

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.281 of 2013

Arising Out of PS. Case No.-1 Year-2007 Thana- SHRI NAGAR District- Madhepura

1. Lalita Devi and Anr Nathan Sah R/O, Vill.-Parmanandpur, P.S.-Srinagar, Dist.-Nadhepura
2. Dharendra Sah Nathan Sah R/O, Vill.-Parmanandpur, P.S.-Srinagar, Dist.-Nadhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amarnath Jha, Adv

For the Respondent/s : Ms Amita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date : 22-11-2024

Heard learned counsel for the appellants and learned APP on behalf of the State.

2. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the Judgment of conviction and order of sentence dated 19.03.2013 passed by the learned Ad-hoc Additional District and Sessions Judge- I, Madhepura in Sessions Trial No. 177 (A) of 2007 arising out of Srinagar P.S. Case No. 01 of 2007, instituted for an offence punishable under Sections 323, 341, 494, 498(A) and 328 of the Indian Penal Code whereby and where under all appellants have been



sentenced to undergo simple imprisonment for three months for the offence punishable under Section 323 of Indian Penal Code while for the offence punishable under Section 498(A) of the Indian Penal Code, they will have to undergo simple imprisonment for two years along with a fine of Rs. 2000/- and for default of payment, they will have to undergo further imprisonment of one month with a direction that all sentence shall run concurrently.

3. Heard Mr. Amarnath Jha, learned counsel for the appellants and Ms. Anita Kumari Singh, learned APP for the State.

4. The brief facts leading to the filing of the present appeal is that on 02.11.2006, one Nilam Devi filed complaint petition vide Complaint Case No. 705 of 2006 before the learned Chief Judicial Magistrate, Madhepura which was forwarded O/C Sri Nagar P.S. under Section 156 (3) Cr.P.C. for institution of F.I.R. and investigation of the case on 27.11.2006 and thus F.I.R vide Sri Nagar P.S. Case No. 01 of 2007 was lodged on 04.01.2007 for the offence under Sections 323, 341, 494, 498(A) and 328 of the Indian Penal Code. As per the aforesaid F.I.R. the fact of prosecution in short is that the informant was married to Nathan Sah who brought her to



Sasural wherein she came to know that her husband has earlier married to the appellant No.1. However, she started living as a wife. After 5 years, her husband started assaulting and torturing her, 2 years before he tried to oust her. On intervention of the people, she started living separately. On 05.11.2006 she was returning after taking bath, saw that all the accused are coming out of her house. She took meal and she got unconscious and she came to know that poison was mixed up in the meal. She went to her *mai*ke and filed complaint petition which was subsequently converted into F.I.R. as aforesaid.

5. After completion of investigation, Charge Sheet No. 33 of 2007 against Nathan Sah was submitted for the offence under Sections 323, 341, 494, 328 and 498(A) of the Indian Penal Code on 22.05.2007 while against Lalita Devi and Dharendra Sah charge-sheet no. 58 of 2007 was submitted on 28.07.2007 for the offence under Sections 341, 323, 494, 498(A) and 328 of the Indian Penal Code. After cognizance of the offence under the aforesaid sections by the A.C.J.M Madhepura, case was committed to the Court of Sessions on 06.11.2007 and Sessions Trial No. 177 (A) of 2007 commenced against the present appellants while Sessions Trial No. 177 of 2007 commenced against Nathan Sah. On 12.12.2007 charge



was framed against convict for the offence under Sections 323, 498 (A), 120 (B) and 328 of the Indian Penal Code.

6. The prosecution examined altogether 6 witnesses in this to substantiate the charges against the appellants, out of them PW-1 Kamleshwari Sah, PW-2 Nilam Devi (informant), PW-3 Sushil Kumar Sah, PW-4 Dunilal Sah and PW-5 Surendra Sah. PW-6 Ranahir Singh were examined. While on behalf of defense DW-1 Mahendra Sah, DW-2 Gulabchand Sah and DW-3 Bindeshwari Sah were also examined.

7. PW-1 Kamleshwari Shah stated in her examination-in-chief that about 3-4 years have passed since the incident. Nathan Shah has two marriages, and scuffling occurred regarding this. His second-wife filed a case. PW-1 heard about the incident from the other co-villager. A Panchayat was held regarding the incident. I was not a Panch in the Panchayat. It was decided in the Panchayat that 5 bighas of land would be given to the second wife. Field was given. Trees, mango trees were also given. She had encroachment on field, bushes and trees. PW-1 in paragraph-5 of the cross-examination stated that the Pancha had divided the property equally and separated them. Nathan Sah or his first wife or any of their children did not have



done anything with the second wife. The houses of both have been separated by putting a wall. I am not aware of any dispute going between the two. Moreover, he is a hearsay witness.

8. PW-2 Neelam Devi, who is the complainant, has stated in her examination-in-chief that the incident took place 5 years ago. She is a student. Bhupendra Shah, Surendra, Sushil, Gajendra Shah, all of them had beaten her. She again says that the above people are witnesses. Nathan and Lalita had a fight. I was married to Nathan Shah 7-8 years ago. I have three son and a daughter after the marriage. Lalita Devi is the co-wife. Dharendra is the son of the co-wife. The above three named persons together had assaulted me and her son, husband and started calling me out of the house. I did not run away. I cooked food and kept it aside. When I went to the door to take a bath, the above three persons together put poison in my food. When I ate that food, I started vomiting. I did not go to see the Doctor, I only vomited repeatedly. Gajendra Shah saw the incident and saved me. PW-2 has stated in his cross-examination in para-8 that we live separately and *Panch* have divided the property. We do farming with great difficulty. In para-9, it is stated that after bathing, half an hour later I started to feel uneasy and after 2-4 minutes the child came, we did not talk to anyone. Next day



when we talked, I told them about the occurrence.

9. PW-3 Sushil Kumar Sah stated in his examination-in-chief that we know Nathan Sah of our village. I recognize his second wife. The occurrence took place 8 years ago. It happened during the day time. Neelam Devi vomited on the left side. Nathan Shah had given the medicine to PW-2. He used to beat the informant. PW-3 stated in his cross-examination in paragraph 6 that he did not saw the occurrence directly, when he came back from ploughing, then the son of Neelam Devi told me about it. In paragraph 7, he stated that the Panchayat had done the division, he had given 4 bighas of land, out of that also Nathan forcibly took some. In paragraph 10, he has stated that he used to fight for the division of land. He is also a hearsay witness.

10. PW-4 Dunilal Shah stated in his examination-in-chief that he knows Neelam Devi. He also knows Nathan Shah. The occurrence took place 5-7 years ago. The incident happened during the day time. The next day PW-4 along with other co-villagers found that she became unconscious when she was fed poison in the pulses. She regained consciousness after being given curd and cow dung. It was found that Nathan Shah and Pananjay Shah had fed poison



to her. She was the second wife. His relation with his first wife was not going well, that is why the incident happened. She was fed poison with the intention of killing her. PW-4 in his cross examination in para 6 stated that his statement was taken earlier also. There was some missing part in the first statement but it is not missing in this one due to memory. In para 7 of his deposition, he stated that he did not see the incident with his own eyes 'I came to know about occurrence in the morning', which seems that he is also a hearsay witness

11. PW- 5 Surendra Sah stated in his examination-in-chief that he knows Neelam Devi. He also knows Neelam's husband Nathan Shah. He also knows the second wife and son. The name of the first wife is Lalita. He also knows Pirendra Sah. Neelam Devi is Nathan's second wife, 20-22 years ago marriage was solemnised. Neelam Devi has 3 sons and a daughter. Neelam Devi and her child lived separately. Nathan Shah and his first wife and son live together. This occurrence took place 7-8 years ago. It was the day time. That day Neelam Devi went to take bath after cooking food. She fell unconscious after she ate the food. PW-5 got the information that Nathan Shah, his first wife and his son had given poison to her. Neelam Devi's son and daughter raised an alarm. On



hearing the alarm more people came there. Neelam Devi was unconscious. During first aid, I made her drink cow dung and she vomited. She regained consciousness after some time of vomiting. I came, treatment was done by the doctor of the village also. Lalita knows Dheerendra. PW-5 in his cross examination paragraph-5 stated that Nathan and Neelam Devi have been living separately for 2-3 years. In paragraph-6 he stated that we came to know about the incident at 12 noon. The children created a ruckus, when we went there then Sushil Kumar Sah, Bhupendra Sah, Upendra Sah, Dunilal etc. were there with me. In paragraph-7 he stated that when we went, we did not talk to anyone, Neelam Devi was unconscious. First aid was given, showed her to the doctor of the village also. In para 8, he stated that when Neelam regained consciousness, they talked, it was approx 1:30 PM, she said that she had gone for bath after cooking food, when she came back and ate food, she fainted. In para 11, PW-5 stated that he did not see the incident from his own eyes, moreover, he did not get the vomiting checked.

12. PW-6 Randhir Singh investigating officer stated in his examination-in-chief that on 04.01.2007, he was posted as sub-inspector in Srinagar Police Station. On



04.01.2007, I took over the investigation. After taking over the investigation, I went to the place of the occurrence. I took the statement of the complainant again. The complainant supported the place of occurrence. On inspecting the place of occurrence, I found that the place of occurrence was located in the complainant's in-laws' house in Paramanandpur Mauja. To the north of the complainant's house is the house of Lalita Devi, the co-wife. The complainant's house has a wooden door. East - Hari Kishan Shah's house, West Sushil Shah's house, in the south is Dunilal Shah's house. Witness statement taken. Statement taken from Sushil Shah, Bhupendra Shah, Surendra Shah, Vijendra Shah. These people supported the incident in their statements. This formal FIR is in the handwriting and signature of SHO Ajay Singh, whom I recognize and which has been declared as Exhibit 1. The charge-sheet is in my handwriting and signature, which has been declared as Exhibit 2. The diary is also in my handwriting. PW-6 has stated in his cross-examination in para-8 that no object related to poisoning was recovered from the place of incident. No inquiry was made as to whether the doctor treated him. In para-1 it is stated that the witnesses have not seen the poisoning taking place but have seen the treatment being done. It is not written that the beating



took place in front of me, this fact was told by the plaintiff. In para-11, it is stated that both the co-wives have separate plots of land at the place of incident. Both properties have been divided.

13. After the prosecution evidence was closed, the statement of the appellants were recorded under section 313 of the Cr.P.C in which the appellants have claimed to be innocent and demanded the trial.

14. Learned counsel for the appellants, at the outset, submits that the trial Court erred in convicting the appellants for the charges, in-spite of having no material available on record, except for the oral evidence of prosecution witnesses. He next argued that he has falsely been implicated by the informant in a criminal case. There is vital contradiction in manner of occurrence and genesis of the case has not been proved by the complainant. There is not a single eye-witness of the occurrence to support the prosecution story and there is no medical report or deposition of doctor has been made before the trial Court to show that poison was mixed in the food of the complainant, making the entire case and prosecution story completely weak and defense cause prejudiced. Learned trial court had completely failed to appreciate the entire evidence made by the prosecution during trial by not considering the



essential ingredients of section 498 (A) IPC. According to Section 5 of the Hindu Marriage Act, for a marriage to be valid, neither party should have a living spouse at the time of marriage. This implies that if the first wife is alive, a marriage with another woman is not considered valid, and hence, such a 'second wife' cannot maintain a complaint under Section 498A of the IPC, as it noted that such marriage is null and void in the eyes of law. In this regard, the Court relied upon the Supreme Court's ruling in the case of ***Shivcharan Lal Verma And Anr. vs State Of Madhya Pradesh*** reported in ***2007 (15) SCC 369*** wherein it was held that if the marriage itself is null and void, then prosecution under Section 498-A IPC against the husband is not maintainable at the instance of the alleged wife.

“The relationship between such a man and woman cannot be as husband and wife. Therefore, proceeding under Section 498-A I.P.C. is not maintainable against such a husband at the instance of a second wife (not legally wedded),” the Court further ruled as it held that a second wife cannot maintain a complaint against



her Husband.”

This case relates to circumstances as, there is no direct evidence in proving the prosecution case. No one seen the occurrence committed by the convicts/appellants. It is well established rule of law that the circumstantial evidence which has been brought on record, as discussed, is not sufficient to come to a conclusion that the appellants have committed the crime. In case of circumstantial evidence, chain must be completed to establish the guilt of the accused. Neither any piece of evidence was collected from the place of occurrence. The prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the appellants are entitled to get the benefits of doubt.

15. On the other hand, learned Additional Public Prosecutor has vehemently opposed this appeal and submits that there is direct allegation against the present appellants, for assaulting the informant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

16. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.



17. On the basis of evidences available on record and after considering the submissions made by the learned counsel for the respective parties, it appears that PW-2 (Neelam Devi) is complainant-cum-victim. She has not stated specifically about date and time of the torturing by the appellants. Moreover, she is also not able to tell the place of occurrence and it is also clear that prosecution witnesses has not supported the case of the prosecution as all the prosecution witnesses are mere hearsay witnesses. Upon perusal of the F.I.R., it appears that there is general and omnibus allegation against the appellants and also appears that no medical examination has been done in order to prove that poison was given to the 2nd wife in her food as there is no medical report on record corroborating the same. These inconsistency in the prosecution lacks reliability.

18. Learned trial court had completely failed to appreciate the entire evidence made by the prosecution during trial by not considering the essential ingredients of section 498 (A) IPC. According to Section 5 of the Hindu Marriage Act, for a marriage to be valid, neither party should have a living spouse at the time of marriage. This implies that if the first wife is alive, a marriage with another woman is not considered valid and hence, such a 'second wife' cannot maintain a complaint under



Section 498A IPC, as it noted that such marriage is null and void in the eyes of law. In this regard, the Court relied upon the Supreme Court's ruling in the case of ***Shivcharan Lal Verma and Anr. vs State Of Madhya Pradesh(Supra)*** wherein it was held that if the marriage itself is null and void, then prosecution under Section 498-A IPC against the husband is not maintainable at the instance of the alleged wife. As no one seen the occurrence committed by the convicts/appellants. It is well established rule of law that the circumstantial evidence which has been brought on record, as discussed, is not sufficient to come to a conclusion that the appellants had committed the crime.

19. In the present case, it does not appear from the records that the incriminating evidence was put to the appellants. Taking into consideration the entire material on record, it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellants. Therefore, conviction granted by the trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably failed to prove the guilt of the accused/appellants for the charges levelled against him.

20. Hence, the Judgment of conviction and order



of sentence dated 19.03.2013 passed by the learned Ad-hoc Additional District and Sessions Judge- I, Madhepura in Sessions Trial No. 177 (A) of 2007 arising out of Srinagar P.S. Case No. 01 of 2007 is hereby set aside and the appellants are acquitted from the charges levelled against them. As the appellants are on bail, they are discharged from their liability of bail bonds.

21. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	N.A
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