avail either to prosecution or to the defence.

**9.** Lastly, it has been submitted that the circumstances against the appellant have not been put to him for eliciting his response under Section 313 of Cr.P.C. The trial court ought to have confronted the appellant with the poser as to how the deceased was killed by administering poison to her. Though the aforesaid question has been put to the appellant by the trial court but another circumstance ought to have been brought to his notice that the occurrence had taken place on 01.12.2011 but the FIR was lodged on 03.12.2011. It was necessary for the court to put this question to the appellant as to what had happened in the meanwhile. If the deceased had died natural death, how was she cremated. If at all the informant had visited the house of the appellant on being informed about the death of the deceased, whether he participated in the cremation.



These are the circumstances which, if established would go against the appellant and therefore those circumstances were required to be communicated to the appellant for knowing his response. To sum up, Mr. Thakur has argued that the offence under Section 304B of the IPC could not be established by the prosecution beyond all reasonable doubts. Likewise, in the absence of any direct or indirect evidence suggesting any manner of killing the deceased, it would have been too much to convict the appellant under Section 302 of the IPC. There is no evidence also with respect to disposing of the dead body thereby rendering the conviction under Section 201 of the IPC also unjustified in the eyes of law.

**10.** On the aforesaid grounds it was urged on behalf of the appellant that with this kind of weak evidence on record, the appellant has already remained in jail for six years i.e. from 17.03.2012.

**11.** In order to appreciate the contention raised on behalf of the appellant, this Court deems it appropriate to briefly refer to the deposition of witnesses.

**12.** One of the brothers of the deceased viz. Raj Kumar has been examined as P.W. 1 at the trial. He has, though, supported the prosecution version but in his cross-examination, has stated that while the deceased



remained in her matrimonial home, he had visited her on two occasions and only on the second occasion did she complain about her in-laws and the appellant. However, P.W. 1 was candid enough in stating that he has not seen the deceased being assaulted by her family members. He could not state as to how many times the deceased had complained against the appellant and other members of his family. He also was not in a position to say regarding the number of his visit to the matrimonial home of the deceased. The suggestions given to him regarding the deceased having committed suicide has been, but, denied by him. From the deposition of P.W. 1, what comes to the fore is that he also has stated that the deceased was married to the appellant about 6-7 years ago since he made his statement before the trial court on 30.04.2013, the date of marriage of the deceased with the appellant therefore could be fixed for a period of more than seven years.

**13.** Another brother of the deceased viz. Ranjeet Kumar who has been examined as P.W. 4 has also stated that the deceased got married to the appellant about 8-9 years ago. If this statement is to be believed, it takes back the date of marriage of the deceased with the appellant much more than seven years. The information to him was only through the mouth of his parents and others who told him that the



deceased has been killed. Though in his cross-examination, the aforesaid witness has reiterated that the deceased was asked to bring Rs. 50,000/- for the purposes of investment in business but he admitted of having told the police that after the marriage, the deceased was kept very well in her matrimonial home and she never complained against any one of the family members of her husband. This witness also has denied the suggestion given to him with regard to the alternative explanation of the death of the deceased. The informant P.W. 5 also could not specifically state about the date of the marriage of the deceased with the appellant. From his deposition also, one cannot infer anything about any demand of money and consequent torture. The deposition of the uncle of the deceased (P.W. 6) also suffers from the same deficiency. When was the demand first made is not known nor can be inferred from the statement of the witnesses. How the demand was made and was communicated to the witnesses through whom, is also not known. Till what time did such demand keep on being persisted by the appellant or others is also not known.

**14.** Thus, in the absence of any definite proof of the fact that the death of the deceased occurred within seven years of her marriage, Section 304B of the IPC would not be applicable to the facts of the case as



against the appellant. If that be so, the rules of evidence would not be in terms of Section 113B of the Evidence Act and in that event, it would have been incumbent upon the prosecution to satisfy the requirements of law and establishing the case beyond all reasonable doubts for any conviction and sentence of the appellant.

**15.** For the appellant to have been convicted under Section 304B of the IPC, it was required to be established that soon before her death, she was subjected to torture for non-payment of dowry. The evidence with respect to the aforesaid aspect is absolutely missing. The fact that the deceased gave birth to two daughters and had been continuously living in her matrimonial home completely belies the aforesaid assertions of the witnesses that the deceased was being tortured for non-payment of Rs. 50,000/- as dowry. There is no evidence of how the dead body was disposed of/concealed.

**16.** The fallacy become further exacerbated when it is found that the informant reached the matrimonial home of the deceased on 01.12.2011. On that day only, if the informant/P.W. 5 had learnt that his daughter had been killed, there was no justification for lodging the written report/FIR on 03.12.2011. The aforesaid FIR (Ext.-1) however saw the light of the day only on 07.12.2011, even though the police station and



the court premises are not distantly located. This obviously means or it could be definitely inferred that the FIR was ante-dated in order to suit the prosecution version.

**17.** The trial court only appears to have completed the formality of putting questions to the appellant under Section 313 of the Code of Criminal Procedure Code. None of the circumstances which could be or have been read against the appellant have been put to the appellant. In that view of the matter, those circumstances cannot be read against the appellant in the present circumstances. The whereabouts of the wife of the appellant could not be ascertained. It is really unfortunate that a young person, who is the mother of two children is not to be found in her matrimonial home but even with such a staggering fact in face of the prosecution, it is difficult to sustain the conviction of the appellant under Section 304B of the IPC as the conviction ought to conform the provision of law.

**18.** This Court has been informed but that the appellant has remained in jail for about six years by now.

**19.** In any view of the matter, with such deficient evidence, benefit of doubt has to be given to the appellant.

**20.** For the reasons aforesaid, the judgment



and order of conviction dated 27.05.2017 and order of sentence dated 31.05.2017 passed in Sessions Trial No. 35 of 2013 (arising out of Hilsa P.S. Case No. 397 of 2011) is set aside.

**21.** The appeal is allowed.

**22.** The appellant is in custody. He is directed to be released forthwith, if not required in any other case.

**23.** A copy of the judgment be communicated to the Superintendent of the concerned jail for information, compliance and record.

**(Ashutosh Kumar, J)**

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| AFR/NAFR          | AFR        |
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