

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.58 of 2016**

Arising Out of PS. Case No.-109 Year-2010 Thana- BARSOI District- Katihar

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Afsar Alam S/o - Sharful Resident of Village - Kandehla, P.S. Barsoi O.P.
Sudhani, District - Katihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Firoz Ahmad, Advocate
For the State : Mr. A.M.P. Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT**

Date : 24-06-2026

Heard learned counsel for the appellant and learned
A.P.P. for the State.

2. This appeal has been filed challenging the judgment of conviction dated 30.11.2015 and order of sentence dated 05.12.2015 passed by the learned Additional District and Sessions Judge-II, Katihar in Sessions Trial No. 17 of 2011 arising out of Barsoi (Sudhani O.P.) P.S. Case No. 109 of 2010 whereby this appellant has been convicted under Section 306 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 10 years and a fine of Rs. 5,000/- and



in case of default of payment of fine, to further undergo simple imprisonment for six months.

3. The prosecution case arises out of a *fard-beyan* concerning the dowry death of the informant's daughter, namely Khusnuma Khatoon. It is alleged that on 09.08.2010 at about 7:30 AM, this appellant, who happens to be son-in-law of the informant, demanded one *bhar* of gold as dowry. Although the informant had previously agreed during marriage to provide the gold, he could not fulfill the demand at the time and promised to do so in the near future. Consequently, the victim was subjected to continuous harassment. Thereafter, all the F.I.R. named accused persons, including this appellant, forming an unlawful assembly, brutally assaulted the victim with *lathis* and *dandas* and subsequently, hanged her. The assault rendered the victim unconscious and she was immediately rushed to hospitals in Barsoi and Katihar for medical treatment. Thereafter, she was brought back to home where she succumbed to her injuries.

4. In this case, the alleged occurrence took place on 10.08.2010 and F.I.R. was lodged on 11.08.2010. Thereafter, charge-sheet was submitted on 14.11.2010 under Sections 304B and 34 of the Indian Penal Code and Sections 3 and 4 of the



Dowry Prohibition Act. Cognizance was taken on 27.11.2010 under Sections 304B and 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against eight accused persons, including this appellant. Subsequently, the case was committed for trial on 21.12.2010 under Sections 304B and 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and charges were framed on 09.02.2011 under Sections 304B and 34 of the Indian Penal Code. In this case two separate trials were commenced and since there was no material to show that it was a case of dowry death, appellant and other accused persons were acquitted of the charges framed, however, this appellant was convicted under Section 306 of the Indian Penal Code for abetment of the suicide.

5. In order to bring home guilt of the accused persons, the prosecution has examined twelve witnesses. P.W. 1, namely Asma Khatoon, is sister of the deceased and she did not say anything about demand of dowry or torture with the deceased. P.W. 2, namely Nashir Alam, in his cross-examination admitted about having no knowledge of the occurrence. P.W. 3, namely Md. Iliyash, also stated that he had no knowledge about the occurrence. P.W. 4, namely Sasdhar Rai and P.W. 5, namely



Rohin Rai, are witnesses to the inquest report. P.W. 6, namely Rukhsana Khatoon, is mother of the deceased and has been declared hostile. P.W. 7, namely Khurshid Alam, is father of the deceased and informant of the present case who stated that his daughter died in her matrimonial house and deposed about demand of gold ornaments and harassment with the victim, however, in his cross-examination, he admitted that he has not seen as to how the deceased died. P.W. 8, namely Dr. A.K. Dev, is the doctor who conducted the *post mortem* of the deceased and opined that death was due to *Asphyxia* resulting from hanging. P.W. 9, namely Nuruddin, is a hearsay witness and had no direct knowledge of the incident. P.W. 10, namely Shekhar Singh, is a formal witness. P.W. 11, namely Rajeswar Prasad, is the Investigating Officer who investigated the case and submitted the charge-sheet. P.W. 12, namely Shiv Saran Sah, proved the *fard beyan* and inquest report and confirmed that the dead body was found in the house of this appellant. The prosecution also exhibited the following documents:-

Exhibit 1	<i>Post Mortem</i> report
Exhibit 2	F.I.R.
Exhibit 3	Charge-sheet
Exhibit 4	<i>Fard beyan</i> of informant
Exhibit 5	Inquest report



6. On the other hand, the defence has produced two witnesses, i.e., D.W. 1, namely Md. Nashim and D.W. 2, namely Md. Yusuf. The defence exhibited the following documents:-

Exhibit A	S. T. No. 317 of 2011
Exhibit B	Deposition of Khurshid Alam (informant) in G.R. No. 1731 of 2010

7. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of this order.

8. Learned counsel appearing for the appellant assails the order of conviction and sentence on multiple grounds. He contends that in this case, there is no evidence with regard to demand of dowry or torture right before death of the deceased. None of the witnesses have seen this appellant committing the offence. As a matter of fact, the deceased herself committed suicide. The said fact is also supported by the *post mortem* report and the deposition of the doctor (P.W. 8), who admitted that the deceased lost her life on account of *Asphyxia* due to hanging. Moreover, there is no evidence on record to show that this appellant played any active role in instigating the deceased to commit suicide and as such, he cannot be convicted under Section 306 of the Indian Penal Code. Thus, it is a case of



no evidence and prosecution has failed to prove the case beyond reasonable doubt and hence, the appellant is fit to be acquitted.

9. *Per contra*, learned Additional Public Prosecutor for the State submits that the evidence on record unmistakably points to the guilt of the appellant. The prosecution could prove that it was this appellant who committed the occurrence. Therefore, the learned Trial Court was fully justified in convicting the appellant under Section 306 of the Indian Penal Code.

10. From going through the evidence and perusal of the records, it appears that in this case, none of the prosecution witnesses are eye-witness to the occurrence. The prosecution has not brought on record any proof with regard to the torture or demand of dowry prior to death of the deceased and as such, the learned trial court has rightly acquitted the appellant from the charges under Section 304B of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

11. It is settled law that abetment involves a mental process of instigating a person or intentionally aiding a persons in doing a thing. In order to convict a person under Section 306 of the Indian Penal Code, there has to be a clear *mens rea* to



commit the offence. In order to bring a case within the purview of Section 306 of the Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

12. Having gone through the rival submissions, materials available on record and deposition of the twelve prosecution witnesses, I have no hesitation in holding that in this case, there is no material on record to show that this appellant played any active role or instigated the deceased to commit suicide. None of the witnesses have deposed anything or brought any material in support of the same. Thus, there is no material to sustain the conviction of the appellant under Section 306 of the Indian Penal Code.

13. In that view of the matter, the impugned judgment of conviction dated 30.11.2015 and order of sentence dated 05.12.2015 passed by the learned Additional District and Sessions Judge-II, Katihar in Sessions Trial No. 17 of 2011 arising out of Barsoi (Sudhani O.P.) P.S. Case No. 109 of 2010 are hereby set aside with respect to this appellant, above named.



14. Appellant, above named, is acquitted of all the charges and is discharged from the liability of the bail bond in connection with this case.

15. Accordingly, this appeal stands allowed.

16. Interlocutory applications, if any, shall also stand disposed of.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
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