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**(2012) 03 JH CK 0147**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (DB) No. 782 of 2002**

Amar Chandra Mandal and Param Mandal @ Paran Mandal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 01-03-2012

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 34, 498A

**Citation :** (2012) 2 JLJR 141

**Hon'ble Judges :** R.K. Merathia, J;Dhrub Narayan Upadhyay, J

**Bench :** Division Bench

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## **Judgement**

1. This appeal arises out of the judgement of conviction dated 23.10.2002 and order of sentence dated 25.10.2002 passed by the learned 4th Additional Sessions Judge, Dumka in Sessions Case No. 191 of 1997, convicting the appellants under sections 302/34 and 498A IPC and sentencing them to undergo R.I. for life for the offence u/s 302/34 IPC and R.I. for two years for the offence u/s 498A IPC. However, both the sentences were directed to run concurrently.

2. The prosecution case in short is that the informant (PW-5) gave fardbeyan on 09.10.1996 at about 11.00 AM to the effect that his daughter-Sumari Devi (deceased) was married with the appellant no. 1-Amarchandra Mandal seven years ago, but she did not bear child due to which the appellants and her mother-in-law used to quarrel with her and about which she used to tell him. He got her treated in the village but of no benefit. After five years of marriage, Amarchandra Mandal brought another girl about which there was a panchayati. Thereafter, the girl returned, but the in-laws of the deceased continued to quarrel with her. On the previous day, he went to take her on "Bidai" but the appellants and her mother-in-law did not allow her. On this, the deceased started weeping. The appellants and her mother-in-law said that she was weeping on seeing her father and scolded her not weep otherwise she will be thrown into the well after killing her. The informant thought that such thing was said casually. He returned to his house. In the morning at about 7.00 AM, the villagers informed him that in the

preceding night, her daughter has been killed and her dead body has been thrown into the well. He rushed there and found the dead body of her daughter lying on the cot and her husband and in-laws escaped. The reason attributed behind the incident was non-bearing of child by the deceased.

3. Mr. Jailisur Rahman, Learned Counsel appearing for the appellants, assailed the impugned judgment on various grounds. He submitted that the prosecution has not been able to prove it's case beyond all reasonable doubts and the chain of circumstances is not complete. It is further submitted that the appellants were all along on bail in course of trial and after conviction, they are in jail from October 2002.

4. Counsel for the State supported the impugned judgment.

5. After carefully going through the records and hearing the parties at length, we are satisfied that the appellants deserve the benefit of doubt.

6. Prosecution has examined 11 witnesses. PWs-4, 6, 7, 8 and 11 have been declared hostile. PW-10 is the doctor who conducted postmortem. In his opinion, death was due to asphyxia as a result of drowning. Abrasion and ecchymosis were found on the neck which could be caused by pressing neck or by fall on hard and blunt substance.

7. PWs-2,3 and 10 are the villagers and they are hearsay witnesses. They said that due to work in the house on the eve of Dussehra, the deceased was not sent with the informant and they heard that the deceased committed suicide. They also said that the relationship between the parties were good.

8. PW-5 is the informant. He supported the version made in the fardbeyan, but he also said that the appellant-Paran Mandal, father of Amar chandra Mandal, went to the police station where he was arrested. Therefore, it appears that the version of the informant that the appellants fled away, is not correct.

9. PW-9 is the investigating officer.

10. Thus, it appears that the prosecution has not been able to prove it's case against the appellants beyond all reasonable doubts and the chain of circumstances is not complete. It cannot be conclusively said that the appellants have killed the deceased. Moreover, there are general and omnibus allegations against the appellants about the torture on account of non-bearing of child.

11. In the result, the impugned judgment of conviction and sentence as passed by the learned trial court against the appellants, is hereby set aside. The appellants are in jail. They are directed to be released forthwith if not wanted in connection with any other case.