

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.279 of 2009

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Md.Mohiuddin Ansari @ Mohibuddin Ansari son of Late Maqubool Hussain,
resident of Mohalla-Islampur, Amir Mishra Lane, Champanagar, P.S.-
Nathnagar, District-Bhagalpur.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Paritosh Parimal (Amicus Curiae)
For the Respondent/s : Mr. Ramchandra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 15-01-2026

None appears on behalf of the appellant. Learned
Additional Public Prosecutor for the State is present.

2. It is noted that the matter is pending
consideration for about 16 years.

3. It has been requested and Mr. Paritosh Parimal,
learned counsel, has shown his willingness to assist as *Amicus*
Curiae in the present matter.

4. Accordingly, learned counsel *Mr. Paritosh*
Parimal, has been appointed as *Amicus Curiae* in the present
matter.

5. Heard Mr. Paritosh Parimal, learned *Amicus*
Curiae for the appellant and Mr. Ramchandra Singh, learned
A.P.P. for the State.

6. The present appeal is directed against the



judgment of conviction dated 10.02.2009 and order of sentence dated 13.02.2009 passed by learned Additional Sessions Judge, Fast Track Court-5, Bhagalpur in Sessions Trial No. 10 of 2006 / 73 of 2008 arising out of Nath Nagar P.S. Case No. 183 of 2005 whereby and whereunder the appellant has been convicted for the offence punishable under Sections 307, 323, 341, 498A and 504 of the IPC and has been sentenced to undergo rigorous imprisonment for five years under Section 307 IPC, rigorous imprisonment for three months under Section 323 IPC, rigorous imprisonment for one month under Section 341 IPC, rigorous imprisonment for three years under Section 498A IPC and rigorous imprisonment for one month under Section 504 IPC. All the sentences have been directed to run concurrently.

7. According to written statement of the informant Fatima Khatoon (PW-5), who is the wife of sole appellant, addressing to the Officer-in-Charge of Nath Nagar Police Station on 06.06.2005 at 5:30 P.M., it is stated that the informant has six daughters from the wedlock and her husband (appellant) took away four daughters under threat and coercion. She further states that the informant was ousted from her own house. It is alleged that the appellant has solemnized second



marriage in January, 2005 without consent of the informant (PW-5). It is further alleged that when the informant went to reside at her own house with her youngest daughters, then, the appellant and his second wife prevented to do so. The appellant and other asked to leave the house. It is further alleged that the appellant and his second wife dragged her by grabbing her hair and dashed on the ground. It is further stated that the informant fell on the ground by keeping the child in her lap. It is further alleged that the appellant and his second wife concertedly assaulted the informant with fists and slaps. It is further alleged that the appellant is alleged to have assaulted the informant holding the neck and pressed with intention to kill. The informant saved her life anyhow and she has alleged that nearby people do not want to be a witness of the case on account of fear from the appellant.

8. On the basis of written statement of the informant, Nath Nagar P.S. Case No. 183 of 2005 was registered under Sections 307, 323, 341, 498A and 504 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation final form has been submitted against the appellant. But on the basis of protest-cum-complaint petition, the I.O. has submitted charge sheet



under Sections 498A, 341, 323, 307 and 504 of the IPC and learned trial court took cognizance against the appellant under the aforesaid sections. The case was committed to the court of sessions after following due procedure. The learned trial court has framed charges against the appellant under Sections 307, 323, 341, 498(A) and 504 of the IPC. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

9. In order to bring home guilt of accused person, prosecution has examined all together thirteen witnesses. PW-1 Md. Sagir, PW-2 Noor Saba @ Ladli, PW-3 Muslim Ansari, PW-4 Noozi, PW-5 Fahima Khatoon (informant), PW-6 Md. Momin, PW-7 Md. Usman, PW-8 Iliyas, PW-9 Md. Mahboob, PW-10 Nabi Hussain, PW-11 Abdul Qayum, PW-12 Dinesh Kumar (I.O.) and PW-13 Dr. Amrendra Kumar.

10. Prosecution has relied upon following documentary evidence on record:-

Ext. P-1-Signature of the Md. Sagir on
Fardbeyan

Ext. P-2 & 2/1- Injury reports proved
by the doctor (PW-13)

11. Defence has produced one witness as DW-1 and also produced divorce papers which have been marked as Exhibits A and B.



12. After hearing the parties, the learned trial court has convicted the appellant and sentenced him as indicated in the second paragraph of the judgment.

13. Learned *Amicus Curiae* for the appellant has submitted that being husband of the informant, the appellant has been falsely implicated in the present case. It has been submitted that appellant was in custody from 27.07.2006 to 21.05.2009 and out of five years of sentence awarded to him, appellant has already remained in custody for near about two years and ten months. It has been further submitted that PW-3, PW-6, PW-7, PW-8, PW-9, PW-10 and PW-11 have not supported the prosecution story. It has been further submitted that the entire prosecution case stands on the testimony of Md. Sagir ((PW-1), Noor Saba @ Ladli (PW-2), Noozi (PW-4) and Fahima Khatoon, the informant herself (PW-5) and all the witnesses of this case are relative witnesses and interested witnesses. It has been further submitted that from the evidences of PW-1, PW-2, PW-4 and PW-5 it is evident that there is a series of cases between the appellant on the one side and the informant and PW-1 on the other, on account of which Md. Sagir (PW-1), who is son-in-law of the appellant and the informant, has deposed against the appellant and in favour of



the informant, who is mother-in-law of PW-1. It has been further submitted that, from the evidence of PW-1, para 2 of his cross-examination, it is crystal clear that the appellant has six daughters. Out of them four daughters reside with the informant (PW-5) and one daughter Noor Saba @ Ladli (PW-2), who is daughter of the appellant and the informant, is married with PW-1. It has been further submitted that in cross-examination, PW-1 has stated that a case was instituted against PW-1 by the appellant for the offence of marrying PW-2 without the consent of the appellant. There are so many contradictions and inconsistencies in the statement of PW-1 and PW-5 that their evidences cannot be relied upon. PW-1 has inimical term with the appellant as the PW-1 is an accused in the case lodged by the appellant and in order to save the skin from the case, PW-1 has falsely deposed in favour of the informant, which is not sustainable and tenable. It has been further submitted that Noor Saba @ Ladli (PW-2) during cross-examination, has stated that the appellant brought case against PW-1 who is the husband of PW-2. It has further been submitted that the appellant and the informant were leading a very happy conjugal life and cordial relation and both were blessed with six children, from which it is evident that there was no dispute between the them. But the



present case clearly indicates as to how the informant has framed the allegation against the appellant in order to suit the prosecution story. It has been further submitted that Noozi (PW-4) is daughter of the informant and her age is of five years and at the time occurrence her age was of three years as occurrence took place in the year 2005 and it is highly improbable for her to understand the nature of occurrence that had taken place between the appellant and the informant and the court has not taken any precautionary steps to ascertain as to how the child of five years is fit to adduce evidence before the court which is the very foundation of Section-118 of Evidence Act. Hence, her evidence is fit to be discarded. It has been further submitted that all the witnesses are relative witnesses and their evidences cannot be taken into account. It has been further submitted that for instituting the offence under Section 307 of the I.P.C. there was nothing on record to prove the case under Section 307 of the I.P.C. and there was no intention on the part of the appellant to kill the informant (wife), rather the allegations are made just to falsely implicate the present appellant in the said case as the injuries are simple in nature caused by hard blunt substance and suggestion has also been given that all such injuries may be caused by falling on the ground. In this way, the charges



levelled against the appellant have not been proved and judgment of conviction and order of sentence passed by the concerned court is not based on the material available on record and trial court has reached to the wrong conclusion and passed the said order. Hence, the judgment of conviction and order of sentence passed by the concerned court are liable to be set aside.

14. Learned counsel for the State submits that the informant is the victim and is none else than the wife of appellant and she has stated the story of prosecution while she has suffered mental agony as the appellant has solemnized the marriage with another lady. On account of said reason, she tried to avail the facility of accommodation but when the same was denied she protested, as mentioned in the initial version of prosecution story. The manner in which she was assaulted has been clearly mentioned in the initial version of prosecution story by the informant (PW-5). She has given details how she suffered by the act of her husband along with his second wife and finally she left the house just on account of the act committed by none else than the appellant. He further submits that marrying another woman by the husband during existence of his first marriage is something which is most likely to cause trauma and grave injury to the mental health of the first wife, unless it has been done



with the consent of the first wife. He further submits that the judgment of conviction and order of sentence passed by the trial court is legal and justified and no interference is needed.

15. The question which arises for consideration is :-

“Whether the prosecution has been able to prove its case under Sections 307, 323, 341, 498A and 504 of the IPC beyond all reasonable doubts or not?”

16. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

17. It is necessary to evaluate, analyze and screen out the evidence of the prosecution-witnesses adduced before the trial court.

18. P.W. 5 is informant as well as victim of the case. She has stated that the occurrence took place on 06.06.2005. She has also stated that she was being ousted from the house, thrashed on the ground, assaulted and her neck was pressed by the appellant. She has supported the initial version of prosecution-story on the point of assault. During cross-examination nothing is revealed to disbelieve the statement of



P.W. 5 that she was being ousted from the house, thrashed on the ground, assaulted and her neck was pressed by the appellant on account of which she has suffered injury by the act of the appellant. In this way, she has supported and corroborated the initial version of prosecution story.

19. P.W. 13 is Dr. Amrendra Kumar. He has stated that on 06.06.2005 he examined Noozi, daughter of Mohiuddin, aged about four years and found following injuries on her person:

- i. A small lacerated wound on the left toe.
- ii. Tenderness of the right and left hand.

Opinion: All the injuries are simple in nature caused by hard and blunt substance.

On the same date, he examined Bibi Fima Khatoon, wife of Mohiuddin and found following injuries:

- i. Tenderness of the right side of the neck.
- ii. Tenderness of the right ring finger.
- iii. Complain of pain in whole of the body.

Opinion: Injuries are simple in nature, caused by hard and blunt substance.

20. From perusal of evidence of P.W. 13 (Doctor), it is evident that injuries are simple in nature and there



is no description of any visible injury on any vital part of the body. So, injuries are superficial in nature and no inference can be drawn that there was intention on the part of the appellant to kill the informant.

21. To constitute an offence under Section 307 of the IPC, the following ingredients of the offence must be present;

(a. An intention or knowledge relating to commission of murder and

(b. Doing of an act towards it.

22. For the purpose of constituting offence under Section 307 IPC, what is material is the intention or knowledge, and not the consequence of the actual act done for the purpose of carrying out the intention. The Section clearly contemplates an act which is done with the intention of causing death but which fails to bring intended consequence on account of initiation on account of intervening circumstances. The intention or knowledge of the cause must be such as a necessary to constitute a murder. In absence of intention or knowledge which is a necessary ingredient of Section 307 IPC, there can be no offence of attempt to murder.

23. From perusal of evidence of P.W. 13 (Doctor), it is evident that injuries are simple in nature and there



is no description of any visible injury on any vital part of the body. So, injuries are superficial in nature and no inference can be drawn that there was intention on the part of the appellant to kill the informant. In view of the evidence of P.W.13 (doctor) and P.W. 5 (informant/victim), there is no material on record to show that Section-307 of I.P.C. is made out in the light of facts and circumstances of the case.

24. It is necessary to quote the judgment passed by Hon'ble Supreme Court in the case of *Brahm Swaroop and another v. State of U.P.*, reported in *AIR 2011 SC 280*, in which the Hon'ble Supreme Court at para 22 of the judgment held as follows:

"22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

25. In the present case, the informant/P.W. 5 is



the wife of the appellant as well as victim of the case as she was being assaulted and ousted from the house. She pointed out the reason that her husband/appellant solemnized marriage with another lady without her consent. So, she is the victim and her statement cannot be disbelieved on the said account and for that purpose her presence at the place of occurrence cannot be disbelieved.

26. It is also necessary to quote the following judgments:-

In Ranjit Singh and others v. State of Madhya Pradesh, reported in ***AIR 2011 SC 255***, the Hon'ble Supreme court at para 17 of the judgment held as follows:-

"17. Under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction."

In Mano Dutt and another v. State of Uttar Pradesh, reported in ***(2012) 4 SCC 79***, the Hon'ble Supreme Court at para 30 of the judgment observed as follows:-



"30... Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit."

In State of U.P. v. Kishan Chand and others reported in ***(2004) 7 SCC 629***, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his testimony that he was present during the occurrence.

In State of Madhya Pradesh v. Imrat and another reported in ***(2009) 2 SCC (Cri) 558***, the Hon'ble Supreme Court at para 11 of the judgment observed as follows:-

"11. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent



coupled with some overt act in execution thereof."

In Lachman Singh v. State of Haryana reported in ***(2006) 10 SCC 524***, the Hon'ble Supreme Court at para 13 of the judgment observed as follows:-

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. An attempt in order to



be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Sadakat Kotwar and another v. The State of Jharkhand passed in ***Criminal Appeal No. 1316 of 2021***, the Hon'ble Supreme Court held at para 4.1 as follows:-

"4.1. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon-dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC."

27. P.W. 1 is the close relative and in the cases of dowry demand, the statement of close relatives cannot be



disbelieved. The allegation made by the victim/ P.W. 5 is corroborated and supported by P.W. 1. Being a close relative, his statement cannot be disbelieved on the said point.

28. It is necessary to produce Section 118 of the Evidence Act which reads as under:

118. who may testify- *All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.*

29. P.W. 4 Noozi who is daughter of the appellant as well as informant/victim, has stated that she and her mother were assaulted by the appellant. PW-4 is the child of tender years, who was aged about five years at the time of adducing her evidence. The court has not taken care to testify as to how she is found able to adduce the evidence. Just because her age is of tender years, she must be tested, otherwise there is possibility of such witnesses being tutored and it must be carefully evaluated with greater circumspection and should be tested in the light of Section 118 of Evidence Act. In this way, the court has departed from said procedure of recording



evidence and has erroneously committed error on record.

30. P.W. 2, who is the daughter of informant as well as appellant, has supported the case of prosecution on the point of assault, torture, ousted from the house and the demand to get the land of her mother transferred in the name of the appellant. During cross-examination, she has corroborated the prosecution story. She has stated that her mother was being assaulted, tortured, ousted from the house and was being asked to transfer her land in favour of the appellant. Being a close relative, her version cannot be disbelieved.

31. P.Ws. 3, 6, 7, 8, 9, 10 and 11 have not supported the case of the prosecution and they have been tendered.

32. P.W. 12 is the I.O. of the case. He has not been cross-examined by the defence side and whatever the evidence adduced by the I.O. is totally against the appellant.

33. D.W. 1 has produced divorce papers in the Court.

34. So far as Section 341 of the IPC is concerned, there is no specific and categorical evidence of restraining or preventing the victim by the appellant from going which is quite obvious from the evidence adduced by the PW-5/informant



during her deposition. In absence of said evidence, no offence is made out under Section 341 of the IPC.

35. So far as Section 504 of I.P.C. is concerned, there is no specific averment by the informant's side for specific abusive word of threatening or anything which proves the offence under Section 504 of I.P.C. In this way, Section 504 I.P.C. is not proved.

36. So far as Section-498A of I.P.C. is concerned, marrying another woman by the husband during existence of his first marriage is something which is most likely to cause trauma and grave injury to the mental health of the first wife, unless it has been done with the consent of the first wife. If the act of performance of second marriage during subsistence of the first marriage is not interpreted as amounting to cruelty contemplated under Section 498A of the IPC, it would frustrate the legislative intent to prevent the torture to a woman by her husband or by relative of her husband and, therefore, that interpretation has to be adopted which sub-serves the object sought to be achieved by the Legislation. Useful reference in this regard may be made to the case of *B.S. Joshi and ors. Vs. State of Haryana and anr. (2003 Cri. L.J. 2028 (SC) and Reema Aggarwal Vs. Anupam and ors. (2004) 3 SCC 199*. Further, in a case of matrimonial



dispute, cruelty and harassment on a married woman and demand of dowry are generally committed within four walls of residential houses and in secrecy, thereby making it difficult to get direct evidence.

37. On the said point, the Hon'ble Supreme Court has formulated the guidelines in the case of *Jagdish and Others Vs. State of Uttrakhand* reported in *2015 (2) PLJR SC 345* wherein the Hon'ble Supreme Court has observed that in a case of cruelty and harassment on a married woman and demand of dowry are generally committed within four walls of residential houses and in secrecy, thereby making it difficult to get direct evidence and presumption under Section 113(B) of the Indian Evidence Act, due weightage is to be given to the evidence of father, brother, sister and other relatives of the deceased with regard to the case put forth relating to demand of dowry.

38. In the present case, PW-1 is son-in-law of the appellant and the informant, PW-2 is the youngest daughter of the appellant as well as informant and all the witnesses are close relatives. Their evidences cannot be negated in the light of nature of offence which has been committed under Section 498A of I.P.C. Further, there is allegation of torture, assault and



ousted from the house and P.W.1, 2 and 4 have supported the aforesaid allegations. P.W. 2 has also supported the allegation of demand to transfer the land of the informant in the name of appellant.

39. On the point of Section 323 I.P.C., the evidence of the doctor is quite evident that the wife suffered injury and the same is marked as Exhibit-2/1 and the doctor has proved it that the wife (informant) suffered injury and same is corroborated in the initial version of the prosecution story.

40. In the light of facts and circumstances of the case, the offences under Sections 498A and 323 of I.P.C. stand proved against the appellant. However, as discussed above, there is no material available on record to prove the offence under Sections 307, 504 and 341 of I.P.C. Hence, the judgment of conviction under Sections 307, 504 and 341 of I.P.C. and order of sentence with respect to the same passed by the trial court are set aside.

41. However, on the point of sentence under Sections 498A and 323 of I.P.C., the submission of learned counsel for the appellant is quite convincing that the appellant has already suffered two years, ten months in the custody and the occurrence took place in the year 2005 and he has already



suffered near about 20 years in litigation and he has sufficiently been punished. The Court is of the view that if sentence of the appellant is reduced to the period already undergone, that would meet the ends of justice. Accordingly, the sentence of the appellant is reduced to the period already undergone.

42. With the aforesaid modification in sentence, the appeal stands partly allowed.

43. Pending Interlocutory Application(s), if any, shall stand disposed of.

44. The record of this case be also returned to the concerned trial court forthwith.

45. Before parting with the judgment, I appreciate the legal assistance rendered by Mr. Paritosh Parimal, learned Amicus Curiae. Patna High Court Legal Services Committee is directed to pay a sum of Rs. 5,000/- (five thousand) to Mr. Paritosh Parimal, learned Amicus Curiae, as consolidated fee for the legal assistance rendered by him, within a period of four weeks from the date of receipt of this judgment.

(Alok Kumar Pandey, J)

amitkumar/-

AFR/NAFR	AFR
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