

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

**Criminal Appeal (SJ) No.1375 of 2016**

Arising Out of PS.Case No. -9 Year- 2012 Thana -PAROO District- MUZAFFARPUR

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1. Ram Dayal Das Son of Gambhira Das  
2. Gambhira Das Son of late Bhucheng Das Both Residents of Village- Mohjamma,  
P.S. - Paroo, Distt- Muzaffarpur.

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Hari Kishore Thakur

For the Respondent/s : Mr. Parmeshwar Mehta

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

**ORAL JUDGMENT**

**Date: 05-07-2018**

Heard the learned Advocates for the appellants and the  
State.

2. The appellants, viz. Ram Dayal Das and Gambhira  
Das have been convicted under Sections 304B/34 and 201/34 of the  
Indian Penal Code by the judgment dated 03.12.2016 passed by the  
learned Xth Additional Sessions Judge, Muzaffarpur in S.Tr. No. 547  
of 2013/ 343 of 2014, arising out of Paroo P.S. Case No. 09/2012 and  
by the order dated 05.12.2016, they have been sentenced to undergo  
R.I. for ten years and R.I. for three years respectively for the offences  
under Sections 304B/34 and 201/34 of the Indian Penal Code. They  
have also been directed to pay a fine of Rs. 10,000/- for the offence  
under Section 201/34 of the Indian Penal Code and in default of



payment of fine, to further suffer S.I. for six months; the sentences however having been ordered to run concurrently.

3. Appellant no. 1 is the husband of the deceased whereas appellant no. 2 is the father-in-law of the deceased. Both the appellants are alleged to have killed the deceased by strangulating her and thereafter, burying the dead body beneath sand in the same village for concealing and screening the offence.

4. Hari Kishore Thakur, the learned Advocate for the appellants, while assailing the judgment and order of conviction, has submitted that but for the father of the deceased (P.W. 5), none of the relatives of the deceased have supported the prosecution version. He has further argued that the prosecution has not been able to establish that there is demand of dowry and resultant torture because of non-fulfillment of the same, soon before the death of the deceased. Additionally, it has been argued that the story of the dead body having been dug up by the informant from beneath the sand/mud is not borne out by the records or the evidence. Neither the inquest report nor the post-mortem report refers to the dead body having been put at least for sometime beneath the mud. That apart, the learned counsel for the appellants has further stressed the point that it is a case of homicidal death but all the evidence, collected during the course of trial, unerringly points towards the deceased having committed suicide



because of her being mentally upset. The investigation of the F.I.R. did not reveal anything and precisely for this reason, only appellant no. 1, viz. Ram Dayal Das, who is the husband of the deceased was charge-sheeted. Later, a supplementary charge-sheet against appellant no. 2, viz. Gambhira Das was submitted. In the aforesaid supplementary charge-sheet, all other accused persons, viz. the other family members of the appellants were not sent up for trial. The learned Magistrate, differing with the police report, took cognizance against all the accused persons and hence, all of them, including the appellants, were put on trial. However, the trial court did not find any merit in the prosecution of the other accused persons and consequently, all of them were acquitted. The mother of the deceased also has not supported the prosecution version. Lastly, it has been argued that no evidence could be gathered to demonstrate that the deceased died within seven years of her marriage and in that circumstance, the conviction of the appellants under Section 304B of the Indian Penal Code was not justified. Rightly, it has been argued, no conviction has been recorded under Section 302 of the Indian Penal Code for the reason that there is no evidence regarding the killing the deceased.

5. In order to appreciate the contention of the appellants, it would be first necessary to refer to the F.I.R., which has



been lodged by the father of the deceased.

6. Janak Das (P.W. 5) has lodged the F.I.R. alleging that he had married his daughter, viz. Manorama Devi (deceased) to appellant no. 1 in accordance with Hindu Religious rites and at the time of marriage, sufficient gifts, by way dowry, was given. The daughter of the informant delivered a son. After about six months of the marriage, appellant no. 1 started demanding of Rs. 25,000/- and a buffalo. Because of such demand, a Panchayati was held. The informant (P.W. 5), because of his straitened financial circumstance did not pay up Rs. 25,000/-. On 24.01.2012, he was telephonically informed that his daughter has been killed and the dead body has been buried. On such information, P.W. 5 along with his co-villagers went to the matrimonial home of the deceased and started looking for the dead body of his daughter. Near the northern side of the river flowing in the village, there was a fresh collection of earth. This made the informant suspicious and after removing the earth, the informant found the dead body of his daughter. It was therefore asserted by him that the appellants and others have killed his daughter and in order to screen the evidence, buried the dead body beneath the ground.

7. On the basis of the aforesaid written report, a case vide Paroo P.S. Case No. 09/2012 dated 24.01.2012 was instituted for investigation for the offences under Sections 304 (B), 302, 201 and 34



of the Indian Penal Code as has been noted earlier and all the accused persons, including the appellants, were put on trial.

8. The learned trial court, after examining 12 witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

9. Ranglal Sharma and Raghunath Bhagat, who hail from the village of the appellants and have been examined as P.Ws. 1 and 2, have not supported the prosecution version and have been declared hostile.

10. Ashok Kumar (P.W. 3) has, though, deposed before the trial court that he was informed on telephone about the death of the deceased and also came to learn that the police had visited the village and had taken the dead body for post-mortem but did not make any other statement which could have brought home the charges of murder of the deceased for the purposes of non-fulfillment of dowry. In cross-examination, he has admitted that none of the accused persons, including the appellants, ever demanded dowry from the parents of the deceased.

11. Sunil Kumar, a cousin of the deceased and a witness to the F.I.R., has been examined as P.W. 4. He has denied any knowledge about the occurrence and has stated that though he had signed the F.I.R. but was not aware of the contents of the same. He



has disclosed his relationship with the deceased and the informant and has stated that at the instance of P.W. 5, who is the uncle of this witness, the case has been lodged.

12. P.Ws. 7 and 8, viz. Basudeo Mahto and Parma Bhagat have also not supported the prosecution version and have been declared hostile.

13. Chandra Bhushan Singh (P.W. 9) is a hearsay witness who came to learn about the death of the deceased by hanging. He went the place of occurrence and found the dead body but did not find the appellants. He has admitted in his cross-examination that the deceased was mentally unstable and the other persons, who were made accused in this case, were not related to the appellants or the deceased.

14. What is seriously disturbing is that even the mother of the deceased, viz. Saraswati Devi, who has been examined as P.W. 10, has not supported the prosecution case. She has stated that the marriage had taken place about 13 to 14 years ago. About the cause of the death, the aforesaid witness has expressed his complete ignorance and has also categorically denied that there was any demand of dowry by the appellants.

15. The father of the deceased, who is the informant of this case, has been examined as P.W. 5. He has supported the



prosecution version but has stated in his examination-in-chief that after the marriage, no demand of dowry was ever made by the appellants. He searched for the dead body of his daughter and found the same beneath the sand. He exhumed the dead body and informed the police, who came to the place of occurrence and recorded his statement. He had brought the dead body after the post-mortem for the purposes of cremation.

16. The doctor, who conducted the post-mortem of the deceased, has been examined as P.W. 6. He has found ligature mark over the neck of the deceased spreading between the chin and the thyroid cartilage. The circle was found to be complete. On dissection of the subcutaneous tissues, the muscles under the ligature mark was found to be lacerated. Time of death has been fixed at 24 to 36 hours from the time of the post-mortem. In the opinion of P.W. 6, the death was due to asphyxia because of ante-mortem strangulation. In his cross-examination, P.W. 6 has stated that normally, in a case of hanging, the trachea is not fractured and there is an irregular ring around the ligature mark.

17. What strikes the attention of this Court is that neither the I.O. nor the witness to the inquest, viz. P.W. 11, who is none-else but the uncle of the deceased`` has stated anything which would lend credence to the prosecution version that the dead body



was dug up from beneath the sand by the informant. The inquest report also does not show that there was any mud or sand on the body of the deceased. Had it been the case and if the testimony of P.W. 5 was correct that after the recovery of the dead body from beneath the sand, police was informed when it came to the P.O. for recording the F.I.R. of P.W. 5, it would surely have been mentioned in the F.I.R. Surprisingly, P.W. 11, who is the witness to the inquest and is an uncle of the deceased, has only deposed that the deceased was suffering from mental illness and had committed suicide. What further appears from the deposition of the witnesses is that the informant was apprised of the death of the deceased. Though P.W. 5 has taken care in not disclosing the name of the person, who informed him about the death of the deceased but the fact remains that he knew about the death. None of the witnesses have spoken about any demand of dowry or consequent torture. The evidence with respect to demand of dowry and consequent torture therefore is absolutely missing; thus, making the prosecution case absolutely doubtful as far as offence under Section 304B of the Indian Penal Code is concerned. Rightly and justifiably, no conviction has been recorded under Section 302 of the Indian Penal Code as there is no evidence of killing the deceased. Nobody had seen the occurrence nor anybody has claimed to have learnt that the deceased was done to death. No doubt, the post-mortem



report speaks of homicidal death but the possibility of the deceased having committed suicide also is not completely overruled. The mother of the deceased not supporting the prosecution version of demand of dowry, makes the prosecution version even more suspect. Normally, mother of the deceased would be the first person to know whether her daughter is being kept properly in her matrimonial home or not, as more often than not, married daughters confide in their mothers. Even with respect to application of Section 304B of the Indian Penal Code, the prosecution has not been able to clearly establish and demonstrate that the death took place within seven years of marriage. The informant/father of the deceased does not refer to the year of marriage and other witnesses have spoken about the marriage of the deceased having taken place more than seven years ago. The death within seven years of marriage not having been established, the offence should have been tried only under Section 302 of the Indian Penal Code and not under Section 304B of the Indian Penal Code. There is no charge under Section 306 of the Indian Penal Code also. The appellants have not spoken anything under 313 Cr.P.C. statement except for their simple denial of the occurrence but that by itself cannot be read against them in the present circumstances.

18. Regard being had to the aforesaid facts, it is therefore difficult to sustain the conviction of the appellants under



Section 304B of the Indian Penal Code or for that matter, under Section 201 of the Indian Penal Code, even with the add of Section 34 of the Indian Penal Code. It is very unfortunate that the deceased died at a young age but the cause of death still remains unascertained.

19. For the aforesaid facts, the judgment and order of conviction is set aside and the appeal is allowed.

20. Appellant no. 1 is in custody. He is directed to be released forthwith from jail, if not wanted in any other case. Appellant no. 2 is on bail. He is discharged from his liabilities of bail bonds.

21. A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

**(Ashutosh Kumar, J.)**

Rakhi

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