

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.480 of 2002**

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KAUSAR HASHMI, SON OF WASHIM HASHMI, RESIDENT OF A-BLOCK  
NO.2, GANGA APARTMENT, L.C.T. GHAT, MAINPURA, PATNA-1.

.... .... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... .... RESPONDENT/S

=====

**Appearance:**

For the Appellant/s : Mr. Alok Kumar Choudhary, Adv.

For the State : Mr. Nagendra Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**C.A.V. JUDGMENT**

**Date: 01-04-2015**

Sole appellant Kausar Hashmi, who has been found guilty for an offence punishable under Section 498A of the IPC and sentenced to undergo R.I. for two years, under Section 4 of the Dowry Prohibition Act and directed to undergo R.I. for two years with a further direction to run the sentences concurrently by Presiding Officer, FTC, Ist, Patna in Sessions Trial No.590 of 1997 / 38 of 2001 preferred instant appeal.

**2.** Fatimah Hussain (PW.3) filed written report (Ext.2) disclosing therein that his daughter has been married with Kausar Hashmi on 10-01-1993. After marriage, she had gone to her Sasural where her father-in-law Wasim Hashmi, mother-in-law Wadiha Khatoon and their three daughters, Safia Rashid, Sabina, Sabina Nazami began to torture for Rs.50,000/-. They used to assault. They continued with demand of Rs.50,000/- and further, threatened that in case of failure on her part to facilitate the aforesaid amount, she will



be murdered. Her daughter used to inform her. Times without number, they tried to resolve but without any success. On 11-05-1996, her husband and other family members turned her out after brutally assaulting as she failed to satisfy their greed and on account thereof, her daughter returned back to her. While she was staying with her, on 22-05-1996 at about 11:00 AM, her son-in-law Kaiser Hashmi came at her house and took her daughter away on the pretext of amusement. When she did not return up till 09:00 PM, she phoned to brother of her son-in-law and inquired from her son-in-law regarding her daughter, who disclosed that he had left her at "Pathan Toli More" at about 02:00 PM. As her daughter has not return till today, on account thereof written report was filed on 23-05-1996.

**3.** On the basis of aforesaid written report Alamganj P.S. Case No. 133 of 1996 was registered where upon investigation commenced and during course thereof, victim Sahin Bano was traced out, statement of the witnesses were recorded and then thereafter, after completing the investigation, charge sheet was filed whereupon cognizance of an offence punishable under Section 364, 498A IPC, 3, 4 of the Dowry Prohibition Act was taken and accordingly, case was committed. After conclusion of the trial, other co-accused were acquitted of all the charges having framed against them while appellant Kausar Hashmi has also been acquitted for an offence

punishable under Section 364 IPC as well as 3 of the Dowry Prohibition Act. At the other end, was found guilty for an offence punishable under Section 498A of the IPC as well as 4 of the Dowry Prohibition Act whereunder he has been sentenced as indicated above, the subject matter of instant appeal.

**4.** The defence as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence as well as of false implication. The further case happens to be over conflict of concept of art of living and on account thereof, to coerce and compel the appellant to come in toe, this case has purposely been filed. In order to support its plea examined three DWs.

**5.** In order to challenge the finding recorded by the learned trial court, it has been submitted on behalf of appellant that the learned lower court below committed grave error in convicting and sentencing the appellant over inconsistent as well as contradictory statement of witnesses. Further, emphasizing the plea, it has been submitted that from the conduct of the victim herself it is apparent that her activities has been found detrimental to the family of appellant and on account thereof, whenever appraised, she revolted tingled and humiliated to such extent, making the family, social, life of appellant hell, by way of her unscrupulous activities, even by way

of filing instant false and frivolous case.

**6.** It has further been submitted that while acquitting the appellant for an offence punishable under Section 364 of the IPC, the learned lower court perceived conduct of the victim who, on her own got herself concealed remaining at the residence of other for two consecutive days without proper acquaintance and that depicts the way of living of alleged victim, his wife. The aforesaid event should also have been taken into consideration by the learned lower court and had abjured the appellant for other remaining finding as the demand of Rs.50,000/- has not been supported by her parents including that of assault. The aforesaid event, as is evident, has duly been commanded by the so-called victim Sahin Bano (PW-2) with ulterior motive and being so, the learned lower court might have rejected her testimony, out rightly.

**7.** Then it has been submitted that marriage was solemnized in the year 1993 and by the grace of God, the spouses have been blessed with two children however, their birth did not deter the unwarranted activities of PW.2 Sahin Bano which, did not like by the appellant and his family on account of having two daughters, left in uncared manner whereupon requested to regulate her way of living caused annoyance took her mother in her confidence and got this case filed.



**8.** Furthermore, it has been submitted that divorce has already been effected amongst the spouse, which happens to be the subsequent event. The two daughters are along with Sahin Bano who, presently is living vagabond life, and on account thereof, the appellant is very much conscious towards welfare of his daughters by way of providing good education including proper way of livelihood.

**9.** As submitted that the allegations whatsoever been alleged did not fall within the ambit of Section 498A of the IPC as well as Section 4 of the Dowry Prohibition Act, apart from the fact that having spent for such long tenure of conjugal life would not justify its application. To support the same referred (2011) 12 SCC 408, (2010) 7 SCC 667, (2010) 11 SCC 749, (2008) 16 SCC 512, (2007) 9 SCC 721, (2009) 13 SCC 330.

**10.** While hearing instant appeal, having peculiar facts and feature on account of being fought amongst the spouses, presence of Sahini Bano was also expected and for that, adjournment was also facilitated however, none turned up on her behalf.

**11.** The learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that the learned lower court, after having analytical as well as critical analysis of the evidences having on the record adduced on behalf of respective parties, recorded finding of guilt for an offence

punishable under Section 498A of the IPC, 4 Dowry Prohibition Act and on account thereof did not attract interference.

**12.** In order to support its case prosecution had examined altogether nine PWs out of whom PW-1 is Asdar Hussain, PW.2 Sahin Bano, PW.3 Fatimah Hussain, PW.4 Arshad Hussain, PW.5 Fajal Ali Nakbi, PW.6 Saiyed Hamramaur Rahman, PW.7 Md. Jalaludin, PW.8 Nurul Haque and PW.9 Jai Prakash Singh (Investigating Officer) as well as had also exhibited Ext.1 the statement of PW.2, victim under Section 164 Cr.P.C., Ext.2 written report, Ext.3 endorsement thereupon, Ext.4 formal FIR. Defence had also examined 3 DWs out of whom DW-1 is Jafar Alam, DW.2 Khawaja Md. Irfan, DW.3 Saiyad Rasid Hussain and had also exhibited Ext.A a letter written by PW.2 to Officer-in-charge, Patliputra P.S., A/1 is another letter written by PW.2 is another letter subsequently written by PW.2 in Urdu. Ext.B is the signature of PW.2 over Nikahnama while B/1 is the signature of appellant Kausar Hasim over the Nikah Nama.

**13.** Taking into account the nature of litigation, it looks better to proceed with the evidence of PW.2, Sahin Bano an aggrieved at first instance. She has stated that marriage was solemnized with Kaisar Hashmi on 10-01-1993 and accordingly, she gone to her Sasural on 11-01-1993. It has been disclosed that relation



was cordial on the first day. On second day, when they have gone through the list of articles having been gifted at the marriage occasion they found description of T.V. Instead of T.V. money was given and so T.V. was not given and on account thereof, they became very much annoyed. They also became annoyed over Nandana (articles to be given to sister of bridegroom). On account thereof, her husband, his father, his mother, his all the three sisters advanced demand of money appertaining to Rs.50,000/-. As her parents failed to satisfy their demand, they used to oust her after assault and sent her to Maika frequently. She used to return back after getting the matter settled. However, no change in their attitude was seen. It has further been disclosed that on the pretext of talk, her husband took her to Botanical garden where on, the pretext of firearm unsuccessfully forced her to sign over divorce paper, which she refused. The aforesaid eventuality was prevented by his friend and getting a chance at that score she escaped therefrom, took auto rickshaw, arrived at Railway Station and then, had gone to Patna City to her distant relative residence. She spent night. She had disclosed the incidence. On 24-05-1996 her mother was informed who came along with police, gone to Alamganj P.S. recorded her statement. She further disclosed that during her stay at her Sasural she was physically as well as mentally tortured as she failed to fulfill their

demand of Rs.50,000/-

**14.** During examination, she had stated that it was arranged marriage and during course thereof, there was talk over the items to be given at the time of marriage. At para-13 she had stated that accused persons began to raise their voice since third day of marriage. In para-19 she had stated that she is unable to disclose the exact dates of demands though during aforesaid events, sometimes neighbours also intervened. However, she had not lodged any case relating to those events. In para-21 she had stated that she had narrated the demand of Rs.50,000/- in lieu of washing machine and other items. At that very time she was residing at Pattchar Ki Masjid. In para-23 she had also stated that demand continued during course of her stay at Ganga Apartment. At that very moment, she was even physically assaulted and on account thereof, there was prevalence of strain relationship. Her husband used to leave her at her Maika. Her neighbours did not intervene. In paras-24, 25 she detailed the incidence of assault having inflicted upon her by her husband. She had further stated that during course of assault, she sometimes slept while at some occasion slipped to bathroom. Sometime she used to cry and sometimes used to keep mum. Also exhibited the letter having in her pen. In para-38 she had stated that since 1996 there happens to be strain relationship. At that very moment, she was

residing at Ganga Apartment. In para-41 she had reiterated the incidence of torture. In para-45 she had stated that she had compromised the case with her husband and in token thereof, she had given an undertaking on 07-06-1996 before the court. In para-46 she had stated that she does not want to stay with her husband.

**15.** PW-1 is brother of PW.2 who had corroborated the evidence of the PW.2. in his examination-in-chief. During cross-examination at para-10 he had stated that he had visited the place of his brother-in-law ten times. In para-13 he had stated that his sister was not subjected to torture in his presence however, quarrel had taken place. In para-14 he had stated that his sister had divulged with regard to torture meted out. In para-15 he had stated that he was informed regarding demand of Rs.50,000/-.

**16.** PW.3 is mother of PW.2. She happens to be informant also. During her examination-in-chief she had reiterated the same version whatever she had made in written report. At para-5 of her cross-examination, it is evident that at the time of negotiation there was no talk relating to gift. They have accepted the items whatsoever she had given at the time of marriage. Subsequently they began to demand as disclosed by her daughter. In para-7 she had stated that no quarrel had taken place in her presence but her daughter used to inform over phone. In para-9 she had further stated that no demand

was made from her.

**17.** PW.4 is the father of PW.2, who during examination-in-chief had reiterated the same version. In para-2 he had stated that he had disclosed the accused persons that their demands are not justifiable and so, they should not insist upon the same. In para-5 of his cross-examination he had stated that at the time of negotiation there was no demand of dowry. In para-6 he had further stated that no demand was made in his presence but his daughter repeatedly informed regarding demand as well as torture inflicted upon her on that very score.

**18.** PW.5 had stated that there was strain relationship in between Sahin Bano with her husband. During cross-examination at para-2 as well as para-4 he had stated that not demand was ever made by the accused persons. In para-5 he had stated that while residing at Ganga Apartment, they indulged in frequent fighting. Sometimes, they even came out from flat. In para-6 he had stated that wife of Kaisar Hasmi wants to lead free life.

**19.** In likewise manner is the evidence of PW.6, PW.7, PW.8. PW.9 is the Investigating Officer who had conducted investigation. From his evidence it is apparent that he had visited the place of occurrence lying at Mohalla Pathantoli as well as Ganga Apartment. Took statement of witnesses, arrested the accused.

Recovered victim, got her statement. During cross-examination he was tested over recovery of the victim and further suggested over collusive mode of investigation.

**20.** Defence had also adduced evidence. DW-1 Jafar Alam deposed that there was no demand. Victim was never tortured. He had further stated that he had seen the wife of accused in company of unknown person. During cross-examination at para-4 he had shown his relationship with appellant and was tested on that very score. DW-2 is Khawaja Mohammed Irfan. He also deposed that accused persons never demanded nor tortured the victim. He had further stated that he had seen the victim in company of others. During cross-examination, he had stated that her appearance happens to be that of medical representative and found corroborated with the evidence of PW.4, father who had deposed that his daughter is medical representative. DW-3 is formal in nature and had exhibited Nikahnama, letters. He happens to be brother-in-law of accused. He had been suggested in terms thereof.

**21.** In *Bhaskar Lal Sharma v. Monica* reported in (2009)10 SCC 604, the ambit, scope of Section 498A IPC and its ingredients have been thoroughly dealt with and for better appreciation the same is quoted below:-

**“27.** Parliament by Act 46 of 1983 with a view to combat the menace of dowry deaths

and harassment of woman at the hands of her husband or his relatives introduced Section 498-A and Section 304-B in IPC. Section 498-A reads as under:

*“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”*

**28.** The “Explanation” appended to Section 498-A thereto defines cruelty to mean:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

**29.** Thus, the essential ingredients of Section 498-A are:

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:

(i) any wilful conduct as was likely to drive such woman:

a. to commit suicide;

b. cause grave injury or danger to her life, limb, either mental or physical;

(ii) harassment of such woman,

(1) with a view to coerce her to meet unlawful demand for property or valuable security,

(2) or on account of failure of such woman or by any of her relation to meet the unlawful demand;

(iii) woman was subjected to such cruelty by:

(1) husband of that woman, or

(2) any relative of the husband.

For constitution of an offence under Section 498-A IPC, therefore, the ingredients thereof must be held to be existing.

**30.** For proving the offence under Section 498-A IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health." ~~xxxx~~

**22.** In *Rajendran Vs. State Asstt. Commr. of Police, Law &*

*Order* reported in *AIR 2009 SC 855* it has been held:-

7. Section 498A reads as follows :

"498A : Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this section 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

8. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the



Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Indian Evidence Act, 1872 (in short 'Evidence Act') have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See *Akula Ravinder and others v. The State of Andhra Pradesh* (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

9. The above position was highlighted in *Balwant Singh and Ors. v. State of H.P.* [2008(10) JT 589].

10. Section 498A IPC has two limbs. The first limb of Section 498A provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman



to cruelty shall be punished. 'Cruelty' has been defined in clause (a) of the Explanation to the said Section as any wilful conduct which is of such a nature as is likely to drive to a woman to commit suicide. When there is demand of dowry, the case comes under clause (b) of the Explanation to Section 498A. Clause (a) of the Explanation has definite application to the facts of the present case. Additionally, effect of Section 113A of the Indian Evidence Act cannot be lost sight of."

**23.** In order to appreciate whether the evidence as adduced on behalf of prosecution satisfy the ingredients of Section 498A of the IPC, it is apparent that prosecution has succeeded in proving the status of PW.2 to be married with the appellant and further, is found to have substantiated the act of cruelty, as is evident from PW.2, supported by PW.1, PW.3 and PW.4. Furthermore, it is also apparent from the evidence of PW.2 that the harassment was made in the background of saturation of Rs.50,000/- as demanded at the end of appellant in lieu of dowry for procurement of those items which, the prosecution party failed to oblige at the time of marriage or just after marriage. Furthermore, the torture or harassment was inflicted at the end of husband. As such, the finding of the learned lower court holding guilty for an offence punishable under Section 498A IPC as well as 4 of the Dowry Prohibition Act is found well substantiated on the basis of the evidence available on the record.

**24.** However, coming over sentence, two important things



have been perceived. The first one as is evident from para-45 of deposition of PW.2, victim whereunder she had narrated that she had compromised the case and in token thereof she had filed an undertaking on 07.06.1996 before the learned lower court. However, backed during trial. Furthermore, as is evident from para-46 she was not inclined to stay with her husband. Apart from this, it has been submitted by the learned counsel for the appellant that parties have chosen their path. After divorce, are living independently without having inter se access. Apart from this, It is also apparent from the evidence of PW.2 as well as PW.4 that during subsistence of wedlock spouses have been blessed with two children. Furthermore, the appellant is keen to look after his children including aged parents as well as other family members. It is further evident from the record of the lower court that appellant was under judicial custody during pretrial stage.

**25.** In the aforesaid facts and circumstances of the case as well as taking into account the principle decided by the Hon'ble Apex Court in *S. Mahaboob Basha Vs. State of Karnataka* reported in (2014) 10 SCC 244, the sentence of imprisonment imposed on the appellant for conviction under Section 498A is reduced to the period already undergone by him at the other end fine of Rs.2 lacs (2,00,000/-) is imposed. In likewise manner, sentence directed under

Section 4 of the Dowry Prohibition Act for 2 years, is also reduced to the period already undergone and is ordered to run concurrently. The fine amount must be deposited within six months either in lump sum or in instalment. In case of deposit of the aforesaid amount of two lacs, the same will be paid to PW.2 Sahin Bano in terms of Section 357 Cr.P.C. on proper identification after having noticed at the end of the court concerned. In case of default of payment of fine as indicated above. Appellant is directed to undergo R.I. for two years under Section 498A of the IPC only. Instant appeal is dismissed with regard to conviction however, with modification in sentence. Appellant is on bail hence his bail bond is cancelled with a direction to surrender before the learned lower court with a prayer of bail which the learned lower court will allow provisionally for six month only to enable the appellant to comply the direction as enumerated above.

**(Aditya Kumar Trivedi, J.)**

Patna High Court  
Dated, the 1<sup>st</sup> day of April, 2015  
Prakash Narayan

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