

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.249 of 2018

Arising Out of PS. Case No.-49 Year-2011 Thana- KESARIA District- East Champaran

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{Against the Judgment of acquittal dated 06.12.2017 passed by the Presiding Officer, Fast Track Court No.1, East Champaran, Motihari, in Sessions Trial No.781 of 2012}.

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Munna Sah, son of Saheb Sah, resident of village-Sahebganj, P.S. Sahebganj, District-Muzaffarpur.

... .. Appellant.

Versus

1. The State of Bihar.
 2. Shatrughan Sah, son of Wakil Sah.
 3. Raj Kumari Devi alias Raj Kali Devi, wife of Wakil Sah.
 4. Wakil Sah, son of Late Ram Charitar Sah.
- All resident of village-Trilokwa, P.S. Kesariya, District-East Champaran.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Binit Kumar, Advocate.
		Mr. Rakesh Ranjan, Advocate.
For the State	:	Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 11-04-2018

Heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State.

2. The appellant has preferred this criminal appeal against the Judgment of acquittal dated 06.12.2017 passed by the Presiding Officer, Fast Track Court No.1, East Champaran, Motihari, in Sessions Trial No.781 of 2012 by which and



whereunder he acquitted the respondent nos.2, 3 and 4 of the charges framed against them for the offences under Sections 304-B, 201, 120-B and 302 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act on the ground that the prosecution could not succeed to prove the charge against them.

3. The appellant lodged Kesaria P.S. Case No.49 of 2011 against the respondent nos.2, 3 and 4 to this effect that his sister was married with the respondent no.2 but she was subjected to cruelty and harassment on account of non-fulfillment of the illegal demand of dowry and, subsequently, she was set on fire, as a result whereof she died on 17.04.2011.

4. The respondents no.2, 3 and 4 were put on trial and stood charged for the offences punishable under Sections 304-B, 201, 120-B and 302 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

5. In course of trial, several witnesses were examined and except the appellant, who was examined before the trial court as P.W.5, not a single prosecution witness supported the prosecution case.

6. The learned trial court, after analyzing and scrutinizing the evidences, available on the record, came to the conclusion that the prosecution failed to prove the ingredients of



Section 304-B of the Indian Penal Code and also failed to prove the charge framed under Section 302 of the Indian Penal Code as there was no eye witness of the so-called killing of the deceased nor there was any circumstantial evidence to establish the involvement of the respondents no.2, 3 and 4. The learned trial court also acquitted the above stated respondents of the remaining charges on the above stated grounds.

7. Learned counsel for the appellant assailed the impugned Judgment of acquittal, arguing that the prosecution successfully proved all the ingredients of Section 304-B of the Indian Penal Code but, even then, the learned trial court acquitted the above stated respondents of the charge framed under Section 304-B of the Indian Penal Code. He further submitted that the learned trial court misconstrued the provisions of Section 304-B of the Indian Penal Code but from perusal of the impugned Judgment, we find that the prosecution could not prove the date and year of the marriage of the deceased before the trial court in course of trial and, furthermore, the prosecution also could not succeed to prove that the deceased was subjected to cruelty soon before her death and, therefore, we, too, are in agreement with the findings of the trial court that the prosecution could not succeed to prove all the



ingredients of Section 304-B of the Indian Penal Code. It is settled law that in absence of any one of the ingredients of Section 304-B of the Indian Penal Code, the conviction cannot be passed for the offence punishable under Section 304-B of the Indian Penal Code. So far as Section 302 of the Indian Penal Code is concerned, the learned trial court after discussing the evidences, available on the record, clearly held that the prosecution failed to produce even a single eye witness and also failed to bring the circumstantial evidence on record on the basis of which it can be said with certainty that it were the respondent nos.2, 3 and 4, who committed the murder of the deceased and, therefore, there is no scope to interfere into the impugned Judgment of acquittal.

8. Accordingly, this criminal appeal along with I.A. No.941 of 2018, which has been filed for grant of leave, stand dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2018.
Transmission Date	18.04.2018.

