

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 953 of 2013

Arising Out of PS. Case No.-50 Year-2011 Thana- Kharik District- Bhagalpur

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Ajit Poddar son of Shankar Poddar, resident of Village- (Navtolia)
Bharanipur, Vishpuriya, Naya Tola, Police Station- Kharik, District-
Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 874 of 2013

Arising Out of PS. Case No.-50 Year-2011 Thana- Kharik District- Bhagalpur

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- 1. Shankar Poddar, son of Late Bhuvneshwar Poddar.
- 2. Mina Devi wife of Shankar Poddar
Both are resident of Village Bhavanpura Naya Tola, Police Station
Kharik, District - Bhagalpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

=====

with

CRIMINAL APPEAL (DB) No. 918 of 2013

Arising Out of PS. Case No.-50 Year-2011 Thana- Kharik District- Bhagalpur

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Sujeet Poddar, Son of Shankar Poddar, resident of Village- Bhavanipur
Vishpuriya, Naya Tola, Police Station- Kharik, District- Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :
(In CRIMINAL APPEAL (DB) No. 953 of 2013)



with

(In CRIMINAL APPEAL (DB) No. 874 of 2013)

with

(In CRIMINAL APPEAL (DB) No. 918 of 2013)

For the Appellants : Mr. Ajit Kumar Ojha, Advocate
Ms. Nutan Mishra, Advocate
Mr. Pranjal Kumar, Advocate

For the Resp./State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 16-05-2019

Appellants in aforesaid three appeals were tried together and by common judgment, they were convicted and sentenced in Sessions Trial No. 692 of 2011/Sessions Trial No. 692A of 2011 and as such, all the three appeals were taken up together under the heading "For Hearing" and are being disposed of by this common judgment.

2. All the appellants by judgment dated 06-08-2013 were held guilty and convicted under Sections 304B/120B and 201 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By order dated 20-08-2013, Ajit Poddar (appellant in Cr.App.DB No. 953/13) under Sections 304B r/w 120B of the I.P.C. has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- (five thousand). In case of



default in payment of fine, he was directed to further undergo rigorous imprisonment for six months. Other appellants i.e. Shankar Poddar, Mina Devi (both appellants in Cr.App.DB No. 874/13) and Sujit Poddar (sole appellant in Cr.App.DB No. 918/13) under Sections 304B/120B of the I.P.C. by the same order i.e. order dated 20-08-2013 have been directed to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- (five thousand) each. In case of default in payment of fine, they were directed to further undergo rigorous imprisonment for six months. By the same order i.e. order dated 20-08-2013, under Section 201 of the I.P.C., appellants in aforesaid three appeals were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- (five thousand) each. In case of default in payment of fine, they were directed to further undergo rigorous imprisonment for six months. The judgment of conviction and sentence has been passed by Sri Devendra Prasad Keshri, learned 4th Additional Sessions Judge, Naugachia, District - Bhagalpur (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 692/2011 & Sessions Trial No. 692A/2011 (arising out of Kharik P.S. Case No. 50 of 2011).



3. Short fact of the case is that on 22-02-2010, a complaint petition was filed, vide Complaint Case No. 102 of 2011, by Sri Kailash Poddar (P.W.3) arraying aforesaid four appellants and one Amit Poddar as accused. In the complaint petition, it was alleged that complainant's daughter namely Mamta Devi (deceased) was married on 27th February, 2009 with Ajit Poddar (appellant in Cr.App.DB No. 953/13). The marriage was solemnized under the Hindu rituals and after the marriage, the complainant's daughter went to her in-laws' house and stayed for about five days. Subsequently, with her husband she returned back to her parental house. Again after 15 days, she alongwith her husband went to her in-laws house, where complainant's daughter remained continuously for one year. During the said period, the daughter of the complainant was administered torture and she was asked to bring Rs. 1,00,000/- (one lack), colour T.V. and motorcycle from her parents. The complainant's daughter was regularly telling that in her marriage, her parents had already spent huge amount and gifted articles of several lacks and it was not possible to fulfill the demand. Due to said reason, the complainant's daughter was regularly being tortured by her husband, देवर (younger brother of her husband), mother-



in-law, father-in-law etc. and she was not being provided proper food and clothes and they were also assaulting her. The complainant disclosed that such information was being sent by his daughter to her parents and other relatives and thereafter, the complainant with his father-in-law and brother-in-law went to the house of the accused on 02-12-2010 and tried to persuade them not to do the same thing, but the accused persons, in presence of those persons, had reiterated regarding the demand of dowry. When all the persuasion went in vain, the complainant's daughter namely Mamta Devi told that the accused persons were planning to kill her due to non-fulfillment of demand of dowry and on number of occasions, she was assaulted. At the time, while the daughter of complainant was returning back weepingly, she had explained all these things before the neighbours. Since the complainant was having some urgent work, he with his other relatives returned back. On 15-01-2011, while the complainant returned back, his daughter telephonically informed him regarding assault and torture given by Sujit Poddar (appellant in Cr.App.DB No. 918/13). On 13th February, 2011, Ajit Poddar (appellant in Cr.App.DB No. 953/13) over mobile had threatened the complainant that if the demand of dowry is not fulfilled, his



daughter will be killed and her dead body will be thrown and he (Ajit Poddar) would solemnise second marriage. The complainant again tried to persuade him, but on 14th February, 2011 at 4:00 hrs. in the evening, all the accused persons conspiring with each other by sprinkling kerosene oil on the daughter of complainant ignited her and she was done to death by burn injury and with a view to conceal the evidence, the dead body of Mamta Devi was wrapped with sand filled bag and it was thrown in Koshi river. The complainant explained that the said occurrence was seen by number of persons. The complainant in its complaint petition has further stated that the complainant was informed by Sujit Poddar (appellant in Cr.App.DB No. 918/13) through mobile phone and he (complainant) was threatened that if any case is filed, no one would be spared. The complainant after getting such information reached the house of the accused persons, then the neighbours informed him about the occurrence and accused persons had fled away from the house. The complainant did not find his daughter in the house nor he could notice any accused persons in the house. The complainant thereafter informed local police station and also senior police officer, however; no case was instituted. The reason for delay in filing complaint was given that from



15-02-2011 to 21-02-2011, there was strike of Advocates of the court. The said complaint petition on the same date i.e. on 22-02-2011 was referred to the Kharik Police Station by the learned Addl. Chief Judicial Magistrate, Naugachia (hereinafter referred to as 'A.C.J.M.') for its institution and investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'). Thereafter, on the basis of said complaint, on 14-03-2011, a formal F.I.R., vide Kharik P.S. Case No. 50 of 2011, was registered under Sections 304(B)/498(A)/201/120(B) of the I.P.C. and Sections 3/4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as 'D.P.Act') against all the aforesaid four appellants including one Amit Poddar, son of Shankar Poddar (appellant-1 in Cr.App.DB No. 874/13).

4. After registering the case, investigation was done and thereafter, on 21-06-2011 chargesheet was submitted against Sujit Poddar (appellant in Cr.App.DB No. 918/13) showing other F.I.R. named accused persons as absconder. After submission of chargesheet, on 26-06-2011 the learned A.C.J.M. Naugachia took cognizance of the offence. On 04-07-2011, the case of all the five F.I.R. named accused was committed to the



court of sessions and it was numbered as Sessions Trial No. 692 of 2011. Thereafter, on 27-09-2011, charge against only accused namely Sujit Poddar (appellant in Cr.App.DB No. 918/13) was framed under Sections 304(B), 498A, 201 and 120(B) of the I.P.C. and Sections 3/4 of the D.P. Act and case of other accused persons was separated. Subsequently, on 09-11-2011 Ajit Poddar (appellant in Cr.App.DB No. 953/13) surrendered, on 02-01-2012 Mina Devi (appellant-2 in Cr.App.DB No. 874/13) surrendered and subsequently against them, charge was framed under Sections 304(B), 498A, 201 and 120(B) of the I.P.C. and Sections 3/4 of the D.P. Act. Thereafter, on 21-01-2012 Shankar Poddar (appellant-1 in Cr.App.DB No. 874/13) surrendered and on 21-03-2012 both the trials i.e. Sessions Trial No. 692/2011 and Sessions Trial No. 692 A/2011 were amalgamated.

5. During the trial, to establish its case on behalf of the prosecution, altogether five witnesses were examined. Out of five witnesses, P.W.3 Kailash Poddar is the complainant/informant and father of the deceased and P.W.2 Dharamshila Devi is the mother of the deceased. P.W.1 Umesh Yadav and P.W.4



Vedanand Yadav are independent witnesses, whereas P.W.5 Subodh Kumar is the investigating officer of the case.

6. After completion of the prosecution evidence, on 12-04-2013, the accused persons were questioned with incriminating circumstances and evidences and their statement under Section 313 of the Cr.P.C. was recorded, in which, they denied the charges. However, no defence evidence has been brought on record.

7. Sri Ajit Kumar Ojha, learned counsel appearing on behalf of the appellants, after placing entire evidence on record, has argued that the prosecution has miserably failed to establish the case as of 'dowry death', in view of cogent evidence on record, either regarding demand of dowry or administering torture on the deceased just prior to the occurrence. Sri Ojha, learned counsel for the appellants submits that P.W.1 Umesh Yadav, who during the evidence has claimed that on *hulla*, while he reached near the house of the appellants, he saw smoke coming from the house and he tried to enter into the house, which was prevented by the accused persons, but during investigation, no such fact was disclosed by him. The suggestion was given to this witness that he had approached the appellants



for demanding an amount of Rs. 5,000/- (five thousand) to say the truth, however; due to non-fulfillment of such demand, this witness P.W.1, contrary to the fact disclosed in his statement recorded under Section 161 of the Cr.P.C., has deposed, as if, he was eye-witness to the occurrence.

8. Sri Ojha, learned counsel for the appellants has also argued that it appears that daughter of the complainant/informant had not died in the house of the appellants, rather she went missing from the house of the appellants and subsequently, a false case was instituted, as if, the appellants by way of sprinkling kerosene oil on deceased has put her in flame and her dead body was disposed of. Sri Ojha has argued that it is also improbable that after committing murder of the daughter of the complainant, one of the accused can inform the complainant on mobile that they had killed his daughter and the story of threatening them appears to be not believable. He has further argued that once the complainant was having knowledge that dead body was thrown in Koshi river wrapped in a bag filled with sand, firstly the complainant/informant would have taken step to find the body in the river or the investigating officer would have taken such step, but neither the



complainant/informant nor the investigating officer has stated any fact to the extent of searching the dead body.

9. As per Sri Ajit Kumar Ojha, learned counsel for the appellants, for holding the appellants guilty for offence under Section 304(B) of the I.P.C, onus was on the prosecution to establish that soon before the death, the daughter of complainant/informant was subjected to cruelty or harassment by the accused persons regarding demand of dowry, however during the evidence, it has come, as if, the younger brother of the husband of the deceased was trying to establish illicit relation with her. Such fact certainly may not be covered, as torture, due to non-fulfillment of demand of dowry just before the death. He further submits that the prosecution has not been able to establish death of the daughter of the informant and as such, the learned Trial Judge has incorrectly passed the judgment of conviction and sentence.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor opposing the appeals has placed heavy reliance on the evidence of P.W.1 namely, Umesh Yadav. He submits that Umesh Yadav (P.W.1) was residing within the jurisdiction of same police station where accused persons were residing. While he was teaching



children, he heard the हल्ला (*hulla*) and then he reached near the house of the appellants, where he saw about 25 female had assembled there. He was informed by them that the daughter of complainant/informant was put on flame by the accused persons. This witness has stated that he had seen smoke coming from the house of the accused and he wanted to enter the house, but he was prevented by the accused persons. According to Sri Mishra, learned Addl. Public Prosecutor, the evidence of P.W.1 is itself sufficient to show that it was a case of dowry death.

11. Sri Mishra, learned A.P.P. further submits that mother and father of the deceased, who have been examined as P.W.2 and P.W.3 respectively, have elaborately stated that the deceased died within seven years of marriage and she was being regularly tortured due to non-fulfillment of demand of dowry by the accused persons. He has also referred to evidence of P.W.4, who is another independent witness, to the extent that marriage of deceased with Ajit Poddar (appellant in Cr.App.DB No. 953/13) was solemnized two years before the occurrence and she died in the house of the appellants. Accordingly, Sri Mishra submits that the judgment of conviction and sentence has rightly



been passed by the learned Trial Judge, which requires no interference.

12. Besides hearing learned counsel for the parties, we have examined entire evidence on record, however; before recording finding, it would be necessary to discuss the evidence, which has been brought on record.

13. In this case, P.W.1 Umesh Yadav, resident of village - Vishpuriya, P.S. Kharik, District - Bhagalpur has stated that on 14-02-2011 at about 04:00 hrs. in the evening, in his house, while he was teaching some children, he heard *hulla* and when he came to know that in the house of Shankar Poddar (appellant-1 in Cr.App.DB No. 874/13), fire has taken place, then he went to the house of Shankar Poddar and inside house, he saw smoke. The daughter-in-law of Shankar Poddar was in flame. Just opposite the house of the appellant Shankar Poddar (in Cr.App.DB No. 874/13), about 25 females were present, from whom, he got information that due to non-fulfillment of demand of dowry of Rs. One lakh, color T.V. and motorcycle, she was set on fire. He further stated that Sujit, Ajit and Sumit (all sons of Shankar Poddar) prevented him from entering the house. He further stated that alongwith three accused persons, their mother



and father were also there. He further stated that smell of kerosene oil was coming. He disclosed the name of daughter-in-law of Shankar Poddar and Mamta Devi (both appellants in Cr.App.DB No. 874/13), who was married with Ajit Poddar (appellant in Cr.App.DB No. 953/13). In paragraph-3, in his evidence, he stated that after seeing those things, he returned back to his house and after one & half hour, one vehicle (हाफ डाला) arrived and thereafter, all the aforesaid accused persons loaded Mamta Devi (deceased) and went somewhere else. He further stated in the same paragraph that subsequently he came to know that injured was not carried to hospital and dead body of deceased Mamta Devi has not been recovered till date. In paragraph-5 of his cross-examination, he stated that he was graduate and he was alone (bachelor) and he was doing private tuition. Attention of this witness was drawn to his previous statement recorded under Section 161 of the Cr.P.C. in paragraph-9 of his cross-examination, this stand was got contradicted at the time of examination of investigating officer i.e. P.W.5. in his evidence in paragraph-15 (at page 38-39) that Umesh Yadav/P.W.1 had not stated that he had seen the daughter-in-law of Shankar Poddar (Appellant-1 in Cr.App.DB



No. 874/13) while she was burning in flame. This witness (P.W.1) has also not stated before him (I.O.) that he was prevented by accused persons in entering the house of the appellants. The investigating officer further stated that before him, P.W.1 had not stated that while he returned to his house, after one and half hour on a vehicle, Mamta (deceased) was carried by all the accused persons and they disappeared the dead body. On examination of evidence of investigating officer (P.W.5), there is no reason to believe that this witness (P.W.1) can be relied upon.

14. P.W.3 Kailash Poddar (complainant/informant and father of the deceased) in his evidence has stated that occurrence had taken place on 14-02-2011 in the evening at 04:00 hrs. He deposed that he was telephonically informed by Sujit Poddar (appellant in Cr.App.DB No. 918/13), who is brother of his son-in-law Ajit Poddar (appellant in Cr.App.DB No. 953/13) that he with Ajit, Sujit, Amit, Shankar Poddar and his wife Mina Devi all by way of sprinkling kerosene oil on Mamta Devi had set her on fire and she was done to death by burn injury and her dead body was thrown in river. This witness further stated that he was also threatened by Sujit Poddar (appellant in Cr.App.DB No. 918/13)



not to make any complaint. On getting said information, the complainant/informant from Delhi straightway came to in-laws house of his daughter, where he noticed that the door of Shankar Poddar (A-1 in Cr.App.DB No. 874/13) was locked and he stayed there for 20-25 minutes, however; he did not see his daughter and on enquiry, Umesh Yadav (P.W.1) and other neighbours told him that Shankar Poddar (A-1 in Cr.App.DB No. 874/13), his wife Mina Devi (A-2 in Cr.App.DB No. 874/13) and others jointly by way of sprinkling kerosene oil and igniting had killed his daughter and thrown the dead body in river. He was further informed by them that his daughter was tortured by the accused persons. The marriage of his daughter was solemnized on 27-02-2009 with Ajit Poddar (App. in Cr.App.DB No. 953/13), son of Shankar Poddar (A-1 in Cr.App.DB No. 874/13). In paragraph-4, he stated that he informed Kharik Police Station regarding the occurrence, however Darogaji did not lodge case, then on 18-02-2011 he came to court, but there was strike of Advocates from 16-02-2011 to 21-02-2011 and as such, on 22-02-2011 he filed a complaint case in Naugachia court, which was sent to Kharik police station. He identified his signature on the complaint petition, which was marked as Ext.1. In paragraph-



5, he further stated that before the occurrence, his deceased daughter was telling that accused persons, due to non-fulfillment of demand of dowry of Rs. one lack, colour TV and motorcycle, were assaulting her and torturing her. In paragraph-7 of his cross-examination, he stated that on 14-02-2011 in the evening at 06:00 hrs. he got information. The information was given on mobile of his son. On 15-02-2011 by Vikramshila Train from Delhi, he proceeded to Bhagalpur. On 16-02-2011 in the night at 09:00 PM, he got down at Bhagalpur, since train was delayed. He stayed in Bhagalpur itself and thereafter in the morning, he came to Naugachia and he reached Kharik. Firstly, he went to the house of Shankar Poddar in Kharik. He went there on foot. It was about 4:00 PM. He informed his father-in-law, who was residing in village Puraini, which was about 25 kilometer away from Kharik, then with his father-in-law, he went to the in-laws house of his daughter. The name of his father-in-law was Suresh Poddar (not examined). In paragraph-10 of his cross-examination, P.W.3 stated that on 17th February, 2011 from Kharik Station, he had given telephone call to his father-in-law Suresh Poddar, with him, he firstly went to the in-laws house of his daughter and reached at 04:00 PM, where he saw that house



was locked and after inquiring from neighbours, he directly went to Kharik police station and reached Kharik police station at 05:00 PM and orally informed the police, however case was not instituted. In paragraph-10 he further accepted that neither oral nor in writing, he informed S.P. or D.S.P. In paragraph-11 of his cross-examination, he further stated that regarding information given by his daughter, reiterating the demand of dowry, he had never given any information to anyone. In paragraph-12 of his cross-examination, he stated that he did not try to search the dead body in Koshi river. In paragraph-14 of his cross-examination, he denied the suggestion that his daughter died in Delhi and he has falsely lodged the present case with a view to extort money.

15. P.W.2 Dharmshila Devi is the mother of the deceased. She too deposed almost in similar manner like P.W.3, however in paragraph-3 of her evidence, she stated that one month prior to the date of occurrence, her daughter had informed that Sujit Poddar (appellant in Cr.App.DB No. 918/13) younger brother of husband of her daughter was trying to establish illicit relation with her daughter, which was being opposed by her and this was the reason that her daughter was assaulted. In



paragraph-5 of her cross-examination, she stated that she was residing in Delhi since five year with her husband and her other family member. In paragraph-8 of her cross-examination, she stated that her son-in-law Ajit Poddar (appellant in Cr.App.DB No. 953/13) was having fields and he was agriculturist. Shankar Poddar (A-1 in Cr.App.DB No. 874/13) was having two *bigha* of land. She stated that for about 15 days, her son-in-law stayed at her house, but he had not demanded anything. Five days after her daughter stayed in her in-laws house and when she returned, at that very time also, she did not say about the demand of dowry. In paragraph-13 of her cross-examination, she stated that on 14-02-2011, Sujit (App.in Cr.App.DB No. 918/13) over telephone had informed, however; after getting that information, she had not initiated any proceeding. In paragraph-18, she admitted that she was not having any evidence regarding demand of dowry nor any case was instituted. Attention of this witness was drawn to her previous statement in paragraph-20 of her evidence and the investigating officer/P.W.5 in paragraph-14 has stated that this witness had not stated that Sujit (appellant in Cr.App.DB No. 918/13) on mobile had informed that he had sprinkled kerosene oil on her daughter and killed her. In



paragraph-16, he (P.W.5) deposed that she (P.W.2) was not knowing any neighbour nor she had any talk with any neighbour of the accused persons, however; P.W.3/her husband in his evidence has stated that he had inquired regarding the occurrence and thereafter, he proceeded to police. This witness (P.W.2) was also given suggestion that the said case was instituted for extortion of money, which was denied by her.

16. P.W.4 Vedanand Yadav, who is resident of village Vishpuriya in his evidence has stated that Ajit Poddar (appellant in Cr.App.DB No. 953/13) was married with the daughter of complainant/informant Kailash Poddar about two years back from the date of occurrence and her death had occurred in her in laws house, however; in paragraph-3 of his cross-examination, he admitted that he had not seen the occurrence.

17. P.W.5 Subodh Kumar on 14-03-2011 was officer incharge of Kharik Police Station and he proved the formal F.I.R. which was marked as Ext.2 and his signature on formal F.I.R. which was marked as Ext.2/1. He stated that on 14-03-2011 he had drawn a formal F.I.R. on the basis of Complaint Case No. 102 of 2011. After registering F.I.R., he took up investigation himself and during investigation, he recorded re-statement of



complainant/informant (P.W.3) and also examined Dharmsheela Devi (P.W.2) and thereafter, he visited the place of occurrence, which was the house of Shankar Poddar (A-1 in Cr.App.DB No. 874/13) in the village Vishpuriya (Naugachia). He noticed that on the main door, there was a lock and accused persons were absconding. In paragraph-3 of his evidence, he has explained the place of occurrence. During investigation, he recorded statement of Umesh Yadav (P.W.1), Police Yadav, Suresh Yadav and Solanki Devi (all not examined). He also examined Vedanand Yadav (P.W.4) and Vikash Kumar (not examined). In paragraph-8 of his cross-examination, he stated that though occurrence had taken place on 14-02-2011, as stated in complaint petition, however even after such heinous crime, neither chowkidar nor any local person had given any information to the police station. However during investigation, he had not inquired either from Mukhiya or Sarpanch regarding the occurrence. In paragraph-10 of his cross-examination, he stated that on 14-03-2011, he had inspected the place of occurrence. The house was not having any boundary wall, however he had not prepared any seizure list of any article from the place of occurrence. In paragraph-12 of his cross-examination, he has stated that regarding torture for



dowry, no complaint was made by the complainant/informant. While he reached the place of occurrence, on the door of the house, there was a lock. With the help of neighbours, from the back door, he entered into the house. In paragraph- 14, 15 and 16 he has stated regarding the fact stated by P.W.2 (Dharmshila Devi), P.W.1 (Umesh Yadav) and P.W.3 (Kailash Poddar) respectively in their statement. In paragraph-17 of his cross-examination, he has admitted that he had not recorded any statement of either of the accused persons. On examination of evidence of the investigating officer, it is evident that he had not bothered even to examine accused persons to ascertain the fact regarding disposal of the dead body nor he has taken step for searching the dead body.

18. On examination of aforesaid evidences, it appears that prosecution has not been able to establish death of daughter of the complainant/informant, though to this extent, P.W.1 was introduced, however P.W.1 in his previous statement had not stated any such fact and during the trial, he developed the story, as if, he had seen while deceased was burning. The evidence of P.W.1, in such situation, appears to be not credible.



19. So far as application of Section 304(B) of the I.P.C., in the facts and circumstances of the present case, is concerned, we do not find any such material brought on record by the prosecution. The prosecution has not been able to establish that just prior to disappearance of the daughter of the complainant/informant, she was subjected to cruelty due to non-fulfillment of demand of dowry. Only in a vague manner, it has been stated that rupees one lack, colour T.V. and motorcycle were being demanded, however; substantively such evidence has not been brought on record.

20. In such situation, the Court is of the opinion that the prosecution has miserably failed to establish its case, particularly; regarding death of the daughter of the informant due to non-fulfillment of demand of dowry. The prosecution has also not given plausible explanation regarding non-lodging of F.I.R. directly after getting the information of the occurrence. It also appears to be not believable that once the complainant had got an information that the dead body of his daughter, with a view to conceal the evidence, was thrown in Koshi river tying with bag full of sand, then why any step was not taken to search the dead body. The evidence of investigating officer is also indicative of the



fact that no step was taken to search the so called dead body of the daughter of the complainant/informant. Since the evidence of P.W.1 is not beyond the shadow of doubt, there is difficulty in coming to the conclusion that the prosecution has proved its case beyond all reasonable doubt.

21. In view of facts and circumstances, we are of the considered opinion that the prosecution has not been able to establish its case beyond all reasonable doubt and as such, by way of extending benefit of doubt, it is desirable to interfere with the judgment of conviction and sentence.

22. Accordingly, the judgment of conviction dated 06-08-2013 and order of sentence dated 20-08-2013 passed by the learned 4th Additional Sessions Judge, Naugachia, District - Bhagalpur in Sessions Trial No. 692 of 2011/Sessions Trial No. 692A of 2011 (arising out of Kharik P.S. Case No. 50 of 2011) is, hereby, set aside and all the appellants, in aforesaid three appeals, are acquitted from all the charges.

23. Since the judgment of conviction and sentence has been set aside, Ajit Poddar {appellant in Cr.Appeal (DB) No. 953 of 2013}, who is in custody, is directed to be released forthwith, if not wanted in any other case and Shankar Poddar, Mina Devi



{both appellants in Cr.Appeal (DB) No. 874 of 2013} as well as
Sujit Poddar {sole appellant in Cr.Appeal (DB) No. 918 of 2013},
who are on bail, are discharged from the liability of their bail-
bonds.

24. All the aforesaid three appeals are allowed.

(Rakesh Kumar, J.)

(P.C.Jaiswal, J.): I agree.

(Prakash Chandra Jaiswal, J.)

Anay

AFR/NAFR	AFR
CAV DATE	09.04.2019
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