

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.562 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Bhagwan Prasad @ Shree Bhagwan Prasad, son of Late Magni Prasad
 2. Most. Ram Patiya Devi, wife of Late Magni Prasad, both resident of village Belwa Rai, P.S. Turkouliya, District East Champaran

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. D.K. Tandon, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-01-2018

The appellants stand convicted for the offence under Section 498A of the Indian Penal Code and appellant No.1 was sentenced to undergo rigorous imprisonment for three years and a fine of Rs.3000/- with default clause and appellant No.2 to undergo rigorous imprisonment for one year and a fine of Rs.1000/- with default clause by the judgment and order dated 27.8.2002 passed by Additional Sessions Judge (FTC No.4), East Champaran, Motihari in Sessions Trial No. 334 of 1995. It further appears that out of seven accused persons five were acquitted from the charge under Section 498A IPC and further all the accused persons were acquitted from the charges under Sections 364/34 and 368/34 IPC and the five accused persons



except appellant Nos. 1 and 2 were discharged from the liabilities of their bail bonds and were set at liberty.

2. Prosecution case, in short, is that the daughter of the informant, Chanda Devi was married with appellant No.1, Bhagwan Prasad and thereafter family members of husband of Chanda Devi demanded TV and Buffalo from her and when the informant showed her inability to give the same the victim was sent to her maik. Further prosecution case as per complainant-informant is that the informant (P.W.6) had gone to Police Station for making complaint about the same on which a Station Diary Entry was made and she was advised to go for Panchayati and on Panchayati Rs.5000/- was given to appellant No.1 for doing his business by the husband of the informant and then the victim was taken to her sasural by appellant No.1 on "Bidagri" and assured that he would maintain her properly and would not do any overt act against her. Further prosecution case is that husband of the informant went to her daughter's sasural and got information from other people that accused persons tortured her as before. He went to the house of the accused persons and did not find his son-in-law, Bhagwan Prasad (appellant No.1) and his daughter Chanda Devi in the house. Other accused persons told him that



appellant Bhagwan Prasad went to Delhi with Chanda Devi. Thereafter husband of informant went to Delhi but did not meet his daughter and his son-in-law and people of the area at Delhi told him that they were not seen for some days. Further prosecution case is that thereafter husband of informant went to accused Ram Ekwel Prasad, who reiterated the same story about them. Informant's husband got suspicion that the accused persons sent his daughter to Delhi where accused Bhagwan Prasad murdered her and made her body disappeared or sold her for illegal purpose. Further prosecution case is that after returning husband of informant from Delhi finding his daughter traceless, the complainant-informant (P.W.6) filed her complaint as her husband fell ill due to long journey.

3. After investigation police has submitted charge sheet against the accused persons, including the appellants and the case was committed to the court of sessions where charges were framed under Sections 364/34, 368/34 and 498A of the Indian Penal Code.

4. On behalf of prosecution altogether seven witnesses have been examined, they are P.W.1, Raghu Nath Bhagat, P.W.2, Ram Janam Thakur, P.W.3, Ram Ekwel Singh, P.W.4, Ram Deni Rai, P.W.5, Ramjeet Prasad (husband of informant), P.W.6, Rampati Devi



(the complainant-informant) and P.W.7, Kamal Prasad (the Investigating Officer). Apart from the aforesaid oral evidence, the following documents have been admitted into evidence as Ext.1, signature on the formal FIR and Ext.2, endorsement written by the I.O. on first page of complaint.

5. On behalf of defence altogether four witnesses have been examined, they are D.W.1 Krishna Singh, who is a formal witness and has proved Ext.A, the S.D. Entry No. 161 dated 10.6.1994, D.W.2 Laxman Sah, is on the point that accused Ram Ekwel Prasad and Mishri Sah were living separately from accused appellant Bhagwan Prasad, D.W.3, Kothari Mahto is on the point that accused Bhagwan Prasad, Rameshwar Prasad and Ram Ekwel Prasad are brothers and they are living separately and D.W.4, Ram Narain Prasad is on the point that mother and father of wife of appellant No.1 have taken wife of appellant No.1 and thereafter she did not return back. However, uncle of appellant No.1 has been cross examined and in his cross examination he has stated that Chanda Devi was traceless after three years of marriage.

6. Learned trial court considering the evidence on record though acquitted the appellants from the charges under Sections 364



and 368 IPC on the ground that appellant No.1 is the husband of Chanda Devi, the so-called victim and, as such, no case is made out against him under Sections 364 and 368 IPC. However, learned trial court convicted the appellants under Section 498A IPC on the basis of the materials available on the record.

7. Learned counsel for the appellants has assailed the judgment on the ground that there is no specific allegation against the appellants and evidence itself shows that the issue of demand was resolved in the Panchayati by handing over Rs.5000/- to appellant No.1 and thereafter he has taken her daughter and thereafter there is no evidence that she was subjected to cruelty and torture in connection with demand, as such, conviction of appellants under Section 498A IPC is not sustainable in the eye of law.

8. On the other hand, learned counsel for the State has submitted that there is evidence available on record showing that even after fulfilling the demand she was subjected to cruelty and she was traceless from the house of the appellants and no explanation has been given for that, as such, conviction of the appellants under Section 498A IPC appears to be just and proper.

9. P.W.6 is the complaint-informant in this case and her



evidence in court shows that she has supported the prosecution case of demand of TV and Buffalo and in Panchayati Rs.5000/- was handed over to appellant No.1. Her evidence also disclosed that her daughter was taken away by the appellant and after about two months her husband had gone to her sasural to enquire about her daughter where he came to know that appellant had taken her to Delhi. Thereafter her husband went to Delhi and at Delhi he came to know from Ram Ekwil Prasad that she was taken to Sablakha and her evidence further disclosed that wife of Sultan Singh has disclosed that she was killed and her son-in-law had fled away. Thereafter the present case has been lodged.

10. P.W.5 is the husband of the complainant-informant (P.W.6) and he has also supported the prosecution case and has stated as stated by P.W.6 in her evidence. However, his evidence in paragraph-5 further shows that when he went to the house of Sultan Singh he met his son-in-law and daughter and after remaining there for some time, he came back. Thereafter he again went to Delhi to meet his daughter and at that time the wife of Sultan Singh told that his daughter was traceless for seven days and his son-in-law has taken her to Punjab. His evidence further disclosed that appellant No.1, son-



in-law, came back and he enquired about his daughter from him but he did not disclose anything.

11. The evidence of other witnesses also disclosed about the demand of TV and Buffalo and also about Panchayati where Rs.5000/- was handed over. Evidence of P.Ws. 5 and 6 further shows that the girl was traceless.

12. In this case charges have been framed under Sections 364 and 368 apart from 498A of IPC and no charge has been framed under Section 302 IPC and learned trial court has convicted the appellants only under Section 498A IPC and acquitted them from the charges under Sections 364 and 368 IPC. No appeal has been preferred by the State.

13. So far conviction under Section 498A IPC is concerned, there is evidence that there was demand of TV and buffalo. However, prosecution has itself admitted that in Panchayati the matter has been resolved and appellant No.1 was paid Rs.5000/- and thereafter they had gone to Delhi. On close scrutiny of the evidence I find no further evidence that she was subjected to cruelty even after the matter was resolved in Panchayati, whereas the case is that she was taken to Punjab and was traceless. On that point also the evidences of P.Ws. 5



and 6, who are husband of the informant and the informant, are contradictory to each other as P.W.6 has stated that her husband had gone to Delhi and came to know that his daughter has been killed as told by wife of Sultan Singh, whereas evidence of P.W.5 discloses that he had gone and met his daughter and son-in-law and thereafter in second time when he went there, he came to know that she was taken to Punjab and thereafter his son-in-law returned back but he did not disclose whereabouts of his daughter. There is nothing substantial in their evidence to show that she was subjected to cruelty even after Panchyati, rather there is evidence that she was traceless. No charge has been framed under Section 302 IPC and appellants were acquitted from the charges under Sections 364 and 368 IPC.

14. So far conviction under Section 498A IPC is concerned, as discussed above, there is absolutely nothing on the record to show that she was continued to be subjected to cruelty even after Panchayati. However, learned trial court has failed to consider this aspect of the matter and only considering the vague allegations that she was not happy and she was traceless, the appellants have been convicted under Section 498A IPC, especially when the case of the appellants which appears from the evidence of D.W.4, that the girl



was taken away by her father and mother and she was traceless for three years.

15. Even if presuming the prosecution story that she is traceless and she was with the appellant, as such, they have to disclose her whereabouts, no charge has been framed under Section 302 IPC and the case is of the year 1995 and the appellants have been acquitted from the charges under Sections 364 and 368 IPC. As such, this Court does not find it proper to remand this case for retrial. At the same time, this Court finds the conviction of the appellants under Section 498A IPC does not appear to be sustainable in the eye of law.

16. Accordingly, the appeal is allowed. The judgment and order of conviction and sentence are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
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