

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1635 of 2018**

Arising Out of PS. Case No.-38 Year-2017 Thana- THAWE District- Gopalganj

1. **Krishna Sah @ Krishna Gond**, son of Late Dukhi Sah,
2. **Ram Sakhi Devi**, wife of Krishna Sah @ Krishna Gond, Both are resident of Village- Udant Rai Ke Bangra, P.S. Thawe, District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 2245 of 2018

Arising Out of PS. Case No.-38 Year-2017 Thana- THAWE District- Gopalganj

Prabhu Nath Sah, Son of Krishna Sah @ Krishna Gond, resident of Village- Udant Rai Ke Bangra, P.S. Thawe, District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 1635 of 2018)

For the Appellant/s : Mr. Ravindra Kumar-Advocate

For the Respondent/s : Mr. Z. Hoda-A.P.P.

(In CRIMINAL APPEAL (SJ) No. 2245 of 2018)

For the Appellant/s : Mr. Ravindra Kumar-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

19-07-2019

Appellant Krishna Sah @ Krishna Gond and Ram

Sakhi Devi (Cr. Appeal (S.J.) No.1635 of 2018) and Prabhu

Nath Sah (Cr. Appeal (S.J.) No.2245 of 2018) have been found

guilty for an offence punishable under Section 304B/ 34 of the

I.P.C. and each one has been sentenced to undergo R.I. for eight



years as well as fined Rs.20,000/-, under Section 201/ 34 of the I.P.C. and each one has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for six months, additionally, with a further direction to run the sentences concurrently by the Additional Sessions Judge-VIII, Gopalganj in Sessions Trial No.04 of 2018 arising out of Thawe P. S. Case No.38 of 2017 vide judgment of conviction and order of sentence dated 24.04.2018, and in the aforesaid background, all the appeals have been heard conjointly and are being decided by a common judgment.

2. Kamal Kunwar (PW-2) filed written report on 22.03.2017 divulging the fact that her daughter Nikky Kumari (since deceased) was married with Prabhu Nath Sah about three years ago and was residing at her sasural, were subjected to torture for fulfilment of demand of dowry and in the aforesaid background, she has been murdered on 21.03.2017. After coming to know about the same, they rushed to the place and then, they came to know that after committing murder of Nikky Kumari, her dead body has been burnt. They have gone to funeral place and found the incriminating materials.

3. After registration of Thawe P. S. Case No.38 of



2017, investigation commenced and after concluding the same, charge-sheet was submitted, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither ocular nor documentary evidence has been adduced on behalf of defence.

5. Altogether five PWs have been examined and those are PW-1, Arjun Kumar, PW-2, Kamal Devi, PW-3, Ram Prasad Sah, PW-4, Ranjeet Kumar and PW-5, Shishu Pal Singh as well as also exhibited as Exhibit-1, endorsement over written report, Exhibit-2, seizure list. As stated above, nothing has been adduced on behalf of defence.

6. Heard learned counsel for the appellants as well as learned Additional Public Prosecutor. Gone through the record. From perusal of the record, it is evident that PW-1 to PW-4, they all have stated that during course of cooking, deceased caught hold of fire and on account thereof, she died. There was no demand nor she (deceased) was ever subjected to cruelty. They all have independently stated in cross-examination that the deceased was being kept at her sasural in congenial



atmosphere. Each one has got no grievance. No demand of dowry was there nor she was ever tortured on that pretext. PW-5, the I.O. as is evident, during course of inspection of the P.O., more particularly, the place where the dead body is said to have burnt, recovered some articles, which are as per seizure list (Exhibit-2) bamboo (Pasi) Pauwa of the khatia, one spade, burnt rim of tyre, ashes, small bones for which, there happens to be no evidence whether it was of female or male (by scientific examination) nor any of the witness pointed out to be the place where deceased was burnt in haphazard manner. From perusal of the judgment impugned, it is evident that irrespective of finding of the learned lower Court that witnesses were declared hostile as they failed to substantiate the prosecution case, the learned lower Court had taken into consideration the contents of the written report, which in worst case, could be used for the purpose for corroboration or contradiction and in likewise manner, statement under Section 161 of the Cr.P.C., which is also to be treated in the same manner and that being so, the judgment impugned as is evident, is not based upon the legal evidence.

7. So, from the evidence available on the record, it is evident that save and except death within seven years of



marriage on account of burn, no other ingredients are being satisfied by way of evidence having on the record produced on behalf of prosecution. That means to say, demand of dowry, torture having inflicted upon deceased on that very score, by the husband or relative of the husband.

8. Consequent thereupon, the judgment impugned is set aside. Both the appeals are allowed. All the appellants are under custody, hence are directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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