

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.398 of 2015

Arising Out of PS.Case No. -65 Year- 2007 Thana -BEUR District- PATNA

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RAJU KUMAR SON OF SHAILESH KUMAR RESIDENT OF VILLAGE-
ANISABAD,(NEAR TELEPHONE EXCHANGE), PS. BEUR, DISTRICT
PATNA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Arbind Prasad Singh, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 29-06-2017

Being aggrieved by and dissatisfied with the judgment of conviction and order of sentence dated 17.06.2015 passed by Additional Sessions Judge, Vth, Patna in Sessions Trial No.444 of 2009 / 4610 of 2014 whereby and whereunder appellant Raju Kumar has been found guilty for an offence punishable under Section 498A of the IPC and sentenced to undergo R.I. for a year as well as slapped with a fine appertaining to Rs.1000/- and in default thereof, to undergo S.I. for four months.

2. Om Prakash Yadav (PW.1) filed written report on 06.12.2007 disclosing therein that his daughter Sushila Devi (PW.3) has been married with Raju Kumar in the year 2002. At the time of marriage he had gifted as per his means. The Sasuralwala of Sushila was not at all satisfied therewith and that happens to be the reason behind that soon after marriage, husband Raju Kumar, father-in-law Shailesh Kumar, mother-in-law, sister-in-law, brother-in-law Sanjay Kumar and others began to torture his daughter for procurement of dowry. Sometimes, they were brutally assaulted. As, he happens to be inefficient in fulfilling their demand, as a result of which the inter-se relationship of spouses have set apart. The Sasuralwala of his daughter is waiting for an opportunity to



murder her. Few months ago, her husband Raju Kumar with the help of her father-in-law as well as sister-in-law succeeded in administering poisonous substance whereupon, she become unconscious. He rushed after being informed took his daughter Sushila to the clinic of Dr. Shanti Rai where she was treated. After recovery, his daughter has gone to his place where she is residing. Treatment is going on. So many attempts were taken for reconciliation but always frustrated at the end of accused persons. Lastly, he has gone along with his daughter at the place of accused persons where they were not at all welcomed at the other end threatened with dire consequences.

3. On the basis of the aforesaid written report, Beur P.S. Case No.65/2007 was registered whereupon, investigation commenced and after completing the same, charge sheet was submitted only against father-in-law, mother-in-law, husband facilitating trial. By the judgment impugned Shailesh Kumar (father-in-law), Shanti Devi (mother-in-law) were acquitted while appellant, though acquitted relating to other offences has been found guilty for an offence punishable under Section 498A IPC and sentenced therefore, the subject matter of instant appeal.

4. Defence case, 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. Furthermore, it has also been pleaded that with malafide intention this case has been instituted putting false and frivolous allegation and to substantiate the same, one DW namely, Ram Krishna Prasad has also been examined.

5. In order to substantiate its case, prosecution had examined altogether six PWs out of PW.1 is Om Prakash Yadav (informant), PW.2 is Ajit Kumar (brother), PW.3 is Sushila Devi (herself), CW.1 Sudarshan Singh (part Investigating Officer who had simply submitted charge sheet), PW.4 is Ishwar Chandra Sharma (the main Investigating Officer) and PW.5 Dr. Shanti Rai, CW.1 Sudarshan Singh. Side by side the prosecution had also exhibited Ext.1, written



report and Ext.2, formal FIR.

6. In order to properly appreciate the evidence available on the record having been adduced on behalf of respective parties, first of all Section 498A of the IPC is to be looked into which reads as follow:

“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.”

From plain reading of the Section, the following ingredients is found perceptible:

- (a) The woman must be married.
- (b) She must be subjected to cruelty or harassment.
- (c) Harassment should be with a view to coercing her or any person related to her to meet the unlawful demand of property or valuable security.
- (d) The harassment may be even where on account of failure by woman or any person related to her to meet any such demand earlier made.
- (e) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

That means to say, if the women is harassed on account of her failure or the failure of her relative to meet an unlawful demand for property or



valuable security, that also constitute cruelty within the meaning of Section 498A of IPC. The expression harassment has not been defined in Section 498A of IPC, but its dictionary meaning is to subject someone to continuous vexations attacks, questions, demands or other unpleasantness etc. But it is not harassment of every nature which is punishable under Section 498A IPC. In order to attract criminal liability, there should be torture physical or mental, by positive acts. Such acts should be aimed at persuading or compelling the woman or her relatives to meet an unlawful demand of any property or valuable security or it should be actuated by the failure of the woman or her relatives to meet such demand.

7. In *Onkar Nath Mishra v. State (NCT of Delhi)* reported in 2008 *Cr.L.J 1391* it has been observed:

“17. The term “cruelty”, which has been made punishable under Section 498-A IPC has been defined in the Explanation appended to the said section, 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. Therefore, the consequences of “cruelty”, which are either likely to drive a woman to commit suicide or to cause grave injury, danger to life, limb or health, whether mental or physical of the woman or the harassment of a woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand is required to be established in order to bring home an offence under Section 498-A IPC.”

8. Now coming to evidence PW.1, father of victim had deposed that Sushila happens to be his daughter who has been married with Raju Kumar in the year 2002. After marriage, his daughter had gone to Sasural. At the time of marriage he had gifted according to his means. At first instance, his daughter stayed at her Sasural for 2-3 months. Then thereafter she returned back to his place. After spending one year, her *Duragaman* was effected. Subsequently thereof, she was subjected to torture for dowry. His daughter was always



informing them that motorcycle, freeze, washing machine etc. are being demanded by them. He had also deposed that they have (Sasuralwala) also adamant to administer poison. Also deposed that she was administered poison by her husband, father-in-law, mother-in-law, sister-in-law, brother-in-law. They have administered poison on 08.02.2007. On getting information, he rushed and then took his daughter to Dr. Shanti Rai where she was examined and treated for 2-3 months. Then thereafter he took his daughter to his place. He tried to get the matter amicable sorted out, but the accused persons did not accept. One day, he took his daughter and gone to her Sasural but, he was driven therefrom whereupon, case was registered (Ext.8). During cross-examination at para-8 he had admitted that he had not mentioned with regard to demand of dowry by way of T.V., freeze, motorcycle etc. in his written report. He had further stated that he had not filed any application at an earlier occasion anywhere relating to torture. At para-6 (wrongly mentioned) he had disclosed that he received information regarding administering poison on 08.08.2007 whereupon he also rushed to the place of his daughter. When he reached there, he found his daughter unconscious she was shifted to the clinic of Dr. Shanti Rai where she was treated. He further disclosed that Dr. Shanti Rai had diagnosed that on account of consumption of poisonous medicine, victim has suffered from infection. He had further admitted that Divorce Suit No.596 of 2010 is going on.

9. PW.2 is brother of victim who had stated that Sushila Devi was married with Raju Kumar in the year 2002. He used to go to Sasural of his sister. Sometimes, he faced ugly scene. Husband of Sushila Devi used to assault. Husband of Sushila Devi demanded godrej, T.V., freeze, splendor motorcycle in dowry and for that, his sister was being tortured. On 08-08-2007 poison was administered to her on account of which she was treated by Dr. Shanti Rai. During cross-examination at para-3 he had admitted that no complaint was ever made with regard to assault /torture/ harassment. Then there happens to be contradiction



on the score of demand of dowry.

10. PW.3 is the victim herself who had deposed that she was married to appellant in the year 2002. After marriage, she came to her Sasural and since thereafter her husband began to torture joined by her father-in-law, mother-in-law, sister-in-law, brother-in-law for procurement of dowry. They have also forced her to drink poisonous substance on account of which she aborted. They have advanced demand of Splendor Hero Honda Motorcycle, washing machine, freeze etc. in spite of the fact that at the time of marriage her father had given sumptuous dowry. When her father came she narrated her owe whereupon he disclosed that on account of financial crunch he is unable to provide the same. Subsequently thereof, on 08.08.2017 again they have administered poisonous substance as a result of which, became unconscious. Then thereafter, her father was informed, who came on the following day, took her to Dr. Shanti Rai where she was treated. Her father had gone to settle the dispute which, the accused persons never accepted as a result of which this case has been registered. During cross-examination she had stated that she is not in possession of copy of application if any they have addressed to the competent authority with regard to torture. In likewise manner, she also failed to disclose the exact date on which, she was administered poison. She had further stated that she was not at all treated for abortion. At the third time she was taken to Dr. Shanti Rai. She further stated that one more case has been drawn up.

11. PW.4 is Ishwar Chandra Sharma, the main Investigating Officer who had deposed that during course of investigation, he took statement of the witnesses, visited the place of occurrence which happens to be house of the accused (detailed) received supervision note of Dy.S.P. wherein case has been found prima facie true and further directing to arrest the accused, he conducted raid however, due to disappearance of the accused they were not arrested. Later on Raju Kumar was arrested. Subsequently thereof, he handed over investigation.



12. During cross-examination, it is evident that certain lapses by way of not incorporating dates along with non-visit by him at the clinic of Dr. Shanti Rai has surfaced. PW.5 is Dr. Shanti Rai, who had deposed on the basis of photocopy of prescription having attached with the case diary (not an exhibit) and on account thereof, would not be admissible in the eye of law. Moreover, when her evidence has been gone through, it is apparent that she contradicted the allegation made by the prosecution party regarding administration of poisonous substance and in likewise manner, abortion having effected at an earlier event as, complain was made at her end on the score of being issueless and so, she was accordingly treated.

13. Sudarshan Singh is the Investigating Officer, who has been examined as CW.1. He deposed that he took up investigation of Beur P.S. Case No.65/2007, perused the case diary and then, finding a prima facie case, submitted charge sheet. So his status is of formal in nature.

14. After analyzing the evidences of PWs, it is apparent that save and except own family members, none came forward to corroborate. If evidence of doctor (PW.5) is accepted as an oral evidence, then in that event, she had completely demolished the case of the prosecution and in likewise manner, happens to be the evidence of PW.4, the main Investigating Officer whose objective finding relating to P.O. have not supported the case of the prosecution. Now coming to the evidence of remaining three witness that means to say PW.1 father, PW.2, brother, PW.3 victim herself, It is apparent that in casual manner the allegation has been made which, in the facts and circumstances of the case that PW.1 and 2 are graduates and PW.3 matric, that means to say literate would have exposed to that extent in the background of the fact that marriage was in the year 2002. Duragaman was effected in the year 2003 and in between 2003-07 they would have categorically explained the event of torture or cruelty at the hands, of accused persons. Whatever they deposed happen to be in evasive manner.



15. It is settled principle of law that the contents of FIR or written report, which ever may be, happens to be subject of corroboration or contradiction. During course of evidence PW.1 the informant neither deposed nor during course of cross-examination the accused persons confronted but, as the written report has been made an exhibit of the record on account thereof, the same could be seen and while doing such exercise, it has been found that the day on which the written report was filed, that means to say on 06.12.2007 the informant had himself incorporated that the relationship amongst the spouses have melted down. The cumulative effect in consonance with the principles as discussed herein above coupled with the nature of evidence having adduced on behalf of prosecution, it is apparent that prosecution could not be able to substantiate the charge whereupon, the judgment impugned is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.07.2017
Transmission Date	03.07.2017

