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**(2005) 09 PAT CK 0071**  
**In the Patna High Court**  
**Case No : Criminal Appeal No. 80 of 2002**

Arun Ram and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 15-09-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 311, 313  
Penal Code, 1860 (IPC) — Section 201, 304B, 34

**Citation :** (2006) 1 DMC 447

**Hon'ble Judges :** Rekha Kumari, J;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** Ram Sumiran Rai, for the Appellant; Ganesh Pd. Jaiswal, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

Aftab Alam, J.—The two appellants, father and son (appellant Nos. 2 and 1 respectively) stand convicted under Sections 304B/34 and 201/34 of the Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000 and on default in payment of fine to further undergo rigorous imprisonment for six months for the offences of dowry death and to undergo five years rigorous imprisonment for causing disappearance of evidence in connection with the offence.

2. The case was instituted on the basis of the statement made by one Karelal Ram (P.W. 4), the father of the deceased girl Vibha Devi before the police on 29.8.2000. According to his statement his daughter Vibha Devi was married to appellant No. 1 about three years ago. Prior to the occurrence she had gone to her parents' home for tying Rakhi on the occasion of Raksha Bandhan. She had then disclosed that about a month ago a quarrel had taken place between herself and her step mother-in-law on the issue of cooking food. He further stated that at about 8 in the evening previous to the day on which he was making the statement his wife informed him that one of their relations (referred to in the

statement as Langra driver) had called on the telephone and said that their daughter was very sick. On this information they came to the house of the accused at about 11 in the morning (of 29.8.2000). They were told by the neighbours there that on the previous day at about 5 in the evening a quarrel had taken place between their daughter-in-law and her step mother-in-law and for this his son-in-law Arun Ram, Samdhi Durga Ram and Samdhan Gayatri Devi forcibly administered poison to her as a result of which she died after a short while; further that later on, the three accused tried to dispose of her body by drowning it in Baya river by tying the body with a piece of rope to a gunny bag stuffed with bricks. He along with his wife went to Dhobi Ghat at Baya river where the body of his daughter was recovered. He further stated that some froth was coming out of her nostrils and a piece of rope was tied to her waist.

3. It may be noted here that though in the statement of the girl's father there was absolutely no indication of any demand for dowry or his daughter being subjected to cruelty or harassment in connection with that demand, the police deemed fit to institute a case under Sections 304B/34 and 201/34 of the Penal Code against the two appellants.

4. In course of investigation the witnesses are shown to have stated before the police that the appellants were putting pressure on the victim to bring Rs. 10,000 from her parents but the parents of the girl were unable to meet the demand owing to their poverty. As a consequence the girl was subjected to cruelty and harassment and finally she was done away with. The police accordingly submitted charge-sheet against the appellants under Sections 304B/34 and 201/34 of the Penal Code. On the basis of the investigation report the two appellants were put on trial and were charged as recommended by the police under Sections 304B/34 and 201/34 of the Penal Code.

5. However, the witnesses coming before the Trial Court did not support the prosecution case in anyway. P.Ws. 1 and 2 were the informant's uncle and maternal uncle respectively. Both of them disclaimed any knowledge as to how Vibha Devi died and they denied having made any statement in that regard before the police. They were declared hostile by the prosecution. P.W. 3 was the maternal uncle of the deceased girl. He too denied having any knowledge as to how she died. By now it seems the prosecutor was resigned to the course the case was taking and about P.W. 3 he did not even make a prayer for declaring him hostile. In cross-examination by the accused he made the definite statement that from the side of the appellants there was no demand for any dowry. Next came the father of the girl as P.W. 4. In examination-in-chief he broadly stated about the discovery of the dead body of his daughter in Baya river. But he also said that his daughter had never made any complaint about her sasural. In his cross-examination he was more explicit and stated that there was no demand for dowry by the appellants and his daughter lived happily in her sasural, P.W. 5 also stated about the discovery of a girl's body in Baya river. There was nothing in his examination-in-chief and hence, he was not even cross-examined.

6. At that stage the prosecution case was closed and after examining the accused u/s 313, Cr.P.C. and the case was fixed for judgment. But at that stage the Court decided to reopen the case and to examine some more witnesses u/s 311, Cr.P.C. At the instance of the Court P.Ws. 6 and 7 were examined who were witnesses of the inquest report. Also examined were P.Ws. 8, 9 and 10. P.W. 8 was the doctor who held post-mortem on the body of the deceased. He stated before the Court that there was no visible external injury except froth from mouth and nostrils. However, on dissection he found fracture of left 11th and 12th ribs and the broken ribs had ruptured the spleen causing abdominal bleeding. The abdominal cavity was filled with blood. He gave his opinion that injuries on ribs seemed to be caused by hard substance, may be by a powerful blow by fist. He also stated that he had preserved samples from the viscera and handed over those to the police for examination in a forensic laboratory.

7. P.Ws. 9 and 10 are two of the police officers, one of them being the I.O. Their depositions only reveal that the investigation of the case was completely messed up simply because the place where the two appellants and the victim girl resided fell within one police station while her body was discovered at a spot that lay within the jurisdiction of another police station.

8. In the entire prosecution evidence there is not even a whisper of any demand for dowry by the two appellants or for that matter by any one else and the unfortunate girl being subjected to cruelty or harassment in connection with that demand. It is, thus, evident that two of the most essential ingredients of Section 304B of the Penal Code are completely absent and hence, the conviction u/s 304B of the Penal Code cannot be sustained at all.

9. There remains the other charge u/s 201 of the Penal Code. In this regard it may be noted that on the basis of the prosecution evidence the following facts and circumstances can be said to have been proved.

(i) The girl Vibha Devi died while she was living at her sasural with the two appellants.

(ii) The medical evidence points to her death being homicidal.

(iii) The offender(s) tried to make the evidence disappear by attempting to drown the body by tying it with a piece of rope to a gunny bag stuffed with bricks.

10. To the above three it may be added that the appellants did not inform the girl's parents about her death/disappearance but that would presume that the appellants themselves had the knowledge about the girl's death or disappearance.

11. On the basis of the aforesaid proven facts and circumstances, it is difficult even to sustain the charge under Sections 201/34 of the Penal Code against the two appellants.

12. On a careful consideration of the material on record and on hearing Counsel

for the parties, I am satisfied that the charges against the two appellants cannot be sustained. The two appellants are accordingly acquitted of all charges. The judgment and order of the Trial Court coming under appeal is set aside. Appellant No. 2 is discharged from the liability of his bail bond and appellant No. 1 who is in custody is directed to be released forthwith, unless he is required to connection with some other case.

13. In the result this appeal is allowed.

Rekha Kumari, J.

14. I agree.