

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.192 of 2008
WITH
Criminal Appeal (DB) No. 289 of 2008
WITH
Criminal Appeal (DB) No. 318 of 2008
WITH
Criminal Appeal (DB) No. 331 of 2008

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AGAINST THE JUDGMENT OF CONVICTION, DATED 30TH JANUARY, 2008 AND THE ORDER OF SENTENCE, DATED 31ST JANUARY, 2008, PASSED, IN SESSIONS TRIAL NO. 381 OF 1992, ARISING OUT OF LAKHISARAI POLICE STATION CASE NO. 220 OF 1991, BY SHRI BIRENDRA KUMAR SINGH, ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO. II, LAKHISARAI

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BISHO SAO @ BISHESHWAR SAO, SON OF LATE GOPI SAO, RESIDENT OF VILLAGE MAULANAGAR, POLICE STATION SURJGARHA, DISTRICT LAKHISARAI

.... APPELLANT (IN CRIMINAL APPEAL (DB) NO. 192 OF 2008)

WITH

ARUN SAO, SON OF SHRI BISHO SAO, RESIDENT OF VILLAGE MAULANAGAR, POLICE STATION SURJGARHA, DISTRICT LAKHISARAI

.... APPELLANT (IN CRIMINAL APPEAL (DB) NO. 289 OF 2008)

WITH

1. VINOD SAO, SON OF SHRI BISHO SAO,
2. PRAMOD SAO, SON OF SHRI BISHO SAO,
BOTH RESIDENT OF VILLAGE MAULANAGAR, POLICE STATION SURJAGARHA, DISTRICT LAKHISARAI

.... APPELLANTS (IN CRIMINAL APPEAL (DB) NO. 318 OF 2008)

WITH

MUNNA SAO, SON OF SHRI BISHO SAO, RESIDENT OF VILLAGE MAULANAGAR, POLICE STATION SURJAGARHA, DISTRICT LAKHISARAI

.... APPELLANT (IN CRIMINAL APPEAL (DB) NO. 331 OF 2008)

THE STATE OF BIHAR RESPONDENT (IN ALL THE APPEALS)

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Appearance :

(In CR. APP (DB) No. 192 of 2008)

For the Appellant : Mr. Krishna Mohan, Advocate
Mr. Praveen Kumar, Advocate

For the Respondent : Mr. A. Sharma, A.P.P.

(In CR. APP (DB) No. 289 of 2008)

For the Appellant : Mr. Krishna Mohan, Advocate
Mr. Praveen Kumar, Advocate

For the Respondent : Mr. S. C. Mishra, A.P.P.

(In CR. APP (DB) No. 318 of 2008)

For the Appellant : Mr. Krishna Mohan, Advocate

For the Respondent : Mr. Praveen Kumar, Advocate
Mr. S. C. Mishra, A.P.P.
(In CR. APP (DB) No. 331 of 2008)
For the Appellant : Mr. Krishna Mohan, Advocate
Mr. Praveen Kumar, Advocate
For the Respondent : Mr. Ashwani Kumar Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE GOPAL PRASAD
CAV JUDGMENT

(Per: **HONOURABLE MR. JUSTICE I. A. ANSARI**)
Date: 24-04-2015

Under challenge, in the present appeals, is the judgment, dated 30.01.2008, of conviction, in Sessions Trial No. 381 of 1992, passed by learned Additional Sessions Judge, Fast Track Court No. II, Lakhisarai, and the order, dated 31.01.2008, whereby various sentences have been passed against the accused-appellants.

2. By the impugned judgment, the learned trial Court has convicted all the accused-appellants, namely, Bisho Sao @ Bisheshwar Sao, Arun Sao, Pramod Sao, Munna Sao and Binod Sao, under Section 302 read with Section 34 of the Indian Penal Code and Sections 201 and 498A of the Indian Penal Code. While the accused-appellants stand sentenced, for their conviction under Section 302 read with 34 of the Indian Penal Code, to suffer imprisonment for life and pay a fine of Rs. 10,000/- each, they stand sentenced, for their conviction under Section 201 of the Indian Penal Code, to undergo simple imprisonment for a period of seven years and pay a fine of Rs.

5,000/- each and all of them, further, stand sentenced, for their conviction under Section 498A of the Indian Penal Code, to undergo simple imprisonment for a period of three years and pay a fine of Rs. 2,000/- each and, in default of payment of fine, undergo imprisonment for 1 (one) year, all the sentences having been directed to run concurrently.

3. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) Radha Devi, daughter of the informant, Ram Prasad Sao (PW 8), was married to accused Munna Sao, their marriage having been solemnized, on 23.05.1991, according to Hindu rites and customs. In the marriage, apart from giving to Rahya Devi, a sum of Rs. 8,000/-, in cash, gold nose pin, one wrist watch, clothes and utensils, the informant also gave to his daughter, Radha Devi, gold and silver ornaments.

(ii) The informant's daughter, Radha Devi, lived for a month at her matrimonial house. The accused Munna Sao, husband of Radha Devi (since deceased) and his family members had been demanding gold chain and gold ring from Radha Devi's father and used to assault her for her inability to bring the gold chain and gold ring from her parental home. Banarasi Sao (PW 2), co-brother-in-law of the informant, used to come to the house of the informant and used to tell the informant that the accused aforementioned were demanding



gold chain and gold ring and that for non-fulfillment of their demand, they were threatening to kill Radha Devi. On the occasion of *Naag Panchmi*, accused Munna Sao, husband of Radha Devi (since deceased), came to the house of the informant and, at the time of their departure, he (accused Munna Sao) demanded gold chain and gold ring. Responding to the demand so raised, the informant told accused Munna Sao that he (informant) had solemnized the marriage of his daughter by taking loan and that he would give to accused Munna Sao what he had been demanding, when he (informant) becomes financially capable of doing so.

(iii) On 20.08.1991, on hearing that Radha Devi had died, Banarsi Sao (PW 2) went to the house of accused Munna Sao and saw Radha Devi lying dead, on a *charpai* (cot), on the upper floor of her matrimonial house. He (PW 2) noticed marks on the neck of the deceased, Radha Devi.

(iv) Having come from the house of the accused persons, Banarsi Sao (PW 2) sent his son, Birbal Sao (PW 3), to the parental house of the said deceased to inform her parents about her death and, on the same day, i.e., on 20.08.1991, at about 07:00 PM, Birbal Sao (PW 3) came to the house of the informant and told him that the in-laws of Radha Devi had called him (informant) as Radha Devi was indisposed and saline drips were being administered to her (Radha Devi) at the

hospital.

(v) On receiving the information so given, when the informant, along with his brothers, Narayan Sao (PW 4), Ram Awtar Sao (PW 6), Ramashish Sao (PW 7) and his father, namely, Sitaram Sao (PW 5), reached the matrimonial house of his daughter, Radha Devi, they found the house locked and, later on, they came to know that the accused aforementioned had removed the dead body of Radha Devi from their house after killing her (Radha Devi) by hanging her. The reason, behind killing Radha Devi, according to the informant, was non-fulfillment of the demand of gold chain and gold ring raised by the accused aforementioned.

(vi) An oral information about the occurrence was given to the police by Ram Prasad Sao (PW 8), father of the said deceased, when he (PW 8) was returning from the house of the accused persons along with his father and his said brothers. The information, so given by the informant, was reduced into writing in the form of his *fardbayan* and treating the said *fardbayan* as First Information Report (Exhibit 4), Lakhisarai Police Station Case No. 220 of 1991 was registered, under Sections 304B/498A/201 of the Indian Penal Code, against the 6 (six) accused persons, namely, (i) Bisho Sao, (ii) Pramod Sao, (iii) Arun Sao, (iv) Vinod Sao, (v) Munna Sao and (vi) wife of Arun Sao (i.e., Geeta Devi).



(vii) During investigation, police recovered the dead body of Radha Devi from near the place of crematorium located by the side of Kuil river and, then, inquest was held over the said dead body, which was also subjected to *post mortem* examination. The doctor opined that Radha Devi had met with her death due to asphyxia caused by hanging and, on completion of investigation, *charge sheet* was laid, under Sections 306/201 of the Indian Penal Code, against 4 (four) of the said 6 (six) accused persons, namely, (i) Bisho Sao, (ii) Pramod Sao, (iii) Vinod Sao and (iv) Munna Sao. No *charge sheet* was submitted against accused, namely, Arun Sao and his wife, Geeta Devi. No *charge sheet* was, thus, submitted under Section 304B and/or 302 of the Indian Penal Code against any of the accused aforementioned.

4. At the trial, however, charges, under Sections 302, 306, 201 and 498A read with Section 34 of the Indian Penal Code, were framed against the 4 (four) accused persons, namely, (i) Bisho Sao, (ii) Pramod Sao, (iii) Vinod Sao and (iv) Munna Sao. To the charges so framed, they all pleaded not guilty. No charge, under Section 304B of the Indian Penal Code, was framed against any of the accused aforementioned.

5. During trial, accused Arun Sao was also made an accused by the learned trial Court by taking recourse to Section 319 of the Code of Criminal Procedure. On his being so made

an accused as indicated hereinbefore, charges were framed against accused Arun Sao, too, under the same penal provisions, whereunder charges had been framed against the other accused persons aforementioned. To the charges so framed, accused Arun Sao, too, pleaded not guilty.

6. In support of their case, prosecution examined altogether 14 (fourteen) witnesses. The accused persons were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, they denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence that of denial of the accusations made against them by counter assertion that they had never demanded money, ornaments or any valuables from the parents of the said deceased nor had they ever assaulted or tortured the informant's daughter, Radha Devi (since deceased). It is also the case of the defence that accused Munna Sao, husband of the said deceased, had met with a railway accident and suffered injuries, which rendered him incompetent to perform his conjugal obligations and that was the reason why Radha Devi had, perhaps, committed *suicide* and that she (Radha Devi) had not been killed.

7. Having, however, arrived at the finding that accused-appellants aforementioned had been proved guilty of

the offences not only under Section 302 read with Section 34 of the Indian Penal Code, but also under Sections 201 and 498A read with Section 34 of the Indian Penal Code, learned trial Court convicted them accordingly. Following their conviction, sentences have been passed against the accused persons as mentioned above.

8. Aggrieved by their conviction and the sentences passed against them, the convicted persons have preferred these appeals.

9. All these four appeals having, thus, arisen out of the impugned judgment of conviction, dated 30.01.2008, and the impugned order of sentence, dated 31.01.2008, these appeals have been heard together and are being disposed of by this common judgment and order.

10. It may be noted that accused Bisho Sao died during the pendency of his appeal and no substitution has been sought for. Consequently, Criminal Appeal (DB) No. 192 of 2008, preferred by accused-appellant, Biso Sao, stands abated.

11. We have heard Mr. Krishna Mohan, learned counsel for the appellants, and Mr. A. Sharma, learned Additional Public Prosecutor, appearing for the State in Cr. Appeal No.192 of 2008. We have heard also Mr. S.C. Misra, learned Additional Public Prosecutor, appearing for the State in Cr. Appeal Nos.289 of 2008 and 318 of 2008, and Mr. Ashwani

Kumar Sinha, learned Additional Public Prosecutor, appearing for the State in Cr. Appeal No.331 of 2008.

12. Before we enter into the discussion of the evidence of the informant and his relatives, let us take note of the evidence of the doctor (PW 11), who had, admittedly, performed, on 21.08.1991, at about 01:40 PM, *post mortem* examination on the dead body of Radha Devi. According to the doctor (PW 11), on conducting *post mortem* examination, he found following *ante mortem* injuries on the said dead body.

“(i) *Bruise appears ligature mark across the front of neck horizontally placed above cricoid cartilage 6" x 1/2". On dissection found extravasations of blood present under the subcutaneous tissues and muscles. Dislocation of second cervical vertebra found.*

(ii) Abrasion 1/2" x 1/4" on the back of right elbow joint.

(iii) Abrasion 1/2" x 1/4" on the lateral aspect of right ankle joint and also on the left ankle.

Froth containing blood present on the nostrils.

Evidence of trickling of saliva on the right side over the chin.

Abdomen distended.”

13. In the opinion of the doctor (PW 11), the death was caused due to asphyxia by hanging. The doctor (PW 11) has clarified that the hanging might have been *suicidal* or *homicidal*.



14. What is necessary to note, while considering the medical evidence, on record, is that the doctor (PW 11) has not given any definite opinion as to whether Radha Devi's death was *suicidal* or not has he (PW 11) been able to confirm if Radha Devi's death was *homicidal* in nature. In fact, nothing was elicited by the prosecution from the doctor (PW 11) to ascertain whether Radha Devi's death was *suicidal* or *homicidal*.

15. Impact of what transpires from the materials on record is that the prosecution remained all along undecided whether the present one was a case of *suicide* or *homicide*, for, it is not in dispute that asphyxia by hanging may be *suicidal* as well as *homicidal*.

16. No wonder, therefore, that the *charge sheet* was not submitted under Section 302 and/or under Section 304B of the Indian Penal Code. Charges were, however, framed by the learned trial Court under Section 302 as well as under Section 306 of the Indian Penal Code.

17. Thus, neither any *charge sheet* was submitted against any of the accused under Section 304B of the Indian Penal Code nor was any charge framed at the trial, under Section 304B of the Indian Penal Code, against any of the accused.

18. Necessarily, therefore, the prosecution's case has

been that Radha Devi was killed, because of asphyxia caused by strangulation and, therefore, her death was *homicidal* in nature. In the same breathe and at the same moment, the prosecution has also contended before the learned trial Court that her death could have been *suicidal*.

19. Since no *charge sheet* was submitted under Section 304B of the Indian Penal Code and no charge was framed against any of the accused under Section 304B of the Indian Penal Code, none of the accused-appellants was convicted under Section 304B of the Indian Penal Code. The implication is that the prosecution does not allege that the death of Radha Devi was *dowry death*.

20. Thus, the learned trial Court was satisfied that the ingredients of the offence of *dowry death*, as envisaged by Section 304B of the Indian Penal Code, had not been satisfied by the materials collected during investigation.

21. The fundamental question, therefore, which stares at us, remains: whether Radha Devi's death was *homicidal* or her death was *suicidal*?

22. Without a definite answer to the question, posed above, the conviction of the accused-appellants would not be legally sustainable either under Section 302 of the Indian Penal Code or under Section 306 of the Indian Penal Code. Unless, therefore, there is clear and convincing evidence of *homicide*,

none of the accused-appellants could have been convicted of *murder* and, conversely, if there is no cogent and convincing evidence of *suicide*, none of the accused-appellants could have been convicted under Section 306 of the Indian Penal Code either.

23. In fact, the learned trial Court has not convicted the accused-appellants under Section 306 of the Indian Penal Code. The possibility of *suicide* is, therefore, ruled out.

24. As a corollary to the above conclusion, the question arises: Had the prosecution adduced cogent, clear and convincing evidence that Radha Devi had been *murdered* and the accused-appellants were the ones, who had committed the *murder*?

25. Coming to the question as to whether the charge framed against the accused-appellants, under Section 302 of the Indian Penal Code, was proved beyond reasonable doubt by the evidence on record or not, it is imperative to note that prosecution has, admittedly, not examined any eye-witnesses to the occurrence to show that Radha Devi had been killed.

26. There is, therefore, admittedly, no direct evidence on record, or eyewitnesses' account, describing that Radha Devi's death was *homicidal*. Was there sufficiently cogent, convincing and reliable evidence on record that the accused-appellants or anyone of them had committed *murder*?

27. We may also pause here to point out that though PW 8 has claimed that Radha Devi's husband, (i.e., accused Munna Sao), had demanded gold ring and chain, he has, admittedly, not told this fact to anyone else. He did not, in fact, tell even PW 2 (Banarsi Sao) about the demand that accused Munna Sao is claimed to have raised.

28. While considering the evidence of PW1, PW 2, PW 3 and PW 4, what is most important to note is that none of them has claimed that accused-appellant, Munna Sao, husband of the said deceased, was present at the house, when the occurrence had taken place, nor there is any evidence on record to show as to who was the person present at the matrimonial house of Radha Devi, at the time, when Radha Devi died.

29. Turning to the evidence on record, we notice that according to the evidence of PW 1 (Garib Sao), he knew Radha Devi, daughter of the informant (PW 8), whose marriage was solemnized with accused Munna Sao, son of accused Bisho Sao (since deceased), in the month of May, 1991 and, following her marriage, Radha Devi went to her matrimonial house, but after two or three months of her marriage, Basarsi Sao (PW 2), brother-in-law or PW 1 (Garib Sao), came and told him (PW 1) that Radha Devi had died.

30. It is in the evidence of PW 1 that he (PW 1), along

with PW 2 (Banarsi Sao), went to Radha Devi's matrimonial house, where they found Arun Prasad and two other persons present, they went upstairs and saw the dead body of Radha Devi lying prostrate on a cot with both her legs hanging down the cot.

31. It is also in the evidence of PW 1 that he did not find any injury on the dead body except one on her back even though he closely examined the dead body by turning it. PW 1 has deposed that thereafter, both, he (PW 1) and PW 2, went to Suryagarha Market and PW 1 sent his son, Birbal (PW 3), to Lakhisarai and he (PW 2) himself went to inform the police and he (PW 1) waited at the market until the parents of the said deceased arrived and, then, all of them went to the house of accused Bisho Sao (since deceased), but they found the house closed and none was present there.

32. On careful scrutiny of the evidence of PW 1, it is clear that he has given no evidence that any demand for ornament or cash had been raised by any of the accused nor has PW 1 given any evidence that Radha Devi had ever been put to torture, assault or beating. In fact, PW 1 has deposed, in his cross-examination, that Radha Devi never made any complain to him (PW 1) with regard to her being tortured by the accused for want of dowry.

33. Coupled with the above, there is neither any direct

nor any indirect evidence coming from PW 1 that Radha Devi was killed or committed *suicide*. His evidence, therefore, merely proves that Radha Devi was wife of accused Munna Sao, they lived together and she died not in normal circumstances. Whether Radha Devi committed *suicide* or her death was a case of *homicide*, the evidence of PW 1 provides no clue nor does his evidence shows that Radha Devi was subjected to cruelty so as to attract Section 498A of the Indian Penal Code.

34. Close on the heels of PW 1, PW 2 (Banarsi Sao) has deposed that Radha Devi's marriage was solemnized with Munna Sao on 23.05.1991, his co-brother-in-law (PW 8) gave to his son-in-law, accused Munna Sao, a sum of Rs. 8,000/-, in cash, utensils, dress materials and one wrist watch and, following her marriage, Radha Devi went to her matrimonial house with all the aforesaid articles and lived there.

35. It is in the evidence of PW 2 that he (PW 2) used to meet accused Munna Sao, his sister-in-law and the members of his family regularly, who used to tell him (PW 2) that they want gold chain and ring and that on non-fulfillment of their demand, they would kill Radha Devi.

36. It is also in the evidence of PW 2 that he (PW 2) accordingly informed his co-brother-in-law, i.e., Ram Prasad Sao (PW 8), but his co-brother-in-law (PW 8) expressed his inability to fulfill the demands so raised on account of his

poverty and requested him (PW 2) to explain his difficulties to the members of the family of accused Munna Sao.

37. PW 2 has deposed that on 19/20.08.1991, he heard that Radha Devi had died and when he went to the house of accused Munna Sao, he found the door closed and, on reaching the upper floor of the house, he saw Radha Devi's dead body lying on a cot and though there was no mark on the dead body, a noose mark on the neck was seen and, then, he (PW 2) came down and found accused Arun Sao, Munna Sao and Geeta Devi present there, who asked him as to what should they do, and he (PW 2) told them that he would inform his co-brother-in-law (PW 8) and, upon his (co-brother-in-law's) arrival, whatever was required would be done.

38. PW 2 has also deposed that thereafter, he (PW 2) went to the market, where he got the information from one Radhe Sharma that the accused persons had removed the dead body.

39. It is, however, interesting to note that notwithstanding the fact that PW 2 has deposed that accused Munna Sao, his sister-in-law and the members of his family, used to, regularly, tell him, that they wanted gold chain and ring and that on non-fulfillment of their demand, they would kill Radha Devi, it has clearly emerged from his cross-examination that Radha Devi never made complain to him about her in-

laws.

40. Situated thus, it is clear that the evidence of PW 2, given to the effect that accused Munna Sao, his sister-in-law and the members of his family, used to, regularly, tell him, that they wanted gold chain and ring and that on non-fulfillment of their demand, they would kill Radha Devi, cannot be at all believed in or relied upon.

41. Even the evidence of PW 2 does not indicate if Radha Devi was put to death or she had committed *suicide*.

42. From the evidence of PW 1 and PW 2, the prosecution derives no strength to sustain the conviction of the accused-appellants either under Section 302 of the Indian Penal Code or under Section 498A of the Indian Penal Code.

43. Following the evidence of PW 1 and PW 2, PW 3 (Birbal Sao), son of PW 2, has deposed that he is cousin of Radha Devi, who had been married to accused Munna Sao, the marriage having been solemnized in the year 1991 and she (Radha Devi) was killed on 20.08.1991. It is in the evidence of PW 3 that he received the information regarding the death of Radha Devi from his uncle, Banarsi Sao (PW 2), who asked him to inform the parents of Radha Devi that she was dead and, thereafter, he went to Lakhisarai the same day, at 5 O'clock in the evening, and informed accordingly the parents of Radha Devi, who rushed to Surajgarha from Lakhisarai with him, but

by the time, they reached Lakhisarai, they were informed by some persons that the dead body had been removed, but he does not know as to who had removed the dead body.

44. From the evidence of PW 3, it becomes clear that though he has alleged, in his evidence, that Radha Devi had been killed, he has no personal knowledge in this regard and his evidence, therefore, given on this aspect of the prosecution's case, is wholly *hearsay* and has to be kept excluded from the purview of this Court's consideration. In fact, the Investigating Officer has proved that PW 3 did not, in his previous statement made during investigation, stated that Radha Devi had complained against her in-laws. This apart, the evidence of PW 3 is that he went on 20.08.1991 itself to the house of the informant (PW 8), father of the said deceased, and informed them about the death of Radha Devi.

45. From a combined reading of the evidence of PW 1, PW 2 and PW 3, what transpires is that Radha Devi was given in marriage to accused Munna Sao in the month of May, 1991 and she was found dead on 20.08.1991, i.e., barely three months after her marriage to the accused Munna Sao. It also transpires, from the evidence of these witnesses that PW 3 was the one, who had informed the parents of Radha Devi about the fact that Radha Devi had died.

46. What is, however, of paramount importance to

note is that none of the three witnesses, namely, PW 1, PW 2 and PW 3, whose evidence have sought to be relied upon by the prosecution, had any personal knowledge if Radha had met with *accidental* death, if she had committed *suicide* or she was *murdered*. Even the medical evidence on record does not confirm whether Radha Devi's death was *suicidal* or *homicidal*.

47. Situated thus, it becomes more than abundantly clear that resting on the evidence of PW1, PW 2 and of PW 3, neither the charge, under Section 302 of the Indian Penal Code nor the charge under Section 498A of the Indian Penal Code could have been sustained against any of the accused-appellants.

48. Bearing in mind what is indicated above, let us proceed further with the evidence on record and come to the evidence of PW 4 (Narayan Sao), brother of the informant, PW 8, i.e., father of the said deceased.

49. We notice that according to the evidence of PW 4, it was Birbal Sao (PW 3), who had brought to them the information that Radha Devi was being administered saline drips and her condition was precarious, whereupon he (PW 4) and his four brothers, namely, Prasadi Sao, Narayan Sao, Ramashish Sao and Ramavtar Sao reached Suryagarha Hospital, where, on enquiry, they came to learn that no such patient had been admitted there and, thereafter, they went to

the house of accused Bisho Sao, at Maulanagar, (i.e., father-in-law of the said deceased) and found the house locked and, upon enquiry, he came to know that after killing Radha Devi, her dead body had been caused to disappear and the inhabitants of the house had fled away after locking their house.

50. Though PW 4 has deposed that he (PW 4) came to know that Pramod Sao, Vinod Sao, Arun Sao, Munna Sao and Geeta Devi had killed Radha Devi by hanging her and that there were marks on her neck and the elbow was bruised, the evidence, so given by PW 4, is nothing but *hearsay* inasmuch as he has no personal knowledge in this regard.

51. The evidence, therefore, of PW 4 given to the effect that the accused-appellants had killed Radha Devi by hanging her has to be kept completely out of our consideration as *hearsay*.

52. What is to be also kept in view is that so far as PW 3 (Birbal Sao) is concerned, he has clearly deposed that he had informed Radha Devi's parents that Radha Devi was already dead; hence, the evidence, given by PW 4, that they were told by PW 3 that Radha Devi was administered saline drips, her condition was precarious and, on receiving this information, he (PW 4) and his four brothers, including Radha Devi's father (PW 8), reached Suryagarha Hospital, but they learnt, at the

hospital, that no such patient had been admitted, has to be treated as utterly false.

53. Even though PW 4 has deposed that the accused persons used to demand gold chain and ring from the parents of Radha Devi and due to non-fulfillment of said demand, they had killed Radha Devi, the evidence, so given by PW 4, is nothing but *hearsay* and needs to be completely kept out of the consideration of this Court inasmuch as neither Radha Devi was put to death in the presence of PW 4 nor was any demand raised by any of the accused, in the presence of PW 4, with regard to any gold chain and/or gold ring from the parents of Radha Devi.

54. In fact, it is also not the evidence of PW 4 that Radha Devi had told him (PW 4) that the accused persons had been demanding gold chain and gold ring from her parents. This apart, PW 4 has admitted, in his cross-examination, that Radha Devi never told him about any demand of dowry and he (PW 4) has, in fact, admitted, even in his cross-examination, that he never stated before police that demand for dowry had been raised by the accused persons.

55. What clearly transpires from the discussion of the evidence of PW 4 is that his evidence is nothing, but a bundle of lies and *hearsay* inasmuch as PW 4 claims that they were reported by PW 3 that Radha Devi was being administered



saline drips and her condition was precarious and, upon receiving this information from PW 3 (Birbal Sao), they went to the house of the accused, but the evidence of PW 3 does not support at all the evidence so given by PW 4 inasmuch as PW 3 has very clearly deposed that he went to the parental house of the said deceased and informed them about the death of Radha Devi. No reliance can, therefore, be placed on the evidence of PW 4.

56. Situated thus, it becomes clear that even the evidence of PW 4 does not help the prosecution in proving that Radha Devi's death was *homicidal* or *suicidal* nor is the evidence of PW 4 admissible, when he (PW 4) claims, in his evidence, that demand for gold chain or gold ring had been raised by the accused-appellants.

57. When we come to the evidence of PW 5 (Sita Ram Sao), grandfather of Radha Devi, we notice that according to his evidence, the marriage of Radha Devi was solemnized with accused Munna Sao, on 23.05.1991, and he (PW 5) was informed by Birbal Sao (PW 3) that Radha Devi was very serious and was admitted in the hospital at Surajgarha and he (PW 5), along with his four sons and Birbal Sao (PW 3), went to Surajgarha Hospital, but the doctor told them that no such patient was admitted there and, thereafter, they went to the house of accused Bisho Sao, the door of the house was found



closed and all had fled away and he did not find her granddaughter there. It is in the evidence of PW 5 that upon enquiry, the people of the locality informed them that Radha Devi was killed and her dead body had been removed. PW 5 has also deposed that the accused had killed Radha Devi and caused disappearance of her dead body. PW 5 has further deposed that Munna Sao used to say that he required a gold chain and a ring in dowry and used to demand the same from Radha Devi and threatened her to face death if the demands were not fulfilled by her parents.

58. It needs to be noted that the evidence of PW 5 that accused Munna Sao used to demand a gold chain and gold ring and had threatened Radha Devi to face death if his demand were not fulfilled by Radha Devi's parents, is nothing but, again, *hearsay* inasmuch as there is nothing in his evidence to show that he had personal knowledge of such a threat having been given to Radha Devi by accused Munna Sao and/or Radha Devi having herself reported to PW 5 that her husband had threatened that if his demands for gold chain and gold ring were not fulfilled, she would be killed.

59. While considering the evidence of PW 5 too, it should be borne in mind that his evidence is belied by the evidence of PW 3 inasmuch as PW 3 has clearly deposed, as already indicated above, that he went to the parental house of



Radha Devi and informed her parental family about her death and, hence, the evidence given by PW 5 that he, accompanied by his sons, including the father of Radha Devi, went to the hospital, etc., cannot at all be believed. This apart, the evidence of PW 5 that the accused had killed Radha Devi and caused disappearance of her dead body is also presumptuous and *hearsay* and cannot, therefore, be taken into consideration for determination of the guilt of the accused-appellants.

60. No strength is, therefore, derived by the prosecution from the evidence of PW 5 to sustain the conviction of the accused-appellants under Section 302 of the Indian Penal Code or under Section 498A of the Indian Penal Code.

61. When we come to the evidence of PW 6 (Ramautar Sao), who is the brother of informant, Ram Prasad Sao (PW 8), i.e., father of deceased Radha Devi, we notice that according to his evidence, on 20.08.1991, Birbal Sao (PW 3) came to him with the message that his niece was seriously ill and admitted in hospital, whereupon he and all his brothers went to the hospital and enquired about Radha Devi from the doctor, who said that no such patient had been admitted and, then, they went to the house of accused Munna Sao and were informed by nearby people that Radha Devi had been killed and her dead body had been removed.

62. Suffice it to point out here that the evidence,



given by PW 6 that Birbal Sao (PW 3) came to them with the message that his niece was seriously ill and admitted in hospital and that they went to the hospital and came to know from the doctor that no patient bearing the name of Radha Devi had been admitted, is completely belied by the evidence of PW 3, who has very clearly deposed, if we need to repeat, that he went to the parental house of the said deceased and informed them about the death of Radha Devi. This apart, the evidence of PW 6 that accused Munna Sao, Biso Sao, Pramod Sao, Arun Sao and Geeta Devi had killed Radha Devi and removed her dead body is, again, nothing, but *hearsay* and must, therefore, be kept out of the consideration of this Court.

63. Similarly, the evidence of PW 6 that Radha Devi used to complain to her parents that Munna Sao, Pramod Sao and other accused had threatened her to face death if their demands of gold chain and ring were not fulfilled is clearly *hearsay* inasmuch as there is nothing in the evidence of PW 6 to show that Radha Devi had complained to him (PW 6) and/or in his presence or within his hearing to her parents that accused Munna Sao had threatened to kill Radha Devi if his demands for gold ring and gold chain were not fulfilled.

64. From a close scrutiny of the evidence of PW 6, too, it clearly transpires that his evidence, which is substantially inadmissible, does not furnish cogent, sufficient,

credible and convincing evidence to found conviction of the accused-appellants under Section 302 of the Indian Penal Code or under Section 498A of the Indian Penal Code.

65. On the heels of PW 6, PW 7 (Ramashish Sao), yet another brother of the informant (PW 8), has deposed that on 20.08.1991, Birbal Sao (PW 3) came to him with the message that his niece was seriously ill and admitted in hospital, whereupon he and all his brothers went to the hospital and enquired about Radha Devi from the doctor, who said that no such patient had been admitted and, then, they went to the house of accused Munna Sao and were informed by nearby people that Radha Devi had been killed and her dead body had been removed, suffice it to point out here that the evidence, given by PW 6 that Birbal Sao (PW 3) came to them with the message that his niece was seriously ill and admitted in hospital and that they went to the hospital and came to know from the doctor that no patient bearing the name of Radha Devi had been admitted, is completely belied by the evidence of PW 3, who has very clearly deposed that he went to the parental house of the said deceased and informed them about the death of Radha Devi.

66. Coupled with the above, the evidence of PW 7 that accused had killed Radha Devi and removed her dead body is nothing, but *hearsay* and must, therefore, be kept out of the



consideration of this Court. Similarly, the evidence of PW 7 that Radha Devi used to complain to her parents that accused Munna Sao, Pramod Sao and other accused had been threatening her to face death if their demands of gold chain and ring were not fulfilled, is clearly *hearsay* inasmuch as there is nothing in the evidence of PW 6 to show that Radha Devi had complained, in his presence or within his hearing, to her parents that the accused had threatened to kill her (Radha Devi) if their demands for gold ring and gold chain were not fulfilled.

67. From a combined reading and analysis of the evidence of PW 4, PW 5, PW 6 and PW 7, what clearly emerges is that their evidence is nothing, but an admixture of half-truth and untruth and their evidence, therefore, cannot be relied upon. This apart, their evidence, that Radha Devi was killed as well as their evidence that the accused-appellants had raised demand for gold chain and gold ring, are nothing, but wholly *hearsay* and, hence, if their evidence, on these aspects of the prosecution case, are kept excluded from our consideration, none of the accused-appellants could have been convicted either under Section 302 of the Indian Penal Code or under Section 498A of the Indian Penal Code.

68. Turning, now, to the evidence of PW 8 (Ram Prasad Sao), who is informant of the case, we notice that



according to his evidence, his daughter, Radha Devi, was married to accused Munna Sao, their marriage having been solemnized on 23.05.1991 and after her marriage, Radha Devi went to her matrimonial house and when she returned after one month, she said that accused had demanded a gold ring and chain and that they had threatened to kill her if their demands were not fulfilled. It is also in the evidence of PW 8 that his brother-in-law, Banarsi Sao (PW 2), also informed him (PW 8) that accused Munna Sao, Bisho Sao and others were demanding gold chain and gold ring and they were torturing his daughter and threatening to kill her on non-fulfillment of their demand.

69. It is in the evidence of PW 8 that on the occasion of *Nag Panchami*, accused Munna Sao came and raised the demand of gold chain and gold ring and that he threatened with dire consequence if the demand was not fulfilled and took away Radha Devi. It is in the evidence of PW 8 that on 20.08.1991, Birbal Sao (PW 3) came and told him (PW 8) that his daughter (i.e., Radha Devi) was very serious and saline drips were being administered to her at a hospital and, on receiving this information, he, along with his four brothers and his father, went to Surajgarha hospital, but did not find Radha Devi there and, then, they went to the house of accused Bisho Sao and found the same closed and, upon enquiry, they came



to know that the accused had concealed the dead body of Radha Devi after killing her and, on his return, he saw a Sub Inspector of police and narrated the entire occurrence to the said police officer and the Sub Inspector of police recorded his statement, read the same over to him and he put his signature after finding the same to be correct. PW 8 has proved his signature on the *fardbayan* (Exhibit 1), which has been treated as the First Information Report in this case.

70. From a dispassionate scrutiny of the evidence of the informant (PW 8), what transpires is that Radha Devi died within about 9 (nine) months of her marriage to accused Munna Sao. Though PW 8 has deposed that when Radha Devi came to her parental house, she told that the accused had been demanding a gold ring and gold chain and had threatened Radha Devi to kill her if their demands were not fulfilled, there is no indication in the evidence, so given by PW 8, that Radha Devi gave him (PW 8) the said information.

71. Consequently, the evidence, given by PW 8, that Radha Devi told that the accused had been demanding a gold ring and gold chain and had threatened Radha Devi to kill her if their demands were not fulfilled, is nothing, but *hearsay* and ought to have been kept excluded, now, from consideration and ought to be kept excluded from the purview of our consideration.



72. While considering the evidence of PW 8, it is also extremely important to note that as far as PW 2 is concerned, he has, as we have already pointed out above, admitted, in his cross-examination, that Radha Devi had never complained to him against her in-laws. The evidence, therefore, given by PW 8 that PW 2 had told him that Radha Devi had complained to him that accused were demanding gold chain and gold ring and/or they had been torturing her and threatening to kill her on non-fulfillment of their demand cannot be safely believed in or relied upon.

73. Moreover, the evidence, given by PW 8, that Birbal Sao (PW 3) came and told him (PW 8) that his daughter (i.e., Radha Devi) was very serious and saline drips were being administered to her at a hospital, is completely belied by the evidence of PW 3, who, as already indicated above, has very clearly deposed that he (PW 3) went to the parental house of the said deceased and informed them about the death of Radha Devi. The evidence, therefore, of PW 8 that PW 3 had told him that Radha Devi was lying at a hospital is nothing, but a lie and, this shows that PW 8 is not a witness, who can safely relied upon or treated as a trustworthy witness. Moreover, the evidence of PW 8 that accused had killed Radha Devi and removed her dead body is, again, nothing, but *hearsay* and must, therefore, be kept out of the consideration of this Court.



74. Situated thus, it becomes crystal clear that by no means, PW 8 can be regarded as a witness, who is wholly reliable and trustworthy. Even if, therefore, his evidence is not rejected outright as wholly unreliable, his evidence will, at best, fall in the category of those witnesses, who are neither wholly reliable nor wholly unreliable.

75. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be wholly unreliable, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be neither wholly reliable, nor wholly unreliable, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

76. The evidence of P.W. 8, on whose evidence the prosecution's case rests, cannot, therefore, be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial. There is, however, no credible and reliable evidence, direct or circumstantial, which can be said to be so credible as to lend

corroboration to the evidence of PW 8.

77. It is also an undisputed proposition of law that one infirm witness cannot be treated to have corroborated the evidence of another infirm witness meaning thereby that witnesses of same brand cannot be taken to have corroborated each other. Thus, when a witness is neither wholly reliable nor wholly unreliable, his evidence cannot be taken to have been corroborated by a witness of the same brand, namely, a witness, who is neither wholly reliable nor wholly unreliable, for, evidence is not to be counted, but weighed. It is not the number of the witnesses, which determines the outcome of a trial; rather, it is the inherent falsity or truth of the evidence given by the witness, which decides the outcome of trial. If each one of a large number of witnesses is found to be wholly unreliable, their evidence cannot become acceptable as true merely because a large number of similar brands of witnesses have corroborated each other.

78. A reference, with regard to the above proposition of law, may be made to the case of **Muluwa, S/o Binda and others Vs. The State of Madhya Pradesh, [AIR 1976 SC 989]**, wherein the Supreme Court has observed as follows : *"It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for,*

evidence is to be weighed not counted. Since the evidence of P.Ws. 5 and 6 suffered from the same infirmities as that of Smt. Jugatia, it cannot be said that the trial Judge had no basis, whatsoever, for stigmatizing it as unreliable."

79. What follows from the above discussion is that when PW 1 to 7, 9 to 10, 12 to 14 are not individually found to be not reliable, their evidence cannot be treated to have legally rendered safe and sufficient corroboration to the evidence of PW 8, who has already been found to be neither wholly reliance nor wholly unreliable.

80. Situated thus, it is clear that merely because the evidence given by PW 8 has been corroborated by the evidence of other witnesses aforementioned, the evidence of PW 1 to 7, 9 to 10, 12 to 14 cannot be made basis for holding PW 8 a truthful witness, when he is a witness, who is neither wholly reliable nor wholly unreliable, for, one infirm witness cannot be treated to have corroborated the evidence of another infirm witness.

81. Coupled with the above, there is also no credible evidence that any of the accused-appellants had removed Radha Devi's dead body for her funeral in order to cause disappearance of evidence with the intention of screening the offenders from legal punishment.

82. In the light of what we have discussed above, it

clearly follows that the evidence on record could not have safely and legally been made the basis for conviction of the accused-appellants either under Section 302 of the Indian Penal Code or under Section 498A of the Indian Penal Code.

83. In the present case, it also deserves to be pointed out that when the possibility of *suicide* could not be ruled out, the question of holding the accused-appellants guilty of the offence of *murder* punishable under Section 302 of the Indian Penal Code could not have arisen. The accused-appellants ought to have, consequently, in such a case, been accorded, in our considered view, at least, benefit of doubt so far as the charge under Section 302 of the Indian Penal Code is concerned and ought to have been, therefore, accordingly acquitted under benefit of doubt.

84. Situated thus, we are of the considered view in the light of the evidence on record, adduced by the prosecution, the accused-appellants ought to have been given, at least, benefit of doubt.

85. In the result and for the foregoing reasons, we allow all these appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of

the same under benefit of doubt.

86. Since the accused-appellants, Bisho Sao @ Bisheshwar Sao, Arun Sao, Vinod Sao and Pramod Sao, are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

87. So far as accused-appellant, Munna Sao, is concerned, he is in custody and, therefore, he is directed to be released, forthwith, if not required to be detained in connection with any other case.

88. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(I. A. Ansari, J.)

Gopal Prasad, J. : I agree.

(Gopal Prasad, J.)

Prabhakar Anand/AFR

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