

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4238 of 2023**

Arising Out of PS. Case No.-215 Year-2019 Thana- NAUGACHIA District- Bhagalpur
=====

Amit Kumar Mandal @ Lucho Mandal S/O- Late Bajnath Mandal
Village Nawada Ps-Naugachia Dist- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s
=====

Acts/Sections/Rules:

- Sections 304(B)/34 of the IPC

Petition - filed against judgement by which the appellant has been convicted under section 304(B)/34 of the IPC

Held - Even assuming that it was a love marriage, the killing took place within seven years. Further, each and every prosecution witnesses have narrated that just prior to the occurrence, the deceased had informed that the appellant was demanding motorcycle and non-fulfilment of the same led to the killing. (Para 28)

Post mortem report clearly shows strangulation. The Doctor who conducted the post mortem came to the definite conclusion that it is asphyxia due to throttling. (Para 29)

When Investigating Officer visited the place of occurrence, the accused persons were absent despite the fact that the death of appellant's wife had taken place. Not only that, except the cot on which the deceased was placed, not a single item was present in the said room. This clearly point fingers towards their role as the accused suddenly did not leave the place of occurrence, that they took plenty of time to remove all the house hold materials before they escaped. (Paar 30)

Mortal remains of the victim were consigned to the flames neither by the father of the deceased nor the accused side but the said rituals were performed by one 'Baba'. (Para 31)

Appellant failed to disapprove the findings of the Trial Court which led to his conviction. (Para 33)

Appeal is dismissed. (Para 34)

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... .. Appellant/s

Versus

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Appearance :

For the Appellant/s : Mr. Amrendra Kumar, Advocate
For the Respondent/s : Mr. A.M.P, Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 27-02-2025

Heard Mr. Amrendra Kumar, learned counsel for the
appellant and Mr. A.M.P. Mehta, learned APP for the State.

2. The present appeal is directed against the judgment
and order of conviction/sentence dated 16.08.2023/19.08.2023
passed by the learned Additional District and Sessions Judge
2nd Naugachia, Bhagalpur in Sessions Trial No. 213/2020 by
which the appellant has been convicted under section 304(B)/34
of the IPC and sentenced to undergo as follows:

Sr. No.	Appellant's name	Sentence	Fine	In Default of Fine
1.	Amit Kumar Mandal	R.I. for ten years under section 304(B) of the I.P.C.	NA	NA

3. Earlier, the matter was admitted on 13.12.2023 by



the Coordinate Bench and the Trial Court Record was called for which has now been received.

4. As per the prosecution story, the informant **Bablu Mandal, father of the deceased**, on **02.07.2019** got an information about the killing of his daughter by the husband/in-laws. As he reached the place, found her lying on a cot with marks on her neck while all the accused persons/in-laws had disappeared. The allegation is that for want of motorcycle, she has been killed. This led to the F.I.R.

5. The Police investigated the matter and submitted **charge-sheet** under section **304(B)/34** on **30.11.2019** against the sole appellant while continuing the investigation with regard to the other accused persons. The **charges were framed on 05.12.2020** and the trial commenced against the appellant.

6. The prosecution in support of the case produced six witnesses as under:

PW-1:- Manish Kumar (brother of the Informant)

PW-2:- Raj Kumar Mandal (brother of Informant)

PW-3:- Bablu Mandal (Informant)

P.W-4:- Dr. Rakesh Jha (Doctor who done post mortem)



PW-5:- Ajay Kumar (I.O.)

PW-6:- Umesh Yadav (I.O.)

7. The defence also came forward with a sole witness namely **Kanchan Devi**.

8. The exhibits produced by the prosecution read as follows:

Exhibit 01:- Signature identified on post-mortem report by Manish Kumar.

Exhibit 02:- Signature identified on inquest report by Raj Kumar Mandal.

Exhibit 03:- LTI identified on the fardbeyan by Bablu Mandal PW-3 and also identified the signature of Vivekanand Mandal on the fardbeyan.

Exhibit 04:- PW-04 has assigned on the post-mortem Report.

Exhibit P5:- Signature identified on the charge-sheet by Ajay Kumar PW-5.

Exhibit P 5/1:- Signature identified by Ajay Kumar PW-5 on the same charge-sheet of Sub-Inspector of Police-cum-Officer-in-Charge.

Exhibit P-6:- Signature identified by Ajay



Kumar PW5 on the formal F.I.R. of the Officer-in-Charge-cum-SHO-Raj Kapoor Kushwaha.

Exhibit P-7:- Signature identified by Umesh Yadav (PW-6) on the inquest report of PW-1 Manish Kumar, Raj Kumar Mandal, Srikant Choudhary (A-SI) Naugachia Camp, Nawada.

9. As recorded, as the sole accused/appellant denied the allegation that was read over to him, the trial took place. **PW-1 Manish Kumar** is the **Uncle** of the deceased who supported the prosecution story and according to him, upon information by the villagers, he went to the place and found his niece dead, lying on a cot. The Naugachia Police came thereafter and recorded the statement of his brother **Bablu Mandal (PW-3)** whereafter the dead body was taken for post mortem and he put in his signature on the inquest report (exhibit 1). He further supported the prosecution story that the appellant used to demand motorcycle and as the same was not fulfilled, his niece was strangled.

10. **PW-2 Rajkumar Mandal** is again the **Uncle of the deceased** and his version is also the same. According to him, there was a black sign on the neck of the deceased, his signature was taken on the **inquest report (Exhibit 2)** and further deposed



that he had knowledge about the demand of motorcycle before the alleged occurrence and his niece also informed the informant four days ago that she may be killed.

11. **PW-3 is the informant and father of the deceased.** According to him, he was at home when received the information about the murder of his daughter. Thereafter they went to the place and saw her dead body lying on a cot with sign of ligature. He put in his signature on the fardbayan and identified the same (**Exhibit 3**). In his cross examination, PW-3 recorded that he along with villagers including some ladies went to the village upon information. He further deposed that the demand of motorcycle was also informed to the 'Mukhiya'.

12. **PW-4 Dr. Rakesh Jha** was serving as the **Medical Officer** at **Sub-Divisional Hospital, Naugachia**. He is an important witness who conducted the post mortem and the post mortem report read as follows:

I have posted on dated 02-07-2019 in S.D.H, Naugachia.

2. I examined Preeti Kumari 22 years female wife of Amit Kumar @ Lucho Mandal, Nawada, P.S., Naugachia District Bhagalpur on 02-07-2019 at 06:00 P.M.

On external examination multiple bruise mark



over neck informant of neck and lower surface of mandible.

Size of abrasion more over by side thyroid.

Swelling of upper and lower lip.

Multiple bluish discoloration over chest with enlarge vein.

On dissection- V shape dissection of neck shows extra vexation of blood beneath the injured area.

Area of bruise in underline muscle anterior and both the side. Bruise also at base of tongue, all viscera congested life liver, spleen kidney lung.

Right chamber of heart filled with dark blood and left chamber empty.

Cause of death- Asphyxia due to throttling.

Time elapsed since death 6 to 18 hours.

13. In his deposition, the Medical Officer informed that on external examination, he found multiple bruise mark over the neck and mandible size of abrasion over thyroid cartilage and there was swelling on upper and lower lip. Further, multiple bluish discolouration over the chest was also found. He had further given the cause of death as **asphyxia due to throttling.**

14. **PW-5** is the **Second Investigation Officer** namely



Mr. Ajay Kumar, Assistant Sub-Inspector of Police at Police Station Naugachia who got the charge from the **first Investigating Officer Umesh Yadav (PW-6)**. When he took over the charge, got the information that the appellant has surrendered on 21.08.2019 and is under judicial custody. The charge-sheet thereafter was submitted on 30.11.2019 under sections **304(B)/34** of the **I.P.C** and he identified his signature on it (**Exhibit P/5**). He further identified the signature of the Police Inspector-cum-Officer Incharge (**Exhibit 5/1**) and the signature of **SHO, Raj Kapoor Kushwaha (Exhibit P/6)**.

15. **PW-6** is **Umesh Yadav**, the first Investigating Officer who at the relevant time was posted at Naugachia Police Station and was handed over the charge of investigation by the SHO, Naugachia, Raj Kapoor Kushwaha. According to him, upon getting the charge, he proceeded to the place of occurrence after information about the killing of a girl due to strangulation. He prepared the inquest report and took the restatement of Bablu Mandal (informant) as also the statement of Manish Mandal. He identified the signature of PW's Manish Kumar, Rajkumar Mandal, Shrikant Mandal (exhibit P-7)

16. The defence on the other hand produced one **Kanchan Devi (DW-1)**. According to her, the couple had solemnized love marriage and were living happily. However, as



the informant side were unhappy with the love marriage, the girl whenever she used to talk to the parents, was depressed. On the fateful day, she found the lady tying knots, requested her not to do so and then left for her home. Later, she came to know about her death.

17. The place of occurrence has been recorded by the Investigating Officer. According to him, he found a long room with a tin roof and save and except the cot on which the dead body was found, everything was removed by the accused side.

18. The defence took note of the deposition of the PWs to show that there is no consistency between them and as such, when none of them actually have seen the occurrence, in that background, the appellant deserves relief as the prosecution failed to prove the case beyond doubt.

19. Learned APP before the Trial Court opposed the same and submitted that the post mortem report that has come on record as also the deposition of the Doctor fully supports the prosecution story. According to him, within couple of days of the girl informing her mother that she may be killed for want of dowry, the killing took place which cannot be ignored in the background of the post mortem report. The place of occurrence is also a testimony to the said killing. He has also taken note of the deposition of the DW-1 that she was asked by the sister-in-



law of the appellant to depose before the court and whatever she narrated, it has been deposed by her.

20. Having gone through the facts of the case, the learned Trial Court came to the conclusion that the killing took place within seven years of the marriage, for want of motorcycle. Further, she was regularly thrashed and on the fateful day, the girl was throttled to death. Learned Trial Court held that the minor difference between the prosecution witness cannot be an alibi to give benefit of doubt to the appellant.

21. In that background, the Trial Court convicted the appellant under section **304(B)/34** of the **I.P.C.** vide an order dated **16.08.2023** and sentenced him to **ten years rigorous imprisonment** vide an order dated **19.08.2023**.

22. Aggrieved, the present appeal.

23. It is the case of the appellant as narrated by Mr. Amrendra Kumar that there is no eye witness to the occurrence. Upon knowledge of the death, they arrived, are not consistent on actual date either with regard to the marriage or the killing. The further submission is that actually the girl was depressed with the attitude of the parents as she had entered into love marriage and whenever she used to converse with the parents, was depressed.

24. He further submits that the deposition of the DW-1



clearly show that she was very happy with the husband/in-laws. Further, this being the love marriage, there was no reason to demand motorcycle.

25. He submits that the Trial Court completely failed to look into these aspects and convicted the appellant to ten years rigorous imprisonment under section 304(B)/34 of the I.P.C. which need interference. He has remained in custody since 21.08.2019 which must be also taken into account.

26. Learned APP on the other hand opposes the appeal and submits as follows:

i) the killing took place within seven years of the marriage;

ii) there was demand of motorcycle and all the witnesses are consistent on it that just four days prior to the occurrence, she had informed her mother that failure to provide the motorcycle, she may be killed;

iii) when the police reached the place of occurrence, each and every accused had escaped, the room was empty save and except the cot on which the deceased was placed;

iv) there was nothing in the room to show to the prosecution that it was not killing rather than



suicide by the lady;

v) the post mortem report of the Doctor clearly proves that not only it is case of strangulation, prior to that, there was also assault as there was bruised lips and blue colourisation of the chest.

27. He submits that when the defence failed to provide anything to show save and except the deposition of DW-1 which is unreliable as according to her she accepted that the lady deposed whatever was parroted to her by the sister-in-law of the appellant. In that background, the Court judgment needs no interference.

28. This Court has heard the parties at length and also perused the Trial Court record. The points raised by learned APP is worth consideration. Even assuming that it was a love marriage, the killing took place within seven years. Further, each and every prosecution witnesses have narrated that just prior to the occurrence, the deceased had informed that the appellant was demanding motorcycle and non-fulfillment of the same led to the killing.

29. The Court further cannot take its eyes away from the post mortem report which clearly shows that beside the findings of strangulation, the Doctor also found bruises on her



lips and a blue colourisation of chest. The Doctor (PW-4) posted at Sub-Divisional Hospital, Naugachia who conducted the post mortem came to the definite conclusion that it is asphyxia due to throttling.

30. The defence on the other hand has not come forward with any alibi to distrust the findings of the Doctor of the Sub-Divisional Hospital, Naugachia. This Court cannot further overlook the fact that when the Investigating Officer visited the place of occurrence, the accused persons were absent. This despite the fact that the death of appellant's wife had taken place. Not only that, save and except the cot on which the deceased was placed, not a single item was present in the said room. This clearly point fingers towards their role as the accused suddenly did not leave the place of occurrence, that they took plenty of time to remove all the house hold materials before they escaped.

31. It has also to be taken note of the fact that the mortal remains were consigned to the flames neither by the father of the deceased nor the accused side but the said rituals were performed by one 'Baba'.

32. DW-1, Kanchan Devi is an unreliable witness. Firstly, she deposed that having found the lady tying knots, she requested her not to do so and then went home. Any sane person in such circumstances would have either taken the lady with her



and/or shall remained present with her till some of the family members come. However, under no circumstances, anyone could have left a lady alone when the life of an innocent was at stake. This clearly proves that it is/was a parroted version which she too acknowledged in her deposition.

33. This Court is thus of the opinion that the appellant failed to disapprove the findings of the Trial Court which led to his conviction. In that background, the well defined judgment of the learned Trial Court dated 16.08.2023/19.08.2023 passed in Sessions Trial No.213/2020 need no interference.

34. The appeal stands dismissed.

(Rajiv Roy, J)

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AFR/NAFR	AFR
CAV DATE	NA
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