

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.26 of 2015

Arising Out of PS.Case No. -104 Year- 2007 Thana -NAWADA MUFFASIL District- NAWADA

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1. VIJAY YADAV.
 2. ASHOK YADAV.
 3. UDAY PD. @ PHONU YADAV.
ALL SONS OF GANAURI YADAV.
 4. GANAURI YADAV, SON OF THAKURI YADAV.
 5. RINKU DEVI, WIFE OF ASHOK YADAV.
 6. RENU DEVI, WIFE OF UDAI PRASAD @ PHONU YADAV
 7. SONI DEVI, WIFE OF VIJAY YADAV
 8. PHULWA DEVI, WIFE OF GANAURI YADAV.
ALL RESIDENT OF VILLAGE - POKHARA, P.S. - MUFASIL, DISTRICT -
NAWADA.

.... APPELLANT/S

VERSUS

1. THE STATE OF BIHAR.
2. SANJU DEVI D/O GANAURI YADAV RESIDENT OF VILLAGE -
POKHRA, P.S. - MUFASIL, DISTRICT - NAWADA.

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Gauri Shankar Prasad, Adv.

For the Respondent/s : Mr. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 04-09-2017

Because of the fact that instant litigation is being fought amongst spouses whereupon, at the request of learned counsel for the appellants so many adjournments were granted in order to facilitate compromise which, could not materialized and lastly, the matter has been heard.

2. All the appellants, namely, Ashok Yadav, Uday Pd. @ Phonu Yadav, Ganauri Yadav, Rinku Devi, Renu Devi, Soni Devi, Phulwa Devi have been found guilty for an offence punishable under Section 323 of the IPC and each one has been directed to undergo S.I. for a year while appellant Vijay Yadav husband has also been found guilty for an offence punishable under Section



498A of the IPC and sentenced to undergo R.I. for three years as well as to pay fine appertaining to rupees two thousand in default thereof, to undergo S.I. for three months additionally, by Additional Sessions Judge, IIIrd, Nawada in Sessions Trial No.156 of 2009/64 of 2014.

3. PW.2, Sanju Devi who happens to be wife of appellant no.1, Vijay Yadav had recorded her fardbeyan on 18.09.2007 at about 10:00 AM disclosing therein that her husband frequently treated her with cruelty as well as torture even going to the extent of inflicting physical harm. Today also, he along with Ashok Yadav, Ganauri Yadav, Phonu Yadav, Sona Devi (her sautin), Rinku Devi all armed with lathi, danda and garasa assaulted her as a result of which, she became unconscious. Villagers Baleshwar Yadav, Lakhan including her mother, who fortunately came at that very moment to meet with her, took her to P.S. where she regained sense wherefrom, she is being sent to hospital by the police officials for proper treatment. It has also been divulged at her end that she was not being provided food as a result of which, she has been forced to work as a labour. At an earlier occasion also her husband had assaulted her.

4. After registration of the case, as Nawada Muffasil P.S. Case No.104/2007 investigation commenced and concluded by way of submission of charge sheet facilitating the trial with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of



the Cr.P.C. is that of complete denial. However, neither any DW nor a chit of paper has been adduced in defence.

6. In order to substantiate its case, prosecution had examined eight PWs out of whom PW.1 Rajendra Yadav, hostile, PW.2 Sanju Devi, informant, PW.3 Basanti Devi, mother of PW.2, PW.4 Baleshwar Yadav cousin brother of Vijay Yadav, husband of informant, PW.5 Pramod Yadav, PW.6 Bipin Kumar, one of the co-villager (hostile), PW.7 Dr. Jitendra Kumar Singh who had examined victim and PW.8 Md. Islam formal who had exhibited relevant documents as, the Investigating Officer died in a motor vehicle accident. Side by side also exhibited, Ext.1-Injury report, Ext.2-Fardbeyan, Ext.-3 Endorsement over fardbeyan, Ext.4-Formal FIR and Ext.5-is the information convened to the court by the S.P., Nawada regarding death of the Investigating Officer and Ext.6 Case diary Para-1 to 17.

7. Learned counsel for the appellants while challenging the finding recorded by the learned lower court had raised manifold arguments. The first and foremost happens to be with regard to non-application of Section 498A of the IPC. To substantiate the same, it has been submitted that from the conduct of the victim, PW.2 it is evident that she, in a casual manner had deposed without specifying the activity of the accused more particularly of husband indulging in torturing her. So submitted that prosecution case suffers from vagueness whereupon, the finding recorded under Section 498A of the IPC is not at all found duly substantiated.



8. In likewise manner, it has also been submitted that conviction and sentence recorded for relating to Section 323 of the IPC is also not found properly proved in the background of the fact that again, the same suffers from vagueness. Improbability of the case is further evident from the fact that informant had not alleged against the appellants regarding their activity at any time earlier to alleged date of occurrence dated 18.09.2007. Consequent thereupon, the version of the informant relating to an occurrence dated 18.09.2007 is not all found reliable. The malafide intention of the informant is found further exposed from the fact that she purposely introduced presence of PW.3, her mother which, in the facts and circumstances of the case, would not have been. In such circumstance, presence of PW.3 completely demolishes the case of the prosecution and that being so, the cumulative effect led only one conclusion regarding setting aside the judgment impugned. That being so, it has been submitted that in the facts and circumstances of the case, it is fit case where the judgment recorded by the learned lower court should be annulled.

9. On the other hand, the learned Additional Public Prosecutor controverting the submission made on behalf of appellant has submitted that informant remained worse victim at the end of not only her husband, rather after her appearance in spite of having given birth to a son which happens to be a boon in the country side, she has been subjected to unending apathy after appearance of her Sautin where after whole family began to torture her so that, any how she should leave the place. That being so, the finding recorded by the learned lower court did not



require interference consequent thereupon, appeal is fit to be dismissed.

10. As stated above, the evidence of PW.1, PW.6 and PW.8 is of no relevance in the background of their status being that of hostile as well as formal in nature.

11. PW.7 is the doctor who had examined the victim on 18.09.2007 and found the following injury:-

- (i) Lacerated wound on the left forehead just above the eyebrow 1"x1/4"x1/4". Duration within six hours. Caused by hard and blunt substance. Simple in nature.

12. During cross-examination he had stated that the aforesaid injury was not at all dangerous to life and may be on fall also.

13. Now coming to remaining witnesses, PW.4 is cousin brother of appellant Vijay Yadav. During his examination-in-chief, he had stated that on the alleged date and time of occurrence, the husband and wife quarrelled. He is unaware with the reasoning therefor. He had further stated that informant Sanju happens to be his Bhabhhu, she resides at his village and for the present, she is residing along with her husband. He had further stated that his house lies hundred meter away from the house of Vijay Yadav. Vijay Yadav used to provide food to Sanju. During cross-examination he had stated that he had given evidence out of his own will. He had further stated that Sanju use to flee from the house of Vijay Yadav. He had further stated that Sanju Devi had



instituted this case maliciously so that, Vijay could not pressurized her. He had further stated that police had not taken his statement.

14. PW.5 is Pramod Yadav, another villager of appellant. He had deposed that the occurrence is about one year six months ago. Vijay Yadav used to keep his wife properly but, used to assault whenever there was wrong at the end of his wife. He had further stated that she used to slip to the house of others. He had further stated that Sanju Devi maintains herself by doing menial work. He had further stated that he had no knowledge with regard to other activity of the accused persons. During cross-examination he had stated that police had not recorded his statement. He had further stated that wife of Vijay Yadav, namely, Sanju Devi frequently flee from her Sasural. Vijay Yadav forced her to stay at his place whereupon Sanju Devi instituted this case. Vijay used to keep his daughter in congenial atmosphere.

15. PW.2 is the victim herself. She had deposed that the occurrence is about one and half years ago. Her husband Vijay Yadav, Ashok Yadav, Ganauri Yadav, Phonu Yadav, Sona Devi (her sautin), Rinku Devi did not provide her food and shelter. They used to torture her even, by way of physical assault. On the alleged date and time of occurrence, they assaulted with lathi, danda and garasa. First of all Vijay Yadav took out paina (small lathi). Sona Devi took out Garasa and handed over to Vijay Yadav who struck over her head. Then thereafter, others have also assaulted (specifically named). Her leg was tied with cord. She fell



down and became unconscious. Villagers arrived. Fortunately, her mother also arrived who had come to meet with her. Her mother had accompanied. Then thereafter, she was taken to P.S. During midst of way, she regained sense. She had recorded her fardbeyan. Then thereafter, she was sent to hospital for treatment. In para-7 she had stated that accused persons forcibly as well as after threatening her got her presence over compromise petition. Identified the accused persons. During cross-examination, at para-3 she had stated that she was married with Vijay Yadav about eight years ago. Four years after her marriage her husband remarried with Sona Devi. When Sona Devi came to her house, at that very time she was mother of two daughters out of whom one was murdered by her husband. Then thereafter, she begotten one son also. Her Sautin has got one son but not from her husband rather from previous husband. In para-5 she had stated that just after birth of second daughter, she was subjected to torture on the pretext that as she had not begotten a son, therefore she should not be allowed to stay. In the aforesaid background, he married with Sona Devi. In the same year she begotten a son. In para-6 she had stated that she had not compromised the case. The accused persons forcibly took her RTI in presence of his advocate. She was not taken before the court. In para-7 she had stated that she had not complained before the court regarding the same. In para-8 she had stated that she wants to stay with her husband Vijay Yadav on the condition that she should not be tortured furthermore. Then had said that other family members of the house also used to torture her who are residing along with her



husband. In para-9 she had stated that even after registration of the case, she has not been allowed to stay at her Sasural and so, she is residing at his Naihar. In para-10 she had denied the suggestion that as no issue was begotten by her so, with her consent her husband remarried. Furthermore, she denied the suggestion that she was being kept at her Sasural in good congenial, harmonious atmosphere.

16. PW.3, Basanti Devi is the mother of PW.2. She had stated that on the alleged date and time of occurrence she had gone to the place of her daughter to meet with her. When she arrived, she saw Vijay, Ganauri, Golu, Ashok, Sona Devi, Phula Devi, Renu Devi were assaulting Sanju. Vijay Yadav had assaulted with Bhala, Ganauri, Sonu assaulted with lathi, Ashok thrust cloth inside her mouth. Phulwa and Renu have tied her leg with cord when she protested, they snatched away her Hasuli. Her daughter was married with Vijay Yadav. Subsequently thereof, Vijay got himself remarried and then thereafter, her daughter was being treated with cruelty. She was not allowed to take food. She was physically manhandled. Panchayati was convened but did not yield any solution. They took RTI over the compromise petition forcibly. She had identified the accused. During cross-examination she had stated that she had visited place of her daughter twice. At the first occasion, her daughter was not treated with torture or cruelty but at second occasion, she had seen the occurrence. At para-5 she had further stated that her daughter was married about ten years ago. At that very time, she had gifted articles as per her means. After four years of marriage, her husband



remarried. From his second wife, there happens to be one son. In para-6 she had stated that at the time of second marriage by her husband, her daughter was at her Sasural. Sanju's both children are along with her. She is residing at her place. Her daughter wants to stay with her husband but he is not inclined to allow and so, for the last 3-4 months she is residing at her place. She had gone to her Sasural even after institution of the case along with her children where she was again treated in similar way during course of her stay. In para-7 she had stated that panchayati was convened but accused persons did not accept. At para-8 she had stated that she reached at the place of Sanju on the alleged date and time of occurrence. When she reached, her son-in-law had given one slip. On query, he began to assault. He again snatched away the aforesaid slip. Sanju was assaulted only by Vijay. Then she denied the suggestion that it is not a fact that Vijay had assaulted Sanju as she was not staying in proper way at her Sasural. In para-9 she had further stated that if her son-in-law undertakes not to torture her daughter then, in that circumstance, she will allow her daughter to go to her Sasural along with children. Then had denied the suggestion that Sanju used to go outside from her Sasural without informing her husband and when her husband protested on that very score, whereupon this false case has been lodged.

17. After having proper appreciation of the evidence in accordance with the suggestion having given to PW.3 by the appellant to the extent that as Sanju was not residing at her Sasural properly so her husband assault her, appears to be an



admission by way of suggestion. That being so, torture at the end of husband Vijay Yadav is admitted. With regard to others, the evidence on its face happens to be sketchy, crispy and that being so, this appeal relating to appellants Ashok Yadav, Uday Pd. @ Phonu Yadav, Ganauri Yadav, Rinku Devi, Renu Devi, Soni Devi, Phulwa Devi are allowed by way of setting aside the judgment of conviction and sentence impugned relating to them. They are on bail hence are discharged from its liability. With regard to appellant no.1, Vijay Yadav, the appeal is dismissed affirming the finding recorded by the learned lower court. Appellant is on bail hence his bail bond is cancelled. He is directed to surrender before the learned lower court within fortnight to serve out remaining part of sentence failing which the learned lower court will be at liberty to proceed against him in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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