

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.1218 of 2016**

Arising Out of PS. Case No.-30 Year-2015 Thana- SABAUR District- Bhagalpur

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Sarjan Mandal Son of Dhaneshwar Mandal, Resident of Village- Lailakh,  
P.S.- Sabour, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with  
**CRIMINAL APPEAL (DB) No. 1170 of 2016**

Arising Out of PS. Case No.-30 Year-2015 Thana- SABAUR District- Bhagalpur

- =====
1. Dhaneshwar Mandal, Son of Late Fagu Mandal,
  2. Pabiya Devi, Wife of Dhaneshwar Mandal.
  3. Sanju Devi Wife of Shrawan Mandal.
  4. Shrawan Mandal, Son of Dhaneshwar Mandal. All Resident of Village-  
Lailakh, P.S. Sabour, District- Bhagalpur.
  5. Jhuniya @ Anjani Devi @ Muniya Devi, D/o Dhaneshwar Mandal, Wife of  
Pintu Sahni, Resident of Village- Kagji Tola, P.S. Kahalgaon, District-  
Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

(In CRIMINAL APPEAL (DB) No. 1218 of 2016)

For the Appellant/s : Mr. Ajay Thakur, Advocate  
Mr. Ranjan Kumar Jha, Advocate  
Mr. Rana Pratap Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 1170 of 2016)

For the Appellant/s : Mr. Ajay Thakur, Advocate  
Mr. Ranjan Kumar Jha, Advocate  
Mr. Rana Pratap Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**



**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 15-05-2023**

We have heard Shri Ajay Thakur, learned Advocate assisted by Mr. Ranjan Kumar Jha and Mr. Rana Pratap Singh in both the criminal appeals and Mr. Binod Bihari Singh for the State and are disposing of these appeals with this common judgment.

The appellant/Sarjan Mandal has been convicted under Sections 304(B)/34, 302/34, 120(B) and 201 of the Indian Penal Code and has been sentenced to undergo R.I. for ten years for the offence Section 304(B) of the IPC; to undergo life imprisonment, to pay a fine of Rs. 5000/-, in default of payment of fine to undergo S.I. for two years under Section 302/34 of the IPC; R.I. for two years, to pay a fine of Rs. 10,000/-, in default of payment of fine to undergo S.I. for four months under Section 120(B) of the IPC and R.I. for three years, to pay a fine of Rs. 15,000/-, in default of payment of fine undergo S.I. for six months for the offence under Section 201 of the IPC *vide*



judgment of conviction dated 24.10.2016 and order of sentence dated 26.10.2016 passed in Sessions Trial No. 42 of 2016, Tr. No. 93/2016, arising out of Sabour P.S. Case No. 30 of 2015 by the learned Additional Sessions Judge-IV, Bhagalpur.

The appellants in Cr. Appeal (DB) No. 1170 of 2016 have been convicted under Sections 304(B)/34, 302/34, 120(B) and 201 of the Indian Penal Code and they have been sentenced to undergo R.I. for seven years under Section 304(B) of the IPC; to undergo imprisonment for life, appellants no. 1 to 4 to pay a fine of Rs. 30,000/- each, in default of payment of fine to undergo S.I. for one year under Section 302/34 of the IPC and appellant no. 5 to pay a fine of Rs. 5000/-, in default of payment of fine to undergo S.I. for two months in the aforesaid Section; appellants were further sentenced to undergo R.I. for two years, to pay a fine of Rs. 10,000/-, in default of payment of fine to undergo S.I. for four months under Section 120(B) of the IPC and further sentenced to undergo R.I.



for three years, to pay a fine of Rs. 15,000/-, in default of payment of fine to undergo S.I. for six months under Section 201 of the IPC *vide* judgment of conviction dated 24.10.2016 and order of sentence dated 26.10.2016 passed in Sessions Trial No. 400 of 2016, Tr. No. 133 of 2016, arising out of Sabour P.S. Case No. 30 of 2015 by the learned Additional Sessions Judge-IV, Bhagalpur.

Sarjan Mandal (Criminal Appeal (DB) No. 1218 of 2016) is the husband of the deceased, whereas appellants Dhaneshwar Mandal, Pabiya Devi, Sanju Devi, Shrawan Mandal and Jhunia @ Anjani Devi @ Munia Devi (Criminal Appeal (DB) No. 1170 of 2016) are the parents-in-law, sister-in-law, brother-in-law and sister of appellant Sarjan Mandal respectively.

All the appellants have been charged for offences under Sections 302, 304 (B), 201 with the aid of 34 of the Indian Penal Code for having killed the deceased/Bharti Devi, who was carrying a six months old pregnancy and also caused the disappearance of her dead body.



Be it noted that in Criminal Appeal (DB) No. 1218 of 2016, five witnesses have been examined in support of the prosecution but all of them except the Investigating Officer (P.W. 5) have been declared hostile; whereas in Criminal Appeal No. 1170 of 2016, out of six witnesses, Puja Devi (P.W. 4), who is the elder sister of the deceased and the Investigating Officer (P.W. 5) have supported the prosecution case and the rest of the witnesses including the informant and independent witnesses have turned hostile.

The dead body is stated to have been cremated and therefore, there is no proof of the homicidal death of the deceased.

The conviction of the appellants appear to have been recorded on the basis of two documents viz. a complaint of the year 2014 and a station diary entry of the same year, reflecting that the deceased was earlier subjected to cruelty and harassment and for some time she had gone missing also.



However, the aforementioned two documents appear to have been summoned by the Trial Court in exercise of his powers under Section 165 of the Evidence Act as also on the asking of the prosecution, which the trial Court had directed for marking the same as exhibits but the same was never marked as exhibits nor the contents of such documents were put to the appellants under Section 313 of the Code of Criminal Procedure.

With this factual background, we have proceeded to analyze the case against the appellants.

The brother of the deceased *viz.* Kundan Kumar Sahani, who has been examined as P.W. 2 in Criminal Appeal No. 1218 of 2016 and as P.W. 3 in Criminal Appeal No. 1170 of 2016 lodged the First Information Report on 19.02.2015 alleging that after the death of his parents, he had solemnized the marriage of the deceased with appellant/Sarjan Mandal in the year 2012. Right after the marriage, his sister was tortured for non-fulfillment of dowry. Appellant/Sarjan Mandal was also continuing with



an unholy relationship with his own sister-in-law which was in the know of the deceased and for which she always protested. Because of that reason also, it was alleged in the First Information Report, she was badly treated in her matrimonial home.

On 27.07.2014, the accused persons, it has been alleged in the FIR administered some intoxicant to the deceased and caused her disappearance. When the informant learnt about it, he lodged a complaint *vide* Complaint Case No. 4009 of 2014 in the court below on 01.08.2014. The deceased could anyhow extricate herself from the captivity of the accused persons and came to her maternal home whereafter a Complaint Case No. 1610 of 2014 was lodged.

During the pendency of the aforementioned complaint, the accused persons again took away the deceased to her matrimonial home after a Panchayati but the deceased was never allowed to meet her own family members.



While lodging the FIR, the informant claimed that his sister (deceased) was carrying a pregnancy of seven months. On 18.02.2015, the other married sister of the informant viz. Puja Devi, who has been examined as P.W. 4 in both the criminal appeals informed him that the accused persons have killed the deceased and have caused the disappearance of the dead body.

The informant along with his brother and villagers tried to find out the truth and in course of such inquiry, he learnt that the deceased was cremated without even informing Puja Devi, who was residing in the same village where the appellants resided.

It was further alleged by him that whenever Puja Devi told the accused persons not to ill-treat the deceased, she was also misbehaved with and on one occasion, she was assaulted also for which Sabour P.S. Case No. 234 of 2014 dated 03.08.2014 was lodged. The informant also learnt that the appellants were looking for him and Puja Devi for killing them as well.



On the basis of the aforementioned fardbeyan statement, Sabour P.S. Case No. 30 of 2015 dated 19.02.2015 was registered for investigation under Sections 304(B), 120(B), 328 and 201 of the Indian Penal Code.

The police after investigation submitted charge-sheet against the appellants, whereupon cognizance was taken and the case was committed to the Courts of Sessions for trial.

All the appellants have been charged with the offences under Sections 304, 302, 201/34 of the Indian Penal Code to which they have denied the allegation and have claimed to be tried.

The appellants have been tried in two separate Sessions Trial cases viz. Sessions Trial No. 400 of 2016/Trial No. 133 of 2016 and Sessions Trial No. 42 of 2016/Trial No. 93 of 2016 respectively.

In Sessions Case No. 42 of 2016, five witnesses were examined as noted above. Chhatish Mandal @



Chhatish Mahaldar and Sunil Mandal @ Sunil Mahaldar (P.W. 1 and 2 respectively), who are the villagers of the appellants have denied that any occurrence of the kind narrated in the FIR had taken place. They have even denied of having made any statement before the police.

However, the Investigating Officer (P.W. 5) has confirmed that both of them had stated before him that the deceased was tortured for dowry and for protesting against her husband's philanderous ways and that she had been killed.

Regrettably, Kundan Kumar Sahani (P.W. 3), the brother of the deceased has also turned *volte face* and has denied that any such occurrence took place. He has also been declared hostile.

In fact, he went to the extent of telling the trial court that the deceased had taken some abortifacient medicines. Appellant/Sarjan Mandal was very angry at his wife and he slapped her and also warned her not to take such medicine as it might affect her pregnancy adversely.



The aforementioned witnesses therefore tried to tell the court that the deceased died because of some pregnancy related complication and not at the hands of the appellants.

Similar statement has been made by Puja Devi (P.W. 4), who has also claimed complete ignorance about the occurrence. Surprisingly, in Sessions Trial No. 400 of 2016, where she has been examined as P.W. 4, she has supported the prosecution version and has said that she was married in the same village as the deceased and she was in know of the fact that the deceased was troubled in her marital home and that in this instance, the deceased was killed and her dead body was stealthily burnt without even informing her.

However, the other witnesses examined in this trial have not supported the prosecution case and have been declared hostile.

The Investigating Officer (Rita Kumari) who has been examined as P.W. 5 and 6 in the two Sessions Trial,



named above respectively has but supported the occurrence but has candidly expressed that she did not find anything incriminating at the place of occurrence. It does not appear from her deposition that she had made any investigation of any kind with respect to the finding as to where was the deceased burnt and before which all persons the cremation had taken place.

Thus, for all practical purposes, her investigation was limited to what was told to her by the witnesses, none of whom have supported the prosecution case at the trial.

We are at a loss to understand as to how the Trial court convicted all the appellants under Sections 302, 304(B), 201 with the aid of 34 of the Indian Penal Code.

For necessity, we thoroughly examined the records of both the Sessions Trials and found that sometimes during the trial, a request was made by the prosecution to summon the complaint case records and the station diary entry from the concerned police station about which reference was made in the FIR, viz. the complaint



case lodged by the brother of the deceased for ill-treatment of the deceased and the station diary entry regarding the deceased having gone missing from her matrimonial home.

Those two documents appear to have been summoned in the court and the court had directed for the same to be marked as exhibit. Unfortunately, the aforementioned documents were never exhibited and therefore could not be proved.

We find that only two documents have been exhibited viz. the fardbeyan and the formal FIR as Exhibits 1 and 2 respectively. The trial court ought to have ensured that the aforementioned two documents viz. the complaint and the station diary were exhibited. We are further constrained to observe that without the appellants having been confronted with the contents of the documents referred to above those documents have been relied upon by the Trial court for recording conviction against the appellants and sentencing them.



At one point of time, we were contemplating of exercising our powers under Section 391 of the Code of Criminal Procedure for recording further evidence in the matter by the Trial court with respect to the two documents which could not be exhibited but ultimately realized that the brother of the deceased, who is the informant of the case is only the author of the two documents who has already been examined in both the Sessions Trial and he has not supported the case.

In that event, asking for any further evidence with respect to those documents would only tantamount to filling up of the lacunae of the case, which may not be advisable or safe and that also after ten years of the occurrence.

However, we have tried to test the case from all other angles.

Assuming but not admitting that the two documents had been exhibited and had been put to the accused persons for their response, it would have made



out a case only for ill-treatment on account of non-fulfillment of Rs. 50,000/- as was demanded by the accused persons and for protesting against the incestual relationship of the husband of the deceased with his own sister-in-law.

In both the instances, there would have been no evidence forthcoming with respect to the murder of the deceased as ultimately the cause of death could not be proved in the absence of the dead body or any investigation made in that regard.

There is nothing on record for us to infer as to what may have happened to the other surviving child of the deceased.

From the evidence on record, it becomes very clear that none of the witnesses supported the prosecution case, which could be either because of the realization that the deceased had died a natural death or it could be because of those witnesses having been won over.



However, it is difficult for us to presume that the own brother and sister of the deceased would abandon the case in favour of accused persons, who at one point of time were alleged to have killed the deceased.

From the evidence of Puja Devi recorded in Sessions Trial No. 400 of 2016, it appears that the deceased was not having good relations in her marital home and because of Puja Devi trying to intercede, she too was hated by the accused persons. What was then the reason for Puja Devi not to have deposed against the appellants during the other trial.

The reasons for death are not known. Even the circumstances preceeding the death could not be proved.

In such a fact-scenario, we are left with no alternative but to set aside the judgment and order of conviction and sentence against the appellants.

After all, conviction can only be based on the evidence on record. The trial court ought to have taken care to have directed for the aforementioned two documents to



be exhibited and should have confronted the appellants with the contents thereof. The contents of those documents were also required to be proved before being used against the appellants.

The trial court thus, appears to have taken only a half baked step of exercising his powers under Section 165 of the Evidence Act, 1872 to have those documents summoned.

In the absence of any proof of either the homicidal death of the deceased or of the deceased having been tortured soon before her death for or in relation to demand of dowry, the burden would have had been on the appellants to discharge under Section 106 of the Evidence Act.

Regrettably, the prosecution could not prove the homicidal death of the deceased for triggering the requirement of Section 106 of the Evidence Act for the accused persons to explain away the circumstances in which death was caused.



All the appellants in Criminal Appeal (DB) No. 1170 of 2016 are on bail. They are acquitted and are discharged of the liabilities of their bail bond.

Appellant/Sarjan Mandal (Criminal Appeal (DB) No. 1218 of 2016) is in jail for the last eight years. He is also acquitted and directed to be released from jail forthwith, if not required in any other case.

Both the appeals stand allowed accordingly.

**(Ashutosh Kumar, J)**

**(Harish Kumar, J)**

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