

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Appellate Jurisdiction)**

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Cr. Appeal (DB) No. 294 of 2019

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Kunal Kumar Choudhary @ Kunal Kumar **Appellant**
Versus
The State of Jharkhand **Respondent**

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**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE KAILASH PRASAD DEO**

For the Appellant : Mr. R.S. Mazumdar, Sr. Advocate
For the State : Mr. Pramod Kr. Choudhary, A.P.P.
For the Informant : Mr. Sudhansu Kr. Deo, Advocate

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03/22.08.2019

I.A. No.7175 of 2019.

Heard, learned Senior counsel for the appellant, learned A.P.P. representing the State and learned counsel for the informant on the prayer for suspension of sentence made by the sole appellant through an Interlocutory Application bearing No.7175 of 2019, during pendency of the appeal.

The sole appellant stands convicted for the offence punishable under Section 304B IPC vide impugned judgment dated 05.03.2019 rendered in Sessions Trial No.196/2016 (arising out of Kunda P.S. Case No.53 of 2016, corresponding G.R. No.742 of 2016) by the learned Additional Sessions Judge-II, Deoghar and has been sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs.2,00,000/- and default sentence vide impugned order of sentence dated 07.03.2019.

Learned Senior counsel for the appellant submits that marriage of the victim was solemnized with the appellant on 24.04.2012 and the victim had committed suicide on 16.05.2016 and prior to her death, she had left a suicide note, which has been brought on record as Exhibits- B and B/1. The handwriting of the deceased has been proved by FSL report, which has been brought on record as Exhibit-H. Learned Senior counsel for the appellant

further submits that from perusal of the suicidal note, it appears that the victim has not stated anything against the appellant nor she has alleged any torture meted out to her, for demand of dowry by the in-laws rather from perusal of the same, it appears that she has committed suicide as she was not satisfied and she has stated, that *“mai pagal ho gai hoo, mujhe maf kar dena aapki beti haar gaiee aur kisi ko bhi kuch nahi hone dena papa, mai inse bahoot payar karti hoo, meri bety ka dhyan rakhna”* as per Exhibit-B/1. So far Exhibit-B is concerned, the victim has stated that *“Babu mai aapse aage se na kuch bolungi, na hi apko gussa aayega per aap kabhi bhi ek acche husband nahi ban paye, kamse kamse kam acche papa banno”*. Learned Senior counsel for the appellant submits that ingredients to constitute an offence under Section 304B IPC are (i) *death within seven years of marriage* (ii) *Demand of dowry* (iii) *soon before the death victim was subjected to torture and* (iv) *death of the victim was in unnatural circumstances*”. Learned Senior counsel for the appellant further submits that the ingredients to constitute an offence under Section 304B IPC are missing since the ingredient regarding torture soon before the death is missing, as is apparent from the suicidal note itself, brought on record as Exhibits-B and B/1.

Learned Senior counsel for the appellant further submits that postmortem report does not show any mark of injury, external or internal on the person of the victim, which can be attributed as ante-mortem injury. The death was caused due to hanging. The evidence of the Doctor (P.W.5), who has brought on record, the postmortem report as Exhibit-6 shows only external injury as *“from below ear lobe to left occiput about 1.5 cm in width. The base is pale, hard and Parchent like. Slight bleeding from nose was present”*. Learned Senior counsel for the appellant further submits

that the husband was working as a Branch Manager in a bank and he was all along on bail during the trial and has never misused the privilege of bail. As such, the appellant should be enlarged on bail.

Learned Additional Public Prosecutor representing the State assisted by learned counsel for the informant have opposed the prayer for suspension of sentence. They have submitted that deceased died within 7 years of marriage and her death was not normal rather she has died because of hanging. As per the postmortem report there is ligature mark of 1.5 cm, which cannot be caused by a dupatta. As such, appellant may not be enlarged on bail as the trial of other co-accused persons is pending in the learned trial court.

We have considered the submissions of learned counsel for the appellant, learned Additional Public Prosecutor representing the State and learned counsel for the informant. We have also taken note of the facts and circumstances of the case including the relevant material evidence on record relied upon by both the parties. From perusal of the suicidal note, which has been brought on record as Exhibits-B and B/1, it appears that there is no whisper about any demand of dowry or torture meted to the deceased. From perusal of the postmortem report, Exhibit-6, it appears that there is no other ante-mortem external or internal injury on the person of the deceased except the injury cited above. The defence has brought on record photographs of several dates of the deceased with the appellant, her child and other family members, which shows that deceased was living a normal life.

Under the aforesaid facts and circumstances and since the appellant was all along on bail during the trial and has never misused the privilege of bail, we considered it proper to release the appellant on bail by suspending

his sentence, during pendency of this appeal.

Let appellant (Kunal Kumar Choudhary @ Kunal Kumar) be enlarged on bail, during the pendency of the appeal, on furnishing bail bonds of Rs.25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-II, Deoghar, in Sessions Trial No.196/2016 (arising out of Kunda P.S. Case No.53 of 2016, corresponding G.R. No.742 of 2016) with a condition that one of the bailors shall be close relative of the appellant and appellant and his bailors shall not change their residential address without permission of the learned trial court.

Interlocutory Application No. 7175 of 2019 stands disposed of.

It has been submitted by the learned counsel for the informant that fine amount of Rs.2,00,000/- may be deposited by the appellant by way of fixed deposit in the name of daughter (Annany Shree) of the deceased, which shall not be encashed till daughter (Annany Shree) attains majority or otherwise with the permission of the court for exclusive purpose of the daughter's education and welfare.

Learned Senior counsel for the appellant submits that the appellant shall deposit the said amount of Rs.2,00,000/- in term deposit scheme with clause of timely renewal, within a period of three months from the date of his release. The photo copy of the fixed deposit slip shall be submitted before the learned trial court thereafter.

(Aparesh Kumar Singh, J.)

(Kailash Prasad Deo, J.)