

**(2024) 09 JH CK 0027**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (D.B.) No. 46 Of 2017**

Shivdhan Tudu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

**Date of Decision : 30-09-2024**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 161  
Indian Penal Code, 1860 — Section 34, 302, 379  
Evidence Act, 1872 — Section 157

**Citation : (2024) 09 JH CK 0027**

**Hon'ble Judges : Ananda Sen, J;Gautam Kumar Choudhary, J**

**Bench : Division Bench**

**Advocate : Mahesh Tewari, Abhay Kumar Tiwari**

**Final Decision : Allowed**

## Judgement

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

1. The instant Criminal appeal is directed against Judgment of conviction dated 23.11.2017 and order of sentence dated 25.11.2017, passed by learned Additional Sessions Judge-III, Ramgarh, in S.T. No.369 of 2014 (arising out of Basal P.S. Case No.13 of 2014 and G.R. No.2286 of 2014) whereby and whereunder the appellant has been convicted under Section 304B IPC and sentenced to undergo RI of ten years.

2. The case of the prosecution in short is that the informant (brother of the deceased) has given a written report that marriage of his sister was solemnized with the appellant on 16.04.2014 and after living there for 4-5 days, she returned to her parents' house. His sister and brother-in-law stayed for 2-3 days there and returned. In the meantime, a motorcycle was demanded by this appellant/accused, for which the appellant has assaulted the deceased. It is further stated that when he was not sending her back to her matrimonial home, the brother-in-law of the appellant came to his house and on assurance on 04.06.2014 took her to her matrimonial home. On 09.06.2014 at 8:00 am in the

morning, the informant received a call that dead body of his sister was lying in the Railway line. He got knowledge that his sister had been murdered due to non-fulfilment of demand of dowry.

3. On the basis of the 'fardbeyan' of the informant, the Police instituted First Information Report being Basal P.S. Case No.13 of 2014 under Section 304(B) of the Indian Penal Code against the appellant/accused.

4. After investigation, the Police submitted charge-sheet and cognizance was taken and appellant was put on trial for the offence under Sections 304B and 302 IPC.

5. In order to prove the case, altogether eleven witnesses have been examined who are P.W.1 to P.W.11 and relevant documents have been adduced into evidence and marked as Exhibits.

6. After prosecution evidence, the statement of the accused/appellant was recorded under Section 313 Cr. P.C. and he pleaded not guilty and claimed to be tried.

7. None of the witness is the witness to the commission of offence of murder/death of the deceased. Doctor has not been examined in this case. P.W.1 to P.W.4 have been declared hostile.

8. Post-mortem of the dead-body was done by the Medical Board and the following injuries were found: - A bruise of size 4"x3" blackish brown in colour found over right side of forehead to the right side of maxillary region of face. A lacerated wound of size 1"x1/2"x muscle deep with blood clots found over the right side of forehead. A lacerated wound of size 2"x1"x bone deep with blood clots found over left parietal region of the scalp. An abrasion of size 1"x1/2" blackish brown in colour found over right side of knee. An abrasion of size 1 1/2" x 1/2" blackish brown in colour left lateral head. An abrasion of size 2"x1/2"x blackish brown in colour found over the back of left elbow and opined that the death is caused due to haemorrhage and shock as caused by abovesaid injuries.

9. From the evidence led by the prosecution, this is an admitted fact that the dead body was found in the middle of the Railway track. There is no evidence to suggest that after committing murder, the body was thrown on the Railway track.

10. The conviction in this case is under Section 304B IPC. To bring home charge under Section 304B IPC, the prosecution has to prove the following three ingredients which are: -

(i) Death was occurred within seven years of marriage;

(ii) Death should be caused by burns or bodily injury or otherwise than under normal circumstances;

(iii) There was demand of dowry and torture soon before the death.

11. From the evidence, we find that the prosecution has been able to prove that

the death occurred within seven years of the marriage as it has come in evidence and also admitted by the defence that the marriage had taken place on 16.04.2014 and the deceased died on 8/9.06.2014 i.e., about less than two months from the date of marriage.

12. Now, the next question is whether the prosecution has been able to prove that there was demand for dowry and torture for non-fulfilment of the said demand soon before death.

13. From the evidence of the prosecution especially the brother and also admitted in the F.I.R. itself that after the marriage only 4-5 days, the deceased lived in the matrimonial home and thereafter she came back and resided in the house of her father and a motorcycle was demanded there. The case is only of the said demand but without there being any evidence of torture in the house of the informant. It is also admitted that on 04.06.2014, the deceased returned to her laws' house as the brother-in-law of this appellant taken her back and the deceased died on 09.06.2014 and between 04.06.2014 and 09.06.2014, there is no evidence of demand of dowry and torture.

14. From the evidence and the period to which the deceased resided in the house of this appellant, there is no material to suggest that she had been tortured for demand of dowry. The allegation of demand of dowry levelled by the informant does not inspire the confidence and all the witnesses have not stated specifically about the torture in view of the non-fulfilment of dowry.

15. Thus, we find that prosecution has failed to prove that soon before death, there was torture of deceased for non-fulfilment of the demand of dowry. In absence of one of these ingredients, the appellant could not have been convicted in this case under Section 304B of the IPC. The burden of proof will only shift after the prosecution has been able to prove against the appellant all the ingredients which are enshrined under Section 304B of the IPC. Thus, by giving benefit of doubt we are inclined to allow this appeal and acquit the appellant of the charges.

16. Since it has been submitted that the appellant has already served the sentence, as imposed, as such, no further order is required to be passed in this case.

17. Accordingly, the judgment of conviction dated 23.11.2017 and order of sentence dated 25.11.2017, passed by learned Additional Sessions Judge-III, Ramgarh, in S.T. No.369 of 2014 (arising out of Basal P.S. Case No.13 of 2014 and G.R. No.2286 of 2014) is hereby set aside.

18. The instant Cr. Appeal (DB) stands allowed.

Pending I.A., if any, stands disposed of.

Let T.C.R. along with a copy of this judgment be sent to the court concerned at once.