

(2017) 03 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Appeal No. 335 of 2016 with I.A.No. 3032 of 2016, (Against the judgment of conviction and order of sentence dated 10.3.2016 passed by Sri. Bansi Dhar Tiwari, learned District and Additional Session Judge-II Godda in S.T. no. 40 of 2013/266 of 201

Niranjan Sharma

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (2017) 2 AIRJharR 283 : (2017) 2 DMC 346 : (2017) 2 JBCJ 276 : (2017) 2 JLJR 151

Hon'ble Judges : Ratnaker Bhengra, J.

Bench : Single Bench

Advocate : Mr. Ranjan Kr.Singh, Advocate, for the Appellant; Mr. Pankaj Kumar, A.P.P, for the State

Final Decision : Dismissed

Judgement

Ratnaker Bhengra,J. (C.A.V.) - This Criminal appeal is directed against the judgment of conviction and order of sentence dated 10.3.2016 passed in .S.T No. 40 of 2013/266 of 2013 by the learned, District and Additional Sessions Judge-II Godda whereby the appellants above named have been convicted for the offence punishable under section 498(A) of the Indian Penal Code and sentenced to undergo R.I for three years subject to set off the period undergone by the appellants.

2. The prosecution case, according to the written report of Ram Prasad Sharma, is that his daughter,namely, Neha Sharma, was married with one Niranjan Sharma son of Bhagwan Sharma of Mahagama police station district Godda in July, 2011. Initially, his daughter was living cordially in her matrimonial home. About two months ago in-laws of his daughter had, after conducting farewell (Bidai), had taken his daughter to Mahagama at their home. About one week ago

he had gone to Mahagama to take his daughter for appearing in her B.A examination but in-laws refused, then his daughter informed that her husband namely Niranjana Sharma, used to assault her mercilessly and in between even his son had gone to take his daughter but they did not allow so. On 30.7.2012 at about 3.a.m. in the morning, he received a call through mobile phone from his son-in-law that his daughter's health was not well and she was suffering acute pain in stomach and therefore, they had taken her to Mahagama hospital for her treatment. When he reached at Mahagama hospital he found that his daughter was struggling in acute pain and was asking for water. On being asked, she told that on 29.7.2012 at about 8 p.m., her husband Niranjana Sharma, brother-in-law Ranjeet Sharma, Father-in-law Bhagwan Sharma and mother-in-law Sunita Devi had locked the door inside the room and all of them caught hold of her and thereafter she was compelled to consume tablet type of substance. The moment she had consumed the tablet, her condition became serious and at that time her stomach was aching and she started vomiting and thereafter she was rushed to the Hospital. During treatment she came to know that she had been brought to Mahagama Hospital. Looking to the serious condition of the girl, the Doctor, for better treatment, referred the girl to Bhagalpur hospital where his daughter, during the course of treatment his daughter told him that her husband Niranjana Sharma, his brother-in-law Ranjeet Sharma, Father-in-law Bhagwan Sharma, mother-in-law Sunita Devi and sister-in-law Nirmala Devi always used to assault and torture her for dowry but for the respect of her in-law family she did not complain about this before the police. During treatment on 31.7.2012 at 8.45 A.M his daughter passed away. His claim is that above mentioned persons used to always torture his daughter for dowry and when he was not able to give the money and article demanded for dowry then the aforesaid persons caught hold of her and his daughter was poisoned and thereafter murdered her. He had given the aforesaid complaint on 31.7.2012 to the police (darogaji) of Barari Thana, at J.L.N.M C. Hospital Bhagalpur but it has not been received at Mahagama Thana.

3. On the basis of written report of the informant Mahagama P.S Case No. 120 of 2012 dated 8.8.2012 was registered against the accused persons under sections 304(B)/34 of the Indian Penal Code. After investigation, the police submitted charge sheet under sections 304B/34 of the Indian Penal Code and Section 3/4 of Dowry Prohibiting Act and thereafter cognizance of the offence was taken and case was committed to court of sessions wherein charge was also framed under section 302/34, 304B/34 and 328/34 of the Indian Penal Code against the appellants. The accused pleaded not guilty and claimed to be tried.

4. The prosecution has examined altogether 14 witnesses to make out the prosecution case, apart from the certain exhibits. Trial was concluded and at the conclusion of the trial, the learned Trial judge acquitted other four accused persons but convicted the appellants for the offence under section 498A of the India Penal Code. Hence, this Criminal Appeal.

5. Now I shall deal with the depositions of the P.Ws

6. P.W.7 is Ram Prasad Sharma (Informant). In para-1 he has deposed that after marriage, her daughter stayed in her in-laws place for one week and thereafter he brought her to his home. He had not given any thing as dowry. So Niranjana Sharma, husband, Bhagawan Sharma, father-in-law and Sunita Devi mother-in-law and four other accused, they used to daily abuse, harass and torture her and make demands for dowry. That on May, 2012, the accused wanted to take her to their home, but due to their behaviour he was not inclined, but due to their assurance that nothing untoward would happen, he allowed his daughter to go. But the in-laws again started abusing and assaulting her. On 20.7.2012, his daughter phoned and told him that the accused have assaulted her badly and are threatening to kill her. Then he again came on 21.7.2012 to Mahagama and asked his daughter about her well being and the assault. He has further deposed that on 28.7.2012 his daughter was due to give B.A Part II examination and he wanted to take away his daughter for the examination, but the appellants and other accused refused. On 26.7.2012, his younger son Shiyanshu Kumar Sharma went to the matrimonial home of his sister with her examination admit card and pleaded with the accused to take her home but the accused again refused. He has further deposed that on 28.7. 2012 Niranjana Sharma, her husband, took her to give examination and later in the evening told her to prepare food, but his daughter said that since she is not well, therefore, she will not be able to prepare the food. Then her husband said that when I will come from duty, I will get you treated properly. He has further deposed that on 29.7.2012, at night, the appellants along with Ranjeet Sharma forcefully closed the door and made her eat some tablet like poisonous substance. On 29.7.2012 at 4 a.m. Niranjana Sharma gave missed call to the informant who called back, then Niranjana Sharma informed that Neha has a lot of pain in her stomach and she is admitted in Mahagama Hospital. He went to Mahagama Hospital where he saw his daughter was struggling in pain and asking for water. Seeing him the accused fled away. On asking her, she informed that at 8.00 O,Clock in the night, her husband Niranjana Sharma, her father and mother -in-laws and Ranjeet forcefully fed her with some poisonous substance as a result she got pain in her stomach and started vomiting. Then he got his daughter referred to and started treatment in J.L.N.M.C Hospital Bhagalpur and on 31.7.2012, during treatment at 8.45 she passed away. He has further deposed that on 29.7.2012 his daughter had sent a letter to his younger son, Shiyanshu Kumar Sharma in which her torture and threatening of her life has been mentioned, and the letter has been marked as Ext.3. While going to Bhagalpur on hearing the voice of her maternal-uncle(Mama), Vijay Sharma, his daughter said "Mama Message" and fell unconscious. When Vijay Sharma checked his mobile, it was seen that message was there regarding giving of threats to kill her. He further said that after death, he had given fardbeyan in Bhagalpur in which he had signed and his signature is marked as Ext 1/1, though with objection. After this, he gave a written report to Mahagama Police Station which was marked as Ext.5.

7. P.W 3 Shiyanshu Kumar is the younger son of the informant and has deposed

that after the marriage of his sister, she stayed one week at her in-laws place and then she came back. During the Durga Puja time appellant Niranjana Sharma took his sister to her in-law place. He also went there and stayed for 2-3 days. Neha's mother-in-law and bhabhi demanded for a T.V and freeze. Then he returned home. On phone his sister used to tell him that her in-laws used to threaten to kill her. Nobody will be able to save her. Niranjana's bhabhi used to tell Niranjana, not to worry if Neha dies, then she will marry him to her sister. Two months before the incident, she had gone to Mahagama and on phone she used to inform that her in-laws are assaulting her. His sister had to appear in her B.A part II exam for which his father had gone to bring her home, but they refused. Even on 27.7.2012, he had gone with her Admit Card in her in law's house and requested the in-laws to let her go, but they refused. On 28.7.2012, after they had returned from giving examination, then Neha was told to make the food. Then she said that she is tired, she cannot make it, then she was assaulted and was told that after returning from duty, she will be treated properly. He has also deposed that on 29.7.2012 he was given a letter by Neha and said to give it to mother. He has identified the said letter in court which is in the hand writing of Neha and it has been marked as Ext.3. On 30.7.2012 at 3.00 A.M a missed call was received by his father and on his father's returning the call, they said that Neha's health is not good and that they are at Mahagama hospital. Then her father with two other persons went to Mahagama, where his sister Neha informed his father that her in-laws had given her poison.

8. P.W.2 is Vijay Sharma and he is the maternal uncle of the deceased. He has deposed that the marriage of the deceased was solemnized about one year prior to the incident. On 30.7.2012 he received a call from Ram Prasad Sharma informant that Neha is not well and that he has come to Mahagama Hospital and doctor has referred her to Bhagalpur. He told him to meet him on route and that they are coming by ambulance. That Neha, who was in an unconscious state , when the ambulance reached near his house, on hearing his voice, she had opened her eyes once and said "Mama Message". He further deposed that he had not understood her message at that time. He advised to reach the hospital quickly. On the next day when her illness aggravated then he went to Bhagalpur, but before he reached, Neha had passed away. He has further deposed that the police had taken the Fardbeyan of Ram Prasad Sharma, in which he had also signed and which has been marked as Ext.1. He has further deposed that he came back home and saw the message in mobile number 9934873631. The message was of 20.7.2012 at 11.50 a.m. There was 3 messages in which there was reference to assault and threatening to kill her. He had given the mobile to the police. The diary has reference to the message and the message has been marked as Ext.2. Mobile was seized. His sister had informed about sending a letter by deceased Neha one day prior to the incident.

9. P.W.6 Manju Devi is the mother of the deceased. At the time of her deposition on 19.8.2014 she has stated that her daughter was married about three years ago and her daughter passed away about two years ago. She has further

deposed that the appellants along with the other accused persons murdered her daughter for dowry. The items they had demanded for dowry were freeeze, T.V and Godrej and they used to assault her daughter and used to say that she had not brought anything at the marriage time. She has further deposed that she had gone with her daughter to Bhagalpur for treatment .She further deposed that her husband told in phone that Neha had told him that these appellants and three others had all together forced her to take or consume a tablet. In her cross-examination she has said that after her first visit to her in-law place when her daughter returned after 5 days she had informed her about the demand of dowry. She has also said that at the time of second fare well (Bidai) also they knew about demands for dowry and assault but they did not object the second farewell.

10. P.W 1 Jai Prakash Sharma, who is the maternal-uncle of the deceased, has deposed that the deceased victim Neha Kumari is his niece(Bhagini) and her marriage was solemnized with Niranjana Sharma about one year ago.The occurrence took place on 30.7.2012.On that very day at 5 .A.M he received the phone call of informant Ram Prasad Sharma that the condition of Neha Kumari is serious and she was referred to Bhagalpur from Mahagama Hospital due to stomach pain. He was also informed that father-in-law, mother-in-law,husband, brother-in-law had given her poison. At about 9 A.M he reached to Mayaganj Hospital at Bhagalpur and found that deceased was in unconscious condition. He asked to doctor then he replied that this is case of poisoning and on the next day morning she had died in course of treatment. The in-laws of the deceased used to torture her due to demand of T.V and Freeze.

11. P.W 4 Pranav Kumar Sharma is also elder brother of the deceased has stated that the marriage of his sister was solemnized with Niranjana Sharma in July 2011. After marriage she went to her matrimonial home and thereafter return back to her parental house after 8-10 days and again she went to her sasural during occasion of Durga Puja. Neha had given telephonic message to him and his family members regarding the torture given by her husband and in-law for demand of dowry. His sister was killed on 31.7.2012.

12. P.W 8 is Doctor, Arun Chandra Rai. He was posted on 29.7.2012 as Medical Officer at Mahagama Referral Hospital and on that very day he had treated the deceased who complained about abdomen pain and vomiting. Neha Sharma had never told about the reason for stomach pain and vomiting. Nehal Sharma was in conscious state but in critical condition. Her body had no sign of injury. He said that if a person is forcefully administered something there may be a scratch on the face and near the face but there was no such type of sign. On 30.7.2012 at 4.a.m she was referred to Bhagalpur for better treatment.

13. P.W. 5, Doctor Sandeep Lal has stated that on 31.7.2012 he was posted as Assistant Professor J.L.N.M College Hospital, Bhagalpur and on the same day at 4 .00 P.M he had conducted postmortem examination on the dead body of Neha Sharma @ Neha Kumari and found the following on her person.

(I) Lips and all finger tips were sinosed.

On dissection :

(i) All viscera were found congested (ii) Mucos of stomach was congested (iii) Stomach and contents with portion of all viscera kept preserved and will be sent to F.S.L Patna as soon as I.O concerned will make all suitable arrangement. Opinion regarding cause of death being kept reserved pending till report of F.S.L Patna is received. Provisionally suspected case of poisoning. Time since death is 3 to 12 hours. The report is written and signed by him. On identification it has been marked as Ext.4.

14. P.W 9 Priyanka Devi has stated that the occurrence is of about two and half years ago. At that time Neha Sharma was ill and during treatment at Bhagalpur she had died. She was living happy conjugal life. She was declared hostile by the prosecution. She was cross-examined by the prosecution but nothing important was extracted in her cross-examination by the prosecution. During her cross-examination on behalf of learned Defence counsel, she stated that accused Niranjana Sharma has four brothers and all are living separately from last six years. His father and mother are also living separately from Niranjana Sharma. Niranjana Sharma is working in Lalmatiya grid. On the date of occurrence deceased was alone present in the house and appellant Bhagwan and Sunaita Devi had gone to Deoghar to perform Puja. In para-5 of her cross-examination she stated that she also accompanied Neha Sharma to hospital and at the time of death Neha Sharma closed her room from inside and she was brought out by breaking the door.

15. P.W 10 is Ghanshyam Yadav. He has stated that the deceased and husband were in an inimical term and troublesome relationship and further stated that Neha Devi died due to stomach pain and headache at Bhagalpur. Villagers told him that Neha Sharma had died due to poisoning. The relation of Neha Sharma with her father-in-law and mother-in-law was cordial. He has been declared hostile by the prosecution and he has further denied the suggestion led by the prosecution that he has given any statement before the police that mother-in-law and father-in-law were always scolding the deceased. He has also identified the accused persons.

16. P.W.11 Meera Devi has stated that she knew Neha Sharma and her marriage was solemnized with Niranjana Sharma. There was no healthy relationship between them. She has further stated that about two and half years ago Neha went to hospital due to illness. Doctor had told that she had died due to poisoning. During Cross-examination she stated that on the day of illness of deceased, she along with Singheswar Sharma, his wife and Ghanshyam Yadav went to Neha's house and found that no person was there. Neha Sharma (Deceased) was inside the room and they asked her to open the door but she did not open the door and thereafter they had broken the door and taken the deceased to Mahagama Hospital. At that time her husband was on his duty. Her

husband was called from office by phone to the Mahagama Hospital and at that time the father-in-law and mother-in-law of the deceased had gone to Deoghar to perform Puja. The deceased was referred to Bhagalppur hospital from Mahagama Hospital and she was taken to Bhagalpur by her husband . she knew the father of Neha but he never came in Mahagama Hospital. The father of Neha came to the house of Niranjana Sharma along with dead body from Bhagalpur and after that he was also present during Sharadh ceremony. He asked for money from Niranjana Sharma and his father in lieu of the marriage expenses and if not paid he would institute a case. Niranjana Sharma did not give any money. She further deposed that her house is adjacent to the house of Neha Sharma.

17. P.W.12 Kanchan Devi has stated that Neha Sharma is her gotni and Neha Sharma father has filed this case. Neha Sharma had died at Mayaganj Hospital at Bhagalpur about two and half a years ago. Neha's relationship with her husband was not good. She does not know anything about the manner of death of the deceased. During cross-examination she stated that on the day of occurrence Neha was inside the room and she was removed from the room by breaking the door. She was then taken away to Mahagama hospital and thereafter was referred to Bhagalpur. She has also stated that the father of Neha did not come to Mahagama Hospital. Neha's father came with dead body of Neha from Bhagalpur to Mahagama and he was also present during cremation. The father of deceased demanded expenses of marriage from Niranjana Sharma and when he refused to do so then he was impleaded in this case.

18. P.W 13 Naresh Prasad Sinha is the I.O of the case. He has stated that on 8.8.2012 he was posted as Officer-in-charge at Mahagama P.S and on that very day at 5.00 P.M informant had given written report and on the basis of written report Mahagama P.S Case No. 120 of 2012 was instituted and he himself took charge of investigation. He has proved the endorsement regarding the institution of case and also proved the formal FIR i.e. Ext. 3/1 and 6 respectively.

Defence has also produced one defense witness :-

19. D.W 1 is Mahendra Choudhary. He has deposed that he recognised the letter no. 179 dated 18.8.2015 which has been issued by him which is in his hand writing and signature and it indicates Niranjana's presence from 14 hours to 22 hours on 29.7.2012 and he was on duty in the Electrical Control Room and continuously present , it is marked as Ext. A. In his cross examination he has stated that he was not on duty along with Niranjana but he has seen attendance register and also consulted Niranjana's colleagues and then he has given his statement. He has also stated that he had consulted Sunit Kishore who was working with Niranjana Sharma.

Arguments

20. The learned counsel for the appellants submitted that on 29.7.2012 the deceased was suffering from stomach pain and was admitted at Mahagama Hospital by the appellants and on being referred for better treatment she was

brought to Bhagalpur but unfortunately she died in course of treatment but this fact has not been considered. It is also stated that none of the independent witnesses have supported the case of the prosecution and rather they have turned hostile and other witnesses are interested one. It is further submitted that the Viscera report, which contained Ext. 11 remarks that :- "No Metallic, Alkaloidal, Pesticidal, Volatile or none volatile poison could be detected" and hence appellant's counsel argued that on this basis the entire allegation becomes doubtful.

It is further submitted that the learned trial court failed to appreciate regarding the intention and motive of appellants as and when the deceased was suffering from Stomach pain, she was brought to Hospital by the in-laws family for her better treatment and even though the suspicion of giving poison is not supported by the Viscera Report(Ext.11 itself). It is also submitted that the learned trial court also failed to consider that without altering the charge the appellant has hurriedly been convicted for the offence under section 498A of the I.P.C though charge was not framed under the aforesaid sections. The learned counsel further submitted that the learned trial court failed to take into consideration that for the same set of evidence other four accused persons have been acquitted hence convicting the appellants is itself wrong..The learned counsel further submitted that the evidence of witnesses have not been corroborated by any of the independent witnesses but this fact has also not been considered by the learned Trial Court and evidence of witnesses are not consistent to each other and therefore vital contradiction in their deposition. To summarize the learned counsel for the appellants has listed the following points :-

(i) The learned counsel for the appellants has argued that there is a lack of motive regarding any offence or cruelty and no offence is made out from the conduct of the appellant. Appellants had taken Neha to hospital at Mahagama and again to Bhagalpur, if there was any illegal intention then he would not have responded in any positive manner.

(ii) The learned counsel for the appellants further submitted that there is a delay of 8 days in lodging the FIR which has not been explained. It is seen that allegation made against the appellants are serious in nature and even trial was conducted on serious allegation, if that is so, the FIR would have been lodged immediately or on the next date. But it was lodged after 8 days of the date of occurrence which only can be explained by pointing that delay was occurred because allegation have been manufactured by way of making concocted story and as a result of which delay has been occurred, otherwise, there is no case against the appellants.

(iii) The learned counsel for the appellants has stated that the entire case of the prosecution is falsified and has no leg to stand on because poisoning has not been supported by the Viscera which has been marked as Ext. 11

(iv) Counsel for the appellants has further stated that the conviction was made

under section 498A and sentence was imposed for the same without altering the charge which is not legally possible and therefore, when they have not been held guilty for the alleged offence of under section 304B/302 of the Indian Penal Code, then without altering the charge the appellants should not have been held guilty under section 498A.

(v) Counsel for the appellants has further argued that there is no cogent evidence to establish the prosecution case that the present appellants had tortured the deceased for demanding of dowry, the allegations, if any, are of general and omnibus in nature against all the accused persons and giving the fact that allegation either under section 304B or Section 302 of the Indian Penal Code is not sustained, then what is the reasons for convicting the appellant under section 498A of the Indian Penal Code because cruelty or torture or harassment is a kind of ingredients of section 304B and also possible under section 302 of the Indian Penal Code.

(vi) Counsel for the appellants has further argued that on the same set of offence other four accused persons were acquitted, hence on the same set of offence, it would not be possible to convict the present appellants.

(vii) He has also argued that the allegation of demand of dowry and harassment and torture is an after thought because original written report or Fardbeyan has not been produced before the court below and hence, the same has not been proved. The original Fardbeyan/written report said to be made in the hospital at Bhagalpur in presence of police personnel of Barari police station has not been brought on record and same cannot be said a true Fardbeyan/ written report. Therefore, investigation and trial of the case are vitiated.

(viii) It is further stated that Ext- A which is a document authored by a person working in the establishment where appellant Niranjana Sharma was also working and he testified that at the relevant time he was at his place of work and as such he could not be held liable for the alleged offence. False allegations which amounts to charges under section 304B or Section 302 were made then conviction under section 498A is also not sustainable and untrue, moreover prior to this case, there is no allegation made against the appellants. Finally, counsel for the appellant has argued that conviction under section 489A is based on the evidence from P.W 1 to P.W 4. However, in their evidence, the allegation of demand of dowry is not consistent and uniformly made against the appellants.

21. The learned A.P.P on behalf of the State has argued that though conviction has been made only under section 498A of the Indian Penal Code but it is seen that other serious allegations were made during course of investigation and trial. It is also seen that even section 304B and 302 IPC have also been made issues and in the facts and circumstances of the case and records, at least the appellants should have been convicted under section 306 of the Indian Penal Code. The learned A.P.P stated that in the written report itself it has been written or stated that he had given a statement to Barai police station at Bhagalpur

Hospital which had not been received at Mahagama Police station. Referring to the deposition of P.W 3 who is the brother of the deceased, the learned A.P.P has submitted that he has referred to a letter which he received and in which assault and torture is indicated by his deceased sister as committed by the accused-appellant. He has submitted that P.W 3 has mentioned that when he was in the matrimonial home of his sister there he saw that appellants were demanding T.V and Freeze and when he returned then he was also informed about such torture via phone.

22. The learned counsel for the State has also argued that on 29.7.2012 a missed call was given by Niranjana Sharma to his father-in-law(informant) to which father of the deceased had later on answered or call backed and then he was informed that his daughter was admitted in hospital at Mahagama. This call or missed call from Niranjana Sharma was only to create a false impression and to show his concerned for the deceased daughter, but it has come from the evidence of the above mentioned prosecution witnesses that appellant had demanded dowry accompanied by assault and torture. The learned A.P.P has stated that Doctor had also stated that it is a suspected case of poisoning and even though viscera does not include poisoning and it is established that faulty investigation does not mean acquittal in totality of the circumstances. Regarding evidence that door was closed from inside counsel for the State said that it has come from the record or written report that she was locked in the room by the accused persons and then she was forcibly made to consume tablet type of such substance and she started experiencing the stomach pain and vomiting. Victim only bolted door inside to prevent herself from being harassed because of fear. Which girl after such long history of assault and torture would not like to protect herself so bolting the door was most natural on her part. He has further stated that statement of girl in this regard made at Mahagama hospital may be taken as dying declaration and is thus totally believable. It is further stated that message via phone was received by the P.W 2 who is the maternal uncle and stated that unfortunately he did not look at the message immediately. Looking at the message it is clearly made out that the deceased was tortured for demand of dowry. He said that message was coming from the mobile of Niranjana Sharma to the mobile of P.W 2 and the girl had tried to reach out to the maternal- uncle and informed him about the situation, she was in but it was unfortunately overlooked and she ultimately was murdered .Regarding plea of alibi of Niranjana Sharma, from the document exhibited counsel for the State stated that total duty period or sequence of duty is not exhibited. But he says that even then it does not mean that husband was not guilty for demand of dowry and torture leading to death. Regarding Doctor report he said that since she was being tortured and assaulted over a long period of time so no mark was found on the body of the victim.

Findings

23. Having heard counsel for both the sides, gone through the case records and

in the facts and circumstances of the case, the following observations and conclusions are made :-

(a) In the written report of the informant P.W 7 it is mentioned that In-laws had refused the permission for allowing his daughter to go with him to appear in her B.A examination. She was mercilessly tortured by her husband Niranjan Sharma. Further in the written report it is also mentioned that at the Mahagama hospital she had told him about torture done by the accused persons including these three appellants. Even when she was shifted to Bhagalpur hospital then during treatment she informed that she was regularly assaulted and tortured by the accused persons including the appellants for dowry. However, bearing in mind the respect of the family she did not complain to any one. It has come in the written report addressed to the Officer-In-charge of Mahagam Police station dated 8.8.2012 that he had given the same complaint on 31.7.2012 to the police personnel of Barari police station at the Bhagalpur hospital and the same was not received at the Mahagama Police station.

(b) It is seen that the informant (P.W 7) in his deposition has supported the prosecution case, as made out in the written report and repeated the same charges. Further he has deposed that his daughter had informed via phone about assault and threat to her life on 20.7.2012 and that immediately on the next date on 21.7.2012 he went to see her, so it seems that he was conversant with the situation, and she had personally conveyed to him about assault, torture and harassment. He has further deposed that the appellants fled away from the hospital and he has also mentioned about the letter that was given to P.W-3 Shiyanshu Kumar. He has also deposed that she had opened her eyes once and said "Mama Message". P.W.3 has deposed that During the Durga Puja time, he went to Nehas's in-laws place and stayed there for 2-3 days. He has also deposed that Nehas's mother-in-law and sister-in-law demanded a T.V and Freeze. He has also deposed that on phone his sister used to tell him that her in-laws used to threat to kill her. Thus he would be a person with direct information from the sister and perhaps the information regarding demand from the appellant and since incident is of the year 2012, it would not be very difficult for him to talk to his sister on a mobile or phone because now a days the phone is available before every young person and young people are often using such gazettes. He has also deposed about the letter which has been marked as Ext.3 in which deceased sister had written and she had mentioned about the torture and threat to her life. Though the letter Ext.3 was objected by the defence but nonetheless it is on record. P.W 2 Vijay Sharma who is the maternal -uncle of the deceased and in his deposition he has deposed about SMS that was sent to him and which indicated about harassment and threat to her life and it was marked as Ext.2. It was also objected to by the defence counsel but it is on record; this evidence is very important in the sense that this evidence if it had been taken seriously, then deceased might still be alive. Because prior to death, she had sent this SMS but unfortunately her uncle did not immediately look at it. The date of the SMS and sequence of evidence regarding the incident including the

death of the Neha in retrospection, make it very credible and believable piece of evidence. In the evidence of P.W 6, who is the mother of the deceased it has been mentioned regarding demand of dowry and assault and she came to know regarding the tablet given to her by the appellants which seems to be fatal sequence of events. P.W 4 is the elder brother of the deceased. He has also deposed that he had received message about torture and demand of dowry over the telephone which also again seems a natural activity of younger people. P.W .8 is Doctor Arun Chandr Rai. He has deposed regarding stomachache and vomiting by the deceased Neha. P.W.11 Meera Devi has deposed that there was no healthy relationship between husband and wife and even P.W 10 also deposed that relationship between deceased and husband was not cordial. P.W 13. Naresh Prasad Sinha is the Investigating Officer of the instant case and he proved the written report which is Ext.5. He has also proved the formal FIR which is marked as Ext. 6. He had also examined the place of occurrence. He also deposed that he had contacted with the Officer-in-charge of the Barari Thana who had informed that Fardbeyan had been registered and inquest report was prepared which was sent to Mahagama police station and it was lost in transit, though fortunately copies had been made and sent to Mahagama police station. He had also examined the alleged message sent from phone of Niranjana Sharma to the phone of Vijay Sharma and concluded that message or communication was made/ was sent on 20.7.2012 as many as eight times. He has also referred to computer generated CDR which has been marked as Ext.t.7/1. P.W.14 is Raghwendra Prasad Singh, Para-medical staff at Mahagama hospital. He deposed that Neha was brought by in-laws and she had complained of stomach pain and vomiting.

(c) It seems from the depositions that all the allegations of harassment, torture and demand of dowry are corroborated by the prosecution witnesses against the appellants with minor inconsistency, but, testimonies of P.W 7, P.W 3, P.W 2, P.W 6, P.W 4 if taken together, even though directly or personally related to the deceased person are credible, believable and consistent with each other. The conversation of two brothers with the deceased-sister seems credible. It has come on record that on the way to the hospital when Neha Sharma was in unconscious or semi conscious state on hearing of the voice of her maternal uncle, she awakened and said to him "Mama Message". It also seems very natural and not something manufactured. There is also a reference to a letter which has been received and marked as Ext. 3. It has come in the evidence of P.Ws 10 and 11 that relationship of the husband and wife were not cordial. All the aforesaid reasons would point towards at least offence under section 498A being made out.

(d) It is also seen that initially FIR was registered under section 304 B of the Indian Penal Code and trial was conducted under section 302 of the Indian Penal Code on the allegation of suspected poisoning. However, as no sign of poison was proved and as such charge under section 304B and Section 302 of the Indian Penal Code were dropped. However, if one looks at the ingredients of Section 304B IPC it is seen that the ingredients i.e. torture and harassment are there.

Now if one looks at section 498A IPC, it is seen that the element of cruelty for unlawful demand is ingredient of the section, hence ingredients under section 498A IPC still remains and the appellants are liable for conviction.

24. Having heard the learned counsel for both sides and having gone through the evidence I am not inclined to acquit the appellants under section 498A of the India Penal Code. Hence the order of conviction passed by the learned lower court below dated 10.3.2016 passed in S.T. No.40 of 2013/266 of 2013 requires no interference. Therefore, their conviction dated 10.3.2016 passed in S.T No. 40 of 2013/266 of 2013 is upheld. From the I.A brought on record it is stated that appellant no.1 Niranjana Sharma has already undergone the imposed sentence, therefore, there will no longer be any need for any further sentence. Regarding the other two appellants no.2 and 3 Bhagwan Sharma @ Bhagan Sharma and Sunita Devi, aged about 86 and 75 at the time of sentence, they have, it seems from the records that the appellants no. 2 and 3 also have already undergone the sentence imposed, however, if any sentence still remain, then considering their significantly old age at the time of judgment, added with the hardships and vigorous of trial, the sentence will then be modified to the periods undergone by them. All the three appellants are discharged from the liabilities of their bail bond.

25. Accordingly, this appeal is dismissed.

26. In the light of the order passed in Cr. Appeal No. 335 of 2016, I.A. No. 3032 of 2016 also dismissed.