

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.139 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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1. Uma Prasad Gupta Son of Late Bundi Lal Gupta
 2. Kalyan Kumar Gupta, Son of Uma Prasad Gupta
 3. Chanda Devi @ Smt. Chanda Devi@Chandra Devi, wife of Uma Prasad Gupta
 4. Anand Kumar Gupta, Son of Uma Prasad Gupta
All residents of Sheetalpur Bazar, P.S. –Dighwara, District – Saran (Chapra).

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Sinha, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mr. Chetan Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 18-01-2018

This appeal is directed against the Judgment of conviction and order of sentence dated 15.01.2003, passed by Uma Kant Srivastava, 7th, Additional Sessions Judge, Saran at Chapra, in Sessions Trial No. 347 of 2000, by which the appellants, above named, stood convicted under Sections 498A of the Indian Penal Code (in short the “IPC”) and were sentenced to undergo rigorous imprisonment for two years.

2. Prosecution case as per the complaint of informant – Lakshmi Narain Gupta, in short is that marriage of his daughter (deceased) was solemnized with appellant –Anand Kumar Gupta in the month of March, 1994 and since then she was living in her *sasural*. Out of the said wedlock a daughter was born and, thereafter, the in-laws became



unhappy and started torturing her and were also taunting her that her parents have not given the appropriate dowry and when the people from her *maike* used to go to meet her, appellants did not allow them to meet her. It is also alleged that she was being ill treated by the appellants due to which, her health started deteriorating and she became mentally depressed and on information of her becoming ill, informant and his wife went to meet her, appellants were not allowing them to meet the deceased. Wife of the informant, namely, Mina Devi, anyhow went inside the house and saw her sleeping on a cot in verandah and none was taking care of her and when they asked the appellants to send the deceased with them for her better treatment but the appellants did not allow the deceased to go with her parents, thereafter, the deceased died in PMCH. The aforesaid complaint case was sent to the Magistrate under Section 156(3) for registration of F.I.R., on the basis of Dighwara P.S. Case No. 93/96 was registered against the appellants.

3. Upon charge-sheet being filed, cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Uma Kant Srivastava, 7th, Additional Sessions Judge, Saran at Chapra for trial and disposal.

4. To prove its case, prosecution has examined seven witnesses.. They are; P.W. 1 Ram Nath Gupta (uncle of the deceased), P.W. 2 Sheo Nath Pd. Gupta, P.W. 3 Sheo Janam Sah, P.W. 4 Abhijeet



Kumar – (brother of the deceased), P.W. 5 Meena Devi (mother of the deceased) P.W. 6- Laxmi Narain Gupta (complainant/informant and father of the deceased), P.W. 7 – Shivadhar Ram (I.O) and P.W. 8 – Uma Prasad Gupta (Doctor) .

5. Apart from that following documents have been brought on record and marked as; Ext. 1 – Carbon copy of death inquest report –, Ext. 2 – signature of Lakshmi Narain Gupta on carbon copy of death inquest report, Ext. 3 – complaint, Ext. 4 – Postmortem report, Ext. 5 – Formal F.I.R and Ext. 6- Expert Report.

6. From the side of defence, accused Uma Prasad Gupta has examined himself as D.W. – 1 and proved a number of documents from Ext. B. Series and onwards, which are prescription and medical certificate showing treatment of the deceased and letters of younger sister Kavita to deceased.

7. Defence of the appellants that the deceased died in course of treatment at PMCH as she was ill and no such cruelty or harassment has been meted out to her for demand of dowry.

8. Learned Trial Court after conclusion of trial, though not found the case true against the appellant under Section 304B/34 of the IPC, however, he has convicted the appellants under Section 498A of the IPC on the ground that there was evidence of demand of dowry and she was subjected to cruelty and harassment.

9. Contention of the appellants is that the evidence available on



record categorically establish that the deceased died during treatment as she used to be ill and even the death certificate issued by the Patna Municipal Corporation shows that informant himself has stated that she died due to illness, in support of this contention, large numbers of document have been referred, which are prescription and medical report of the victim, showing she was under treatment and the trial court has also not found the case true against the appellants under Section 304B/34 of the IPC. It has further been submitted that the story of demand of dowry is an afterthought of the informant and no such demand was ever made and though witnesses have stated in their evidence that they were not allowed to meet the deceased, when she was ill, however, there is nothing to show that any *Panchayati* was held in this regard and a case has been lodged by them while the deceased was under treatment at PMCH as informant was interested to get her second daughter married with appellant – Kalyan Kumar, for which the appellants were not ready, however, the said defence of the appellants were rejected by the trial court on the ground that once the case was filed by the informant, there was no question of offering marriage of his second daughter. A suggestion was also given to the appellants that the deceased was suffering from blood cancer, though they denied the said suggestion but the said denial appears to be evasive and the trial court without considering all these facts convicted appellants under Section 498A of the IPC, which is



perverse and not tenable in the eye of law.

10. On the other hand, learned counsel for the respondent – State has supported the finding of guilt recorded by the trial court and has submitted that there are consistent and reliable evidence available on record to show that there was demand of dowry of a motorcycle and some cash, for which the deceased was subjected to cruelty and torture. Further it has also come in the evidence of witnesses that they were not allowed to meet the deceased when she was ill and, therefore, there is no illegality in the impugned judgment and conviction of appellant under Section 498A of the IPC is just and proper.

11. Heard rival contention of the parties.

12. On perusal of evidence of informant (P.W. 6), it appears that he has stated in his evidence that there was a demand of motorcycle and Rs. 10,000/- as dowry from the side of appellants, for which they started assaulting her and were not providing food to the deceased and when they went to meet her, appellants did not allow them to meet her. His evidence further disclose that on information that she was ill, he and his wife went to the house of deceased to see her but the appellants did not allow them to meet her, however, his wife anyhow went inside the house and found the deceased lying on a cot, who told her that appellants were not providing food to her. His evidence further disclose that in spite of his insistence to take the decease with



themselves for her better treatment, appellants did not allow them to take the deceased. This witness has also stated in his evidence that on information, they came to the hospital and saw the deceased dead. This witness has been cross-examined at length and it appears that the deceased was suffering from illness and was under treatment. Evidence of this witness has been corroborated by the evidence of all other witnesses.

13. It appears that postmortem report does not show any cause of death and Viscera report also shows that no poisonous substance was found in Viscera, however, the trial court considering the demand of Rs. 10,000/- and motorcycle and also the letter written by the deceased, has found a case under Section 498A of the IPC. Submission of learned counsel for the appellants that the said letter was never brought before the police and for the first time, the same was brought before the Court and, therefore, the said letter appears to be manufactured one.

14. It also appears that the trial court has failed to appreciate the fact that though it is alleged that there was a demand of Rs. 10,000/- and a motorcycle but no specific allegation for demand of dowry has been attributed to any of the appellants rather the material produced in the court including large number of documents of treatment, shows that appellants born all the expenses, when the deceased was under treatment. Learned court below has also failed to consider that



though there is allegation of demand of dowry and cruelty from much before death of deceased, but the case has been lodged just few days before her death and earlier they kept mum and the above act of informant shows that there may be other reasons for lodging the case. Further allegation is that deceased was not properly treated but large number of prescriptions and reports had been produced before the court, which shows that the deceased was under continuous treatment. Hence the prosecution evidence of cruelty does not inspire confidence and as such appellants deserve the benefit of doubt.

15. Accordingly, this appeal is allowed. Conviction and order of sentence dated 15.01.2003, passed by Uma Kant Srivastava, 7th, Additional Sessions Judge, Saran at Chapra, in Sessions Trial No. 347 of 2000, is set aside.

16. As the appellant are on bail, they are discharged from liabilities of bail bonds.

(Vinod Kumar Sinha, J)

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