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**(2011) 07 PAT CK 0034**

**In the Patna High Court**

**Case No :** Criminal Appeal (SJ) No. 236 of 1997

Bisuni Sharma and Ram Padarath Sharma

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 19-07-2011

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 304B, 498A

**Citation :** (2012) 3 Crimes 612

**Hon'ble Judges :** Anjana Prakash, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Anjana Prakash, J.—The Appellants have been convicted under Sections 304B, 498A and 201 Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years, two years and one year respectively by the 1st Additional Sessions Judge, Samastipur, in Sessions Trial No. 184/88 of 1994/96 by judgment dated 30th July, 1997.

2. The prosecution case is that informant Ram Nandan Sharma married his daughter with Appellant No. 2 around 1988 during which time the Appellant Bishuni Sharma, the father had demanded a motorcycle but he could not fulfill the said demand and promised that he would give it after marriage. When his daughter was living in the house of her in-laws, she was consistently tortured for motorcycle and, therefore, the informant was told about her condition. When the informant went to the house of the Appellant about six months back, he apologised to the accused that he has not been able to arrange money for motorcycle and requested them not to torture his daughter. On 12.03.1993, he learnt that his daughter has been killed by her in-laws on the night of 10.03.1993 and they had disposed off her dead body. Thereafter, the present case was instituted and the Appellants were put on trial.

3. During trial, the prosecution examined seven witnesses, out of whom, PW 1

Vijay Kumar has proved formal First Information Report (Ext.1), whereas, PW 2 Jogendra Prasad has proved the signature of the informant on Ext.2 and PW 4 Vishwanath Maho, also a formal witness has proved Ext.2 which is written report. PW 6 Shiv Nath Pd. Roy and PW 7 Sitaram Prasad are yet another two formal witnesses, out of whom, PW 6 proved the endorsement on the forwarding of the written report, whereas, PW 7 proved the case diary. PW 5 Ramnandan Sharma and his brother Bahadur Sharma (PW 3) are the only two material witnesses out of whom, PW 5 is the informant. The informant in his evidence before the Court has said that his daughter had been married to the Appellant Ram Padarth Sharma in the year 1998, at which time a demand of motor cycle was made but the same could not be fulfilled and promises were made by the informant to fulfill the same at the later point in time. Further, his daughter was constantly tortured on account of non-fulfillment of the same and 5-6 months before the death of the deceased when he had gone to meet the in-laws, he requested them not to torture his daughter and also that he would arrange the money for motorcycle. However, on 12.03.1993, he learnt from Upendra Sharma that his daughter has been murdered by her in-laws and, so, he went and on enquiry learnt from the grand-daughter Mamta Kumari that the present two Appellants had killed her mother. PW 3 Bahadur Sharma is the brother of the informant and has supported the case on the material particulars.

4. On behalf of the defence, three witnesses have been examined out of whom, DW 1 Dr. Rati Raman Jha has stated that the deceased was under his treatment from 07.03.1993 to 10.03.1993 on account of her ailment of loose motion and vomiting. On 07.03.1993 he had advised some drug to her but her condition was deteriorating and, therefore, on 10.03.1993, he referred her to Darbhanga Medical College and Hospital. He proved the prescription written by him which is Ext. A. From the prescription it also appears that she had been examined at Saroj Nursing Home and Research Centre, Samastipur, on 07.03.1993 and also attended to there 08.03.1993 and 10.03.1993 and she became suddenly very ill. DW 2 is a co-villager of the informant and DW 3 Dinkar Jha is co-villager of the informant. Both of them have stated that the deceased was living happily in her in-laws house and there was never any complaint of torture or demand of dowry.

5. In a case of Section 304B Indian Penal Code, the prosecution is required to prove that

- (i) That death has taken place within seven years of marriage
- (ii) That death was unnatural
- (iii) That soon before her death she had been subjected to cruelty for ends of dowry.

The prosecution case has to be viewed in this background. No. doubt, the prosecution has successfully proved the fact that death has taken place within seven years, but in absence of post mortem report it is difficult to conclude that the death was unnatural. Here, the evidence of DW 1, who was the treating

doctor of the deceased, is relevant. He has satisfactorily explained the cause of death of the deceased. The third clause that soon before her death the deceased had been subjected to cruelty has not been proved beyond doubt since the informant has stated that 5-6 months back he had gone to the house of the Appellants and explained his inability to fulfill their demand of motorcycle after which there is No. evidence that the deceased was tortured by the in-laws. Therefore, Clause III of Section 304B Indian Penal Code that soon before the death the deceased should have been subjected to cruelty for ends of dowry has not been satisfactorily proved by the prosecution.

6. The evidence of DW 1 and 2, who are the villager of the informant and the Appellants, is also very important and noteworthy which completely contradicts the prosecution case that the deceased had been subjected to cruelty.

7. In view of the discussions made above, the Appellants are acquitted of their respective charges and they are also discharged from the liabilities of their respective bail bonds.

8. In the result, this appeal is allowed.