

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.616 of 2015

Arising Out of PS.Case No. -370 Year- 2013 Thana -GORAUL District- VAISHALI(HAJIPUR)

=====

LALA SAH SON OF JINDA SAH, RESIDENT OF VILLAGE - MAL
MATHNA, P.S. - GORAUL (KATHARA O.P.), DISTRICT - VAISHALI.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

Appearance:

For the Appellant/s : Mr. Vinod Kumar, Adv.

Mr. Suman Kumar, Adv.

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

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 31-07-2018

Appellant, Lala Sah has 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 Rs.5000/- and in default thereof, to undergo S.I. for one month additionally with a further direction of set off against the period having spent under custody during course of trial as provided under Section 428 of the Cr.P.C. vide judgment of conviction and sentence dated 28.08.2015 passed by the Addl. Sessions Judge, Vaishali at Hajipur in Sessions Trial No.431/2014.

2. Asha Devi (PW.1) filed written report on 20.10.2013 disclosing therein that her daughter Hema Devi was married with Lala Sah, son of Jinda Sah of village-Mal Mathna, P.S.-Goraul,



District-Vaishali about six years ago. Her daughter was being tortured by her husband Lala Sah and his family members on account thereof, her daughter had instituted a case against them. On the intervention of the villagers, the matter was amicably shorted out whereupon, case was disposed of. Subsequently thereof, her daughter had gone to her Sasural where her husband Lala Sah, father-in-law Jinda Sah, brother-in-law (Bhaisur) Devendra Sah, mother-in-law Girija Devi and sister-in-law (Gotani) Lalita Devi began to torture in order to procure a motorcycle as well as rupees five lacs as dowry. Her daughter had disclosed that his mother is poor and on account thereof, she could not fulfill their demand. On 19-10-2013 at about 04:30 PM she received telephonic information from the Sasural of her daughter with regard to commission of her murder by her Sasuralwala by administering poison as well as dead body having been disposed of. After getting information, she along with her son Dharmendra Sah came at the place of her daughter where she came to know that all the accused persons have assaulted and then administered poison causing her murder. Further with the help of co-villager, namely, Sharwan Sah, Basu Sah and four others got dead body disposed of.

3. On the basis of the aforesaid written report, Goraul P.S. Case No.370 of 2013 was registered followed with an investigation. After concluding the same charge sheet has been submitted only against the appellant/accused as he was under custody keeping the investigation pending against remaining of the accused. Accordingly, trial commenced and concluded in a



manner, 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 that of complete denial oral as well as documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether five PWs out of whom PW.1 is Asha Devi, informant, PW.2-Dhruv Narayan (I.O.), P.W.3-Shankar Sah, PW.4 Ranjeet Kumar Singh and PW.5-Dharmendra Kumar Sah. Side by side had also exhibited written report-Ext.1, endorsement over written report-Ext.1/1, forwarding-Ext.1/2, signature of Dharmendra-Ext.1/3, formal FIR-Ext.2. Side by side defence had also exhibited one DW Ram Pravesh, formal in nature and had exhibited Complaint Petition No.1339/03 as Ext.A.

6. From the record, it transpires that at an initial stage appellant was charged for an offence punishable under Section 304B/34 IPC, 201/34 IPC vide order dated 10-04-2015. Later on, the charge was amended and then, he has been charged for an offence punishable under Section 304B/34 of the IPC, 302/34 of the IPC, 201/34 of the IPC vide order dated 18-08-2015. From the judgment impugned, it is evident that learned lower court had acquitted the appellant for an offence punishable under Section 302/34 IPC, 304B/34 and 201/34 of the IPC but, convicted and sentenced for an offence punishable under Section 498A of the IPC and for that, it has been observed by the learned lower court under para-18 of the judgment that in spite of non-framing of



charge, conviction could be recorded under the minor offence of the major offence whereunder charge has been framed as provided under Section 222 of the Cr.P.C.

7. Now, it has to be seen whether the evidence available on the record did justify the finding recorded by the learned lower court.

8. Coming to the evidence available on the record, it is evident that PW.1 is the mother of the deceased while PW.5 is the brother of the deceased. PW.2 is the I.O. and PW.3 and 4 are co-villagers of the appellant.

9. PW.3 had stated that the occurrence is about one and nine months ago. There was quarrel amongst mother-in-law, daughter-in-law over dowry whereupon, she committed suicide. Deceased was daughter of Asha Devi and wife of Lala Sah. He had further stated that wife of Jinda Sah, Lala Sah, Devendra Sah were quarreling over dowry. Identified the accused. Then was declared hostile whereupon he was confronted with his previous statement which he denied. During cross-examination at para-3 he had stated that Lala Sah happens to be separate from his brothers. The mother-in-law and the daughter-in-law fought over domestic affair.

10. PW.4 had deposed that the occurrence is about one year and nine months ago. He was at Muzaffarpur. He had got no knowledge regarding the occurrence. He had not made statement before the police and so was declared hostile. During cross-examination he had stated that Devendra lives separately.



11. PW.5 is the brother of the deceased. He had deposed that deceased was his sister who was married with Lala Sah, son of Jinda about 7-8 years ago. After marriage when sister had gone to Sasural her husband, parents of her husband, Sharwan Kumar, her sister-in-law began to torture her on the pretext that as your brother is earning a lot therefore, she should bring Rs.5-10 lacs. His brother-in-law deserted his sister due to development of intimacy with his Bhabhi. His brother-in-law had illicit relationship with his Bhabhi. His sister was being assaulted by him as she protested. Then, thereafter, a case was instituted. Thereafter, case was compromised and in the aforesaid background, his sister was taken away. Lastly Lala Sah, firstly assaulted her with Lathi and then, caused murder by administering poison and then thereafter, put the dead body on fire. He along with his mother gone to police station where her mother had instituted a case over which, he had also put his signature (exhibited). During cross-examination he had stated that meaning of torture means to punish. I.O. had taken his statement. In para-3 there happens to be contradiction. In para-4 he had stated that at the time of marriage of the sister, he was aged about 4-5 years. In the case, having instituted by his sister there was allegation of demand of dowry to a tune of rupees ten thousand as well as one T.V. In para-5 he had stated that after compromise, he had gone to the Sasural of his sister but he is unable to disclose the date and year. Then had said that *Chaur* lies 500 steps away from the house of Lala Sah. He had gone to *Chaur*. He is unable to disclose the boundary of the place where



funeral taken place. It was duly fenced. Then had denied the suggestion that his sister was not at all murdered by administering poison rather, his sister was coming ill since before as a result of which she died. After amendment of the charge he was recalled wherein at para-6 he had stated that he received telephonic information from her Sasural regarding her precarious condition.

12. PW.1 is the informant. She had deposed that her daughter Hima Devi was married with Lala Sah about eight years ago. At the time of marriage she had gifted the articles according to her means. After marriage when her daughter had gone to her Sasural, her husband Lala Sah, Devendra Sah, Basu Sah, Sharwan Sah, Jinda Sah, Vidya Devi, Lalita Devi, Girija Devi demanded one motorcycle as well as cash appertaining to rupees five lacs and for that, she was being tortured. They have also said that in case of non-fulfillment of the same, he will be murdered. Lastly, her daughter returned back to her place. Then case was filed. Subsequently thereof, case was compromised. Then, accused persons took away her daughter and during course of her stay all the accused persons after tying her hands and legs, administered poison and lit fire while she was alive. She received telephonic information whereupon she along with her Samdhini, son gone there. Chowkidar was also there. He disclosed that she has been murdered by the accused persons on account of dowry. Then they have gone to police station where got the written report scribed by the Pushpa whereupon she put signature (exhibited). During cross-examination, at para-2 she had stated that she had dictated



Pushpa and got the written report prepared. She had further stated that her daughter begotten two sons and a daughter who are living with their father. Even after death of her daughter, she met with all the three. In para-3 she had stated that she happens to be vegetable vendor. Her son-in-law resides Dehri. 1-2 year after the marriage accused persons began to advance rupees five lacs and a motorcycle. At para-4 she had further stated that just one month after marriage accused persons forced her to leave the place. She was frequently assaulted by the accused persons and for that panchayati was convened wherein both the parties participated. In para-5 she had stated that *Bara Babu* had informed her on phone. She gave information about two years ago. Chowkidar had come to inform. She had instituted one case relating to dowry. This case has been instituted after four years but again corrected, as he is unable to disclose exact time. Her daughter used to suffer from ailment before marriage. Then again corrected. Then she denied the suggestion that her daughter died of ailment as accused persons have not concealed over their illegal demand on account thereof, this false case has been filed. On recall after amendment of charge at para-6 she had stated that the officer of the police station had informed her regarding murder of his daughter.

13. DW.1 has been examined in order to exhibit the earlier complaint petition wherein the date of marriage has been shown in the month of May, 2002.

14. On the record, it is apparent that the learned lower court had rightly held that the alleged death of deceased was



beyond the statutory period of seven years on account thereof, Section 304B of the IPC is not at all applicable. In likewise manner there happens to be no evidence regarding murder more particularly in the background of inconsistency amongst PW.1 as well PW.5 apart from the fact that they both were not an eye witness to occurrence. In the aforesaid background, the learned lower court had acquitted the appellant for an offence punishable under Section 201/34 of the IPC also.

15. Now coming to propriety of the judgment impugned relating to Section 498A of the IPC is concerned, it is evident that not only from the evidence of PW.1 and PW.5 rather PW.2, co-villager of appellant had also deposed on that very score. It is needless to say that though there happens to be some sort of variance while appreciating the ingredients of Section 304B of the IPC as well as 498A of the IPC but, cruelty is found having the same meaning. Furthermore, it is crystal clear that Ext.A, complaint petition having been filed by the deceased at an earlier occasion on the score of torture having been inflicted upon her for fulfillment of demand of dowry which ended in compromise. Apart from this, it is also manifest that though suggestion has been given to the respective witnesses that deceased died of ailment but not been substantiated. So, cause is found unexplained.

16. In ***Kunjabai v. State of M.P.*** reported in **(2016) 15 SCC 608**, it has been held:-

“**10.** However, the High Court was of the considered view that the evidence on record proved beyond reasonable doubt that the



appellant subjected the deceased to cruelty due to non-satisfaction of the demand for gold bracelets and tape recorder as dowry. Further, the appellant was the best person to disclose the relevant facts solely within her knowledge as to the circumstances leading to the death of the deceased as she was present in the house at the relevant time. While committing the act of self-immolation, it was natural for the deceased to cry out in pain and agony, however the nature and extent of burn injuries suffered by the deceased gave rise to the inference that no attempt was made by the appellant to save the deceased from the burn injuries. In that view of the matter, the guilt of the appellant for the offence punishable under Section 498-A IPC was proved beyond reasonable doubt. Therefore, the High Court confirmed the order of conviction passed by the trial court against the appellant for the offence punishable under Section 498-A IPC, but reduced the sentence to imprisonment for a period of one year.

11. xxx xxx xxx.

12. xxx xxx xxx.

13. xxx xxx xxx.

14. xxx xxx xxx.

15. xxx xxx xxx.

16. After going through the records of the case including the judgments and orders passed by the courts below, we are of the considered view that there is no infirmity in the well-reasoned judgment of conviction passed by the High Court for the offence punishable under Section 498-A IPC which requires our interference.”



17. That being so, the learned lower court had rightly found the appellant guilty for an offence punishable under Section 498A of the IPC and for that, the sentence having inflicted, in the facts and circumstances of the case, is found appropriate. As such, instant appeal sans merit and is accordingly, dismissed. Appellant is on bail hence his bail bond is hereby cancelled directing him to surrender before the learned lower court to serve out remaining part of sentence within a fortnight failing which the learned lower court will proceed against him in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	10.07.2018
Uploading Date	31.07.2018
Transmission Date	31.07.2018

