

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.116 of 2018

In
Criminal Appeal (SJ) No.3256 of 2017

Arising Out of PS. Case No.-6 Year-2015 Thana- NATWAR District- Rohtas

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Lalan Sah, S/o Late Ramdhari Sah, Resident of Village-Lurui, P.S. - Sur
yapura, District Rohtas at Sasaram.

... .. Appellant/s

Versus

1. The State of Bihar
2. Dhanji Sah, S/o Late Fagu Sah, Resident of Village- Tenuan, P.S.- Natwar,
District Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Vijay Kumar Mishra
For the Respondent/s : Smt. Abha Singh

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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 : 19-02-2019

Heard learned counsel appearing for the appellant and
learned Additional Public Prosecutor for the State, no one
appears on behalf of the respondent No. 2, who has been sent
to the judicial custody by the order of this Court, on I.A. No.
233 of 2018, filed under Section 378(3) of the Code of
Criminal Procedure, as well as on the point of admission.

Re. I.A. No. 233 of 2018

I.A. No. 233 of 2018 has been filed under Section



378(3) of the Code of Criminal Procedure seeking leave to file and pursue this appeal against the judgment of acquittal.

The appellant-applicant happens to be the father of the deceased and, therefore, he comes under the definition of victim and has right to challenge the judgment of acquittal.

In the aforesaid manner, I.A. No. 233 of 2018 stands allowed and the appellant is permitted to pursue this criminal appeal.

Re. Criminal Appeal (DB) No. 116 of 2018

1. This criminal appeal has been preferred against the impugned judgment dated 19.8.2017 passed by learned Additional Sessions Judge-VIII, Rohtas at Sasaram in Sessions Trial No. 317 of 2015, by which and whereunder the learned trial court acquitted the respondent No. 2 from the charges framed against him for the offences punishable under Sections 304-B, 323, 341, 302, 504, 506 and 498-A of the Indian Penal Code.

2. Informant Lalan Sah on 10.2.2015 gave a written report to Officer-in-Charge of Natwar Police Station, to this effect, that the marriage of his daughter was solemnised with respondent No. 2 on 22.2.2012 but on 10.2.2015 at about 4 A.M., the respondent No. 2 informed him that his daughter



died after consuming poison. He claimed in his written report that respondent No. 2 used to torture his daughter, as a result whereof, his daughter died after consuming poison.

3. On the basis of aforesaid written report Natwar P.S. case No. 06/2015 was registered and formal first information report for offences punishable under Sections 341, 323, 504, 506, 498-A and 304-B of the Indian Penal Code was drawn up against the respondent No. 2.

4. The police after investigation submitted charge-sheet for the above stated offences and, accordingly, the respondent No. 2 was put on trial and he stood charged for the offences punishable under Sections 304-B, 323, 341, 302, 504, 506 and 498-A of the Indian Penal Code.

5. In course of trial, prosecution examined, altogether, six prosecution witnesses and got exhibited some documents. The statement of respondent No. 2 was recorded under Section 313 of the Code of Criminal Procedure in which he reiterated his innocence.

6. The learned trial court after evaluating the evidences available on the record came to conclusion that prosecution could not succeed to prove its case beyond all shadows of reasonable doubt.



7. Learned counsel appearing for appellant submits that the learned trial court failed to appreciate the evidences in its right perspective and also failed to take notice of this fact that informant as well as other material witnesses, specifically, stated that deceased was subjected to cruelty and harassment soon before her death on account of non-fulfillment of demand of a cow in dowry. He submits that, admittedly, deceased died within seven years of her marriage in other than the normal circumstances but learned trial court held that the death of deceased was not other than normal circumstances, which is a fact against the material available on the record. He submits that the Investigating Officer had sent viscera for chemical examination to Forensic Science Laboratory but the learned trial court did not take any step to obtain the report of Forensic Science Laboratory and passed the judgment of acquittal holding that the prosecution could not succeed to prove that the death of the deceased was unnatural.

8. He further submits that it is the prosecution case that deceased came to her *sasural* on 9.2.2015 and on the very next date, her dead body was found at her *sasural* and, therefore, the aforesaid fact, clearly, goes to show that it was respondent No. 2, who committed the murder of the deceased



due to non-fulfillment of his illegal demand but the learned trial court failed to take note of all the above stated circumstances and wrongly acquitted the respondent No. 2 from the charges framed against him.

9. On the other hand, learned Additional Public Prosecutor submits that the learned trial court has passed a well discussed judgment and the learned trial court noted down that the essential ingredients of Section 304-B of the Indian Penal Code were missing. He further submitted that learned trial court also noted down that the prosecution witnesses improved their statements during course of trial. He further submits that, admittedly, viscera report was not produced before the trial court and the doctor could not succeed to ascertain the cause of death of the deceased, therefore, in the aforesaid circumstance, the learned trial court rightly passed the judgment of acquittal.

10. Having heard the contentions of both the parties, we went through the impugned judgment as well as Lower Court Records. In our view, this criminal appeal can be disposed of at the admission stage itself.

11. Admittedly, Natwar P.S. Case No. 06/2015 for the offences punishable under Sections 341, 323, 504, 506,



498-A and 304-B of the Indian Penal Code was registered on 10.2.2015 on the basis of written report given by P.W. 4. The P.W. 4 has identified his signature on written report, which has been marked as Ext. 1. The written report of P.W. 4 goes to show that he has, nowhere, stated in the aforesaid written report that any demand was made by respondent No. 2 from him either prior to marriage, at the time of marriage or after his marriage. Therefore, it is obvious that one of the important ingredients of Section 304 of the Indian Penal Code was missing since the very inception of the present case but even then the police registered the case under Section 304-B and other minor Sections of the Indian Penal Code. However, paragraph Nos. 9, 10 and 11 of cross-examination of P.W. 6, who is Investigating Officer of the present case, go to show that in course of investigation neither P.W. 4 (informant) nor P.W. 2 and P.W. 3 had claimed that respondent No. 2 had made any illegal demand from them but in course of trial, P.W. 2, P.W. 3 and P.W. 4 claimed that the respondent No. 2 had demanded one cow in dowry and committed the murder of deceased due to non-fulfillment of above stated illegal demand, therefore, the aforesaid fact, clearly, goes to show that P.W. 2, P.W. 3 and P.W. 4 improved their statement in course



of trial and on account of aforesaid improvement, the learned trial court doubted the statement of aforesaid prosecution witnesses on the point of illegal demand of dowry.

12. Furthermore, we find that, admittedly, the marriage of respondent No. 2 was solemnised with deceased on 22.2.2012 and deceased died on 10.2.2015, i.e., after three years of her marriage. It is also admitted position that deceased gave birth to two children out of the aforesaid wedlock before her death. The doctor, who held postmortem examination on the dead body of deceased, admitted in his deposition that he did not find any external or internal injury on the person of the deceased and, furthermore, the doctor could not succeed to ascertain the cause of death and, accordingly, he kept the viscera reserved for chemical examination. The Investigating Officer claimed in his deposition that he has sent the viscera of the deceased to Forensic Science Laboratory for examination but, admittedly, no report was produced by the prosecution before the trial court nor any prayer for calling for viscera report was made on behalf of the prosecution. Therefore, it is obvious that there was nothing on the record before the learned trial court to form an opinion that the death of the deceased was unnatural. However, we have already stated that for the



first time prosecution witnesses disclosed the fact of demand of dowry in course of trial. Apart from this, it is admitted case of the prosecution that the deceased along with respondent No. 2 had gone to her native place, where she along with her husband remain stayed for near about ten days and, thereafter, on the next day of her returning from her native place, she was found dead. The depositions of P.Ws. 2, 3 and 4 go to show that they did not say as to when deceased was assaulted and tortured by respondent No. 2, though they have made general allegation of torturing against the respondent No. 2. It is one of the most important ingredients of Section 304-B of the Indian Penal Code that the deceased must be subjected to cruelty soon before her death. To attract Section 304-B of the Indian Penal Code, the prosecution is bound to prove the above stated ingredient of Section 304 of the Indian Penal Code. In the present case, the aforesaid ingredient of Section 304-B of the Indian Penal Code is also lacking and the learned trial court has noted the aforesaid fact in his judgment. It is well settled principle of law that if two views are possible on the basis of facts and evidence, the view taken by the learned trial court shall not be disturbed unless it is shown that the view of learned trial court is absurd and perverted. In the



present case, there is nothing on the record to show that the view taken by the learned trial court is perverted and absurd and, therefore, we are of the opinion that there is no need to interfere into the impugned judgment of acquittal.

13. On the basis of aforesaid discussions, this criminal appeal stands dismissed on the admission stage itself.

14. The learned trial court is directed to release the respondent No. 2, namely, Dhanji Sah, immediately. The office communicate this judgment to the learned trial court without any delay.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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