

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.529 of 2003

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Santosh Kumar Sah son of Sri Baidhya Nath Prasad Sah resident of Mohalla
Patel Chowk in the Town and District- Katihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramesh Kumar Agrawal, Advocate

Mr. Gopi Krishna, Advocate

For the Respondent/s : Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 24-09-2025

By this appeal, appellant/convicted accused Santosh Kumar Sah is challenging the judgment of conviction and order of sentence dated 11.11.2003, passed by the Sri Ravindra Prakash Sinha, learned Additional Sessions Judge-III, Katihar, in Sessions Trial No.254 of 1993, arising out of Katihar Police Station Case No.147 of 1993, thereby convicting him the imprisonment for two years for the offence punishable under Section 498A of the Indian Penal Code.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i). The Informant, Shyam Nand Sah, delivered his fardbeyan to police on 30.01.1993, at about 11.30 AM, at the



Darwaja of the house of accused Baijnath Sah at Patel Chauk, stating that his daughter Bijali @ Benita, aged about 20 years, married with accused Santosh Kumar Sah S/o. accused Baidnath Sah in March, 1991 and gave presentations to his son-in-law and daughter according to his capacity. But the accused persons used to demand something all the times. Accused Santosh Kumar Sah, the son-in-law of the informant, whenever visited to his sasural at Sonaili, demanded motorcycle but the informant tried to convince him that he is not in a position to give motorcycle nor he agreed to do so at the time of marriage. This annoyed his son-in-law, accused Santosh Kr. Sah, and since then accused persons started torturing his daughter and she always complained about the torture and harassment whenever she arrived to her parents' house. The brother of the deceased visited the Sasural of her daughter on 28.01.1993 at Patel Chawk, on that day also the deceased expressed displeasure towards Sasural people. The informant further stated that Bhola, a tea seller, informed him that his son-in-law asked him to inform him (informant) that his daughter is serious. Thereafter, they visited the P.O. and saw injury on the forehead of her daughter and swelling around her neck and abrasion near the neck and ear.



(ii). The fardbeyan of informant (PW 2) was recorded by police, treating the same as First Information Report, Katihar P.S. Case No.147 of 1993, under Sections 302/304B/34 of the Indian Penal Code, was registered on 30.01.1993 against two accused persons including the present appellant.

3. During investigation, inquest was held over the dead body of deceased, which was also subjected to *post mortem* examination, and on completion of investigation, charge sheet was laid on 30.04.1993, under Sections 304B and 498A of the Indian Penal Code against two accused persons including the present appellant/accused.

4. At the Trial, charges, under Sections 304B and 498A of the Indian Penal Code were framed on 22.04.1994 against two accused persons including the present appellant, on which they pleaded not guilty.

5. In support of their case, prosecution has examined altogether 6 (six) witnesses. The accused during their examination under Section 313(1)(b) of the Cr.P.C. denied the allegations and no evidence was adduced by the defence.

6. The Trial Court found the appellant Santosh Kumar Sah guilty only of the charge under Section 498A of the



Indian Penal Code and convicted accordingly. However, the Trial Court acquitted the accused/appellant Santosh Kumar Sah from the charge under Section 304B of the Indian Penal Code. Following his conviction, sentence has been passed against the convicted accused/appellant as mentioned above. However, giving benefit of doubt to co-accused Baidnath Sah, the Trial Court had acquitted them from all charges.

7. Being aggrieved and dissatisfied by his judgment of conviction and order of sentence, the convicted accused/appellant has preferred this appeal.

8. Heard Mr. R.K. Agrawal, learned Counsel, appearing on behalf of the appellant and Mr. A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State.

9. Learned Counsel for the appellant submits that the present appeal is fit for acquittal, due to the reason that charges have been framed under Sections 304B and 498A of the Indian Penal Code against two named accused persons. One of the accused was acquitted from those charges. Against the present appellant the categorical finding has come by the Trial Court that case is based on circumstantial evidence and I.O. (PW 5) has categorically narrated in his evidence that the



appellant and his wife (deceased) was living in two room house. There was no any fighting mark in the room. PW 5 has stated about wound on the forehead of the deceased, but injury report has not been marked exhibit. He further submits that the Trial Court has exonerated the appellant and not found case true under Section 304B of the Indian Penal Code and only on the basis of oral evidence of Pws.2, 4 and 5 has convicted the accused under Section 498A of the Indian Penal Code. Counsel submits that from the record it transpires that PW 2 is the father of the deceased, PW 3 is the brother of the deceased and PW 4 is the mother of the deceased. He submits that admittedly death has been caused at the house of the husband; whereas PWs.2, 3 and 4 were residing at the different place at all. They have also not known about the death; rather only after information of the shop-keeper of informant's house became aware about this occurrence. He submits that the appellate Court has unnecessarily relied on the evidence of the relatives of the deceased. There is no single witness who came forward to support the story of torture. Learned Counsel further submits that PWs.2, 3 and 4 are admittedly the hearsay witness but Trial Court have convicted the accused only on this ground alone. Therefore, according to him, the present case is fit to be



allowed.

10. Learned Additional Public Prosecutor appearing on behalf of the State-respondent, on the other hand, submits that there is enough material that the Trial Court has committed error as the charge has been framed under Section 304B of the Indian Penal Code and even though the ingredient of murder is not available, but the ingredient of suicide is available, then onus shifts on the accused to defend under Section 113B of the Evidence Act as admittedly marriage took place within seven years.

11. After hearing the parties as well as upon perusal of the lower court records, it transpires that there are in total six witnesses in the present case. PW 1 Ganga Prasad has proved his signature and signature of Anil Kumar Sah on the inquest report of deceased Bijali @ Benita Devi, prepared by I.O., marked as Exhibits-1 and 1/1. He also proved his signature as well as the signature of Jyotish Lal Sah on the seizure-list, which are exhibited as Exts-1/2 and 1/3. PW 2 Shyam Nand Sah, PW 3 Shree Ram Sah and PW 4 Kamini Devi are the father, brother and mother of the deceased. PW 5 is the I.O. of the case. PW 6 is the doctor, who has proved the post mortem report.



12. Before I come to the ocular evidence on record, this Court deem it fit to take note of the medical evidence adduced by the prosecution. This Court noticed that according to the evidence of PW 6 Dr. Manindra Kumar Manish, who deposed that he and Dr. Kuldeep Mandal was posted at Sadar Hospital, Katihar. As per the post mortem report Dr. Kuldeep Mandal conducted post mortem examination on the dead body of deceased Bijali @ Benita Devi on 31.01.1993. In the opinion of the doctor, the cause of death was asphyxia due to hanging. The doctor also found ligature mark around the neck of the deceased.

13. PW 2 Shyam Nand Sah (informant) has proved the signature on the fardbeyan (Ext-1/4) and the signature of Pratap Narayan Barnwal (Ext-1/5). He has re-narrated the prosecution case in his examination-in-chief. He deposed that his daughter always expressed annoyance against her sasural people. He deposed that the sasural people of her daughter used to demand rice and pulse from her father and accused Santosh Sah demanded motorcycle and the witness showed their disability to fulfill it. He deposed that Bijali (deceased) has stated to her brother (PW 3) on 28.01.93, a day before the occurrence, about the dissatisfaction for the



behaviour of her sasural people. He deposed that on arrival he saw a big injury on the forehead of his daughter (deceased). There were abrasion on her ear and ligature mark around her neck.

In cross-examination, he deposed that accused Baijnath Sah had two sons. One Sudhir and other one is accused Santosh and before marriage accused Santosh was residing at village Sonaili. He deposed that accused Baijnath Sah was living separately from his son, accused Santosh, before one month of the incident.

14. PW 3 Sri Ram Sah deposed that his sister used to say that the sasural people used to harass her sister and demanded motorcycle. He deposed that on 28.01.93 also his sister (deceased) complained against her sasural people.

15. PW 4 Kamini Devi deposed that the behaviour of sasural people was cordial with her daughter but her son-in-law (appellant Santosh) used to demand motorcycle.

16. After hearing the parties, this Court upon consideration of the documents and exhibits, finds that the Trial Court has rightly convicted the accused under Section 498A of the Indian Penal Code and imposed sentence accordingly. The appeal has been preferred by the appellant to look into the



ingredient of Section 498A of the Indian Penal Code. The ingredient is available against the appellant or not as the State/prosecution has not aggrieved by the said order. It is due to this reason, this Court is only confined to look into the availability of the ingredients of Section 498A of the Indian Penal Code. Section 498A of the Indian Penal Code states as follows:

***“498A. Husband or
relative of husband of a woman
subjecting her to cruelty.-***

*Whoever, being the husband or the
relative of the husband of a woman,
subjects such woman to cruelty shall be
punished with imprisonment for a term
which may extend to three years and
shall also be liable to fine.”*

17. With a view to prove the torture, the evidence of the family members is paramount as it is a dispute between the two families, where marriage of daughter of one family took place with the son of another family and this Court is of the firm view that the relatives of the family members are the most competent witness. Here in the present case, the mother of the



deceased has categorically stated that demand of motorcycle was made. The brother, who had visited the house of his sister, had witnessed the behaviour of his brother-in-law and father has also adduced in his evidence that how the demand of dowry in the form of motorcycle used to be made by the appellant and by virtue of those ocular evidences, which come on record from the mouth of PWs.2, 3 and 4, this Court reached on the conclusion that there is sufficient material for ingredient under Section 498A and, therefore, this Court is not interfering in the judgment of conviction and order of sentence dated 11.11.2003 passed by Additional Sessions Judge-III, Katihar, in Sessions Trial No.254 of 1993.

18. In the result, the present appeal is devoid of merit and the same is dismissed. The accused is hereby directed to surrender within six weeks from today and the Trial Court shall proceed accordingly.

19. Let the Lower Court Records be sent back to the learned Trial Court with a copy of this judgment and order.

(Dr. Anshuman, J.)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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