

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Cr. Appeal (SJ) No. 1711 of 2003**

Fuldeo Mahtha, son of Dime Mahtha, resident of Village: Rajpura,
P.S.: Madhupur, District- Deoghar

... .. **Appellant**

Versus

The State of Jharkhand

... .. **Respondent**

with

Cr. Appeal (SJ) No. 1749 of 2003

1. Dinu Mahtha, son of Late Titu Mahtha

2. Dhaneshwar Mahtha, son of Dinu Mahtha

3. Girja Devi, wife of Sri Dinu Mahtha

All residents of Village- Rajpura, P.S.: Madhupur, District-
Deoghar

... .. **Appellants**

Versus

The State of Jharkhand

... .. **Respondent**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants : Mr. Peeyush Krishna Choudhary, Advocate

For the Respondent : Mr. Abhay Kr. Tiwari, APP

15/18.03.2026 Heard the learned counsel appearing for the parties.

2. The learned counsel for the appellants submitted that in these two cases, the appellant in Criminal Appeal (SJ) No.1711 of 2003 is the husband of the deceased and the appellants in Cr. Appeal (SJ) No.1749 of 2003 are the father-in-law, elder brother-in-law and mother-in-law of the of the deceased respectively.

3. The learned counsel for the appellants submitted that although there is allegation that there was a demand of Rs.10,000/-, but no earlier steps were taken in connection with such demand and the allegation with respect to the demand has come up for the first time only through the F.I.R. He submitted that the deceased had expired and charge was framed under Section 304B/34 of Indian Penal Code (*hereinafter referred to as the "IPC"*), but the accused persons have not been convicted with respect to the said charge and the conviction is only under Section 498A of IPC.

4. The learned counsel submitted that as per the defence evidence and also as per the evidence of the Investigating Officer, P.W. 6, the deceased had given birth to a male child on 07.08.2000 and on

account of the child being dead and there was excessive bleeding the deceased died on 17.08.2000 in course of treatment at hospital.

5. The learned counsel submitted that it was because of this evidence, the accused has been acquitted for the offence under Section 304B of IPC. He also submitted that the accused persons other than the husband have been directed to undergo rigorous imprisonment for two years and so far as the husband is concerned, he has been directed for rigorous imprisonment for three years and fine of Rs.1,000/-.

6. The learned counsel has submitted that the fact that there was no previous complaint lodged in connection with the demand of dowry creates a serious doubt with respect to the allegation of demand of dowry and primarily the case has been lodged for the reason that the deceased had died.

7. *The learned counsel for the State* has opposed the prayer and submitted that the informant who is the brother of the deceased and other prosecution witnesses including the I.O. and the family members of the deceased have fully supported the prosecution case and the informant in his cross-examination has stated that no complaint was earlier lodged in connection with the demand of dowry in order to save the prestige of the family. The learned counsel submitted that the reason for not filing any complaint earlier has been duly explained by the informant, P.W.5, and there is consistent evidence on record with respect to demand of dowry, and therefore, the appellants including the husband has been rightly convicted by the learned trial court.

8. *After hearing the learned counsel appearing for the parties*, this Court finds that all the appellants have been convicted for the offence under Section 498A of Indian Penal Code. The appellants in Criminal Appeal (SJ) No.1749 of 2003 have been sentenced to undergo rigorous imprisonment for two years each and the appellant-husband in Criminal Appeal (SJ) No.1711 of 2003 has been sentenced to undergo rigorous imprisonment for three years and a fine of Rs.1,000/- with a condition that if the fine is not paid, he will undergo imprisonment for a further period of three months.

9. The informant of the case is the brother of the deceased who submitted the written report on 19.08.2000 stating that the marriage of his sister was solemnized with the accused Phuldeo Mahtha four years back. He further stated that his sister lived properly in her sasural for one year and thereafter all the accused persons, who are the appellants before this Court, started torturing and assaulting her asking her to bring dowry, failing which she will be killed. He also stated that his sister used to tell him about such demand whenever she visited his house and he told his sister that he is a poor man and he is unable to give the money and used to send her sister back to sasural and her torture continued in sasural at the hands of the accused persons.

On 18.08.2000 at about 09:00 AM, the Informant's brother-in-law Manoj Yadav came to the house of the Informant and informed him that his sister is dead. Upon knowing this, the Informant alongwith Dashrath Pandit, Nago Ray, Ravi Yadav, brother-in-law Manoj Yadav and another Manoj Yadav went to the matrimonial house of his sister and when they enquired about his sister, they were told that his sister's dead body has been cremated.

10. The charge was framed against all the accused persons for the offences under Sections 304B/34, 498A /34 and 201/34 of Indian Penal Code in G.R. No.378 of 2000, Madhupur P.S. Case No.141 of 2000.

11. In course of trial, the prosecution examined altogether seven witnesses; they were P.W.-1 Kamal Pandit, P.W.-2 Dashrath Pandit, P.W.-3 Veena Devi, mother of deceased, P.W.-4 Anand Mahtha, P.W.-5 Kishan Yadav, who is the informant and brother of deceased, P.W.-6 Kedar Nath Ram, who is the investigating officer of the case and P.W.-7 Manoj Yadav, the brother-in-law of the informant.

12. *P.W.-1* was declared hostile as he did not support the prosecution case.

P.W.-5 is the informant of the case and in his examination-in-chief, he fully supported the prosecution case as stated in the F.I.R. and exhibited the F.I.R. During his *cross-examination*, he has admitted that the sasural of his sister, Rajpura, is 10-12 Kms away from his

village and he reached there on 18.08.2002 at 11.30 AM. and on the same day, he approached the police station at 4 PM. During his cross-examination, he admitted that he cannot say as to how many times his sister had visited her *maike*. He also admitted that the demand of dowry made from his sister had taken place in her house. He further admitted that his sister had lastly visited her *Maike* just 7 days before her death and she was not pregnant at that point of time and he alongwith his brother-in-law Manoj Yadav had left her in her sasural. He also admitted that for about one year after the marriage, she had lived properly in sasural and he had not lodged any complaint before any authority in connection with the cruelty committed to her for the rest three years as he wanted to save the prestige of the family. He denied the suggestion that his sister had expired at the time of delivery in course of treatment.

Thus, the informant of the case has fully supported the prosecution case and with respect to demand of dowry made by the accused persons amounting to Rs.10,000/- and that his sister used to tell the informant. He has also explained that he did not make any complaint before any authority in order to save the prestige of the family and each time he used to send his sister back to her sasural.

P.W.-3 is the mother of the deceased. She has also stated that her daughter was married 4 years back and had stayed properly in her sasural for a period of one year and thereafter her in-laws started assaulting her. She has taken the name of each of the accused persons and stated that they used to demand dowry and used to assault the deceased and used to ask her to get money from her *Naihar*. She further stated that on account of non-fulfilment of demand, the in-laws killed her daughter and cremated her. She has also supported the case that there was a demand of dowry by the accused persons. During **cross-examination**, this witness admitted that her daughter used to inform her about the assault and demand, but she did not make any complaint before any authority. She denied the suggestion that after giving birth to a child, her daughter was admitted in hospital and she had given birth to a child and she had expired due to sickness.

Thus, P.W.-3 has also fully supported the prosecution case so far as demand of dowry by the accused person is concerned and except that she had not filed any complaint earlier, there is no further cross-examination on this point.

P.W.-2 has also supported the case of the prosecution and has clearly stated that the deceased was married 4 years ago and she lived properly in her sasural for one year, but later on there was demand of dowry and torture and the family members of the deceased could not satisfy the demand. He also stated that the deceased used to disclose the fact about demand of dowry at her parental house saying that her mother-in-law, father-in-law, elder brother-in-law and husband used to assault and torture her regularly. During **cross-examination**, he admitted that he has neither friendship, nor animosity with Kishan Yadav. Her statement was recorded by the police. She reiterated that the deceased was being assaulted for demand of dowry by the accused persons and she had not given birth to any child. She denied the suggestion that she had made any statement to the police that the deceased had given birth to a child on 07.08.2000 and thereafter she died on 17.08.2000.

P.W.-4 has also fully supported the prosecution case in the same manner as above, and he is the neighbour of Fuldeo Mehta, and his house is across the road. In his **cross-examination** also, he has stated that he used to talk to the deceased and she was married for four years and her in-laws used to demand Rs.10,000/-, but he could not disclose the date/month of such demand. He has stated that he had given his statement before the police. He denied the suggestion that he had stated before that on 07.08.2000, the deceased had given birth to a son and ultimately, she died on account of such reason.

Thus, this witness, being the neighbour of the informant, has also fully supported the prosecution case.

PW-6 is the Investigating Officer of the case who had conducted the investigation and had submitted charge-sheet in the case. In his examination-in-chief, he exhibited handwriting and signature of the Officer-in-charge, Madhupur on the written report and on the formal

F.I.R. as Exhibit-2 and 3 respectively. He explained the place of occurrence and stated that he had recorded the statements of the different witnesses and further statement of the Informant. During ***cross-examination***, he specifically stated at Para-4, 5, 6, 12 and 14 that the witnesses Kamal Pandit and Anand Mahtha had told him that the deceased Huro Devi has given birth to a male child on 07.08.2000 and thereafter the deceased was unconscious and in course of her treatment at Madhupur Hospital, she died on 17.08.2000. The witness Kishan Yadav had also said that the deceased was pregnant some months back when she was sent to her sasural. He had also recorded the statement of the lady named Dulari Devi W/o Likar Turi who said that she used to help during pregnancy and had also helped the deceased Huro Devi and a male child was born on 07.08.2000 and after the birth of the boy, Huro Devi had become weak and the newly born boy died on the 9th-10th day and thereafter, the deceased remained in unconscious condition and she was taken to Madhupur Hospital where she died in course of treatment. Thereafter, her dead body was brought to the village and the people assemble and cremated her dead body.

13. ***P.W.-7*** is the brother-in-law of the Informant who also fully supported the prosecution case and stated that after marriage, the deceased stayed in her sasural properly and later on he came to know that there was dispute in connection with demand of dowry. During ***cross-examination***, he denied the suggestion that he knew that the deceased had given birth to a child and there was excessive bleeding to her and after 1-2 days, the child died and the deceased had become very weak and she remained in unconscious condition and she was treated in Devanand Prakash Clinic, Madhupur where she died.

14. All the accused persons have been examined under ***Section 313 of Cr.P.C.*** and they have denied the incriminating evidences appearing against them including the allegation of demand of dowry and while giving explanation with regard to the death of the deceased, they have stated that the deceased had given birth to a child and during treatment, the child as well as the deceased had expired.

15. *The appellants also led evidence and examined five witnesses* in their defence.

DW-1 Baldeo Rai is a formal witness and he exhibited the certificate dated 17.08.2000 issued by Dr. Devanand Prakash who had treated the deceased as Exhibit-A.

DW-2 Sukhdeo Mahto also supported the case of the defence by stating that the deceased had given birth to a son, but the child expired after 6 days and the mother also died due to anxiety and bleeding.

DW-3 Ramdeo Yadav also supported the case of the defence with respect to the cause of death of the deceased and stated that she had given birth to a child who had expired.

DW-4 Dewanand Prakash is the husband of Dr. Neeta Agarwal. He stated that his wife has a clinic namely, Prakash Clinic and Research Centre, in Deoghar. He has supported the case of the defence that the deceased was brought in the clinic with profound anemic condition and she needed blood, but blood was not available and ultimately, she died at 04:00 PM on 17.08.2000 in the clinic. He had issued the certificate to that effect. He also stated that a child was born to the deceased ten days ago and there was profuse bleeding and the patient was brought for treatment. He also stated that he did not inform the police and handed over the dead body to the persons who were present at that time. During ***cross-examination***, he admitted that though his wife is a doctor, but she is not a government doctor. He also stated that he had not given any statement to the police during investigation of the case.

DW-5 Nand Lal Yadav is a formal witness and he exhibited the signatures of Punch namely, Salim Mian, Dindayal Mishra (Mukhiya), Sarat Mahto, Mahendra Puri and Mahadeo Pandit of Village- Rajpura under Balrampur Panchayat on an application to the Officer-in-charge, Madhupur as Exhibits- C, C/1, C/2, C/3 and C/4 (with objection) respectively. During ***cross-examination***, he admitted that the application does not bear his signature, nor the signature of the writer. He further admitted that the application was prepared in the gali of Village- Rajpura and when he was crossing the village, he had

seen the document. He also admitted that the police had not recorded his statement. He further admitted that the document does not bear the signature or receipt of the Officer-in-charge, Madhupur Police Station. He also admitted that he is a farmer and the accused Dinu Mahtha has brought him to deposed in the case.

16. This Court finds that all the prosecution witnesses have fully supported the case so far as the allegation of demand of dowry of Rs.10,000/- by the accused persons are concerned, and they have specifically named the accused persons, who have been convicted in the present case with respect to demand of dowry.

17. This Court also finds that the learned trial court while considering the allegations in connection with Sections 304B and 201 of IPC has acquitted the accused persons vide Paragraph 24 of the impugned order. The finding is quoted as under:

“24. I have carefully considered the rival submissions made by the counsels appearing on behalf of both the parties and have also gone through the records and material available including the Exhibits. With regard to section 304B the prosecution is duty bound to prove the ingredient of Section 304 B and that the onus of proving themselves not guilty shifts on defence u/s 113 ‘B’ of the Evidence Act. From careful consideration of the material available on record and in view of the submissions made by the learned defence counsel this Court is of the view that the ingredient of death caused by burns, bodily injury or otherwise than under normal circumstances could not be proved by the prosecution. Though shameful, it is still true that in rural areas the medical facilities had not reached so that each and every delivery should be completed under medical supervision and still the village lady expert is employed to help in delivery of a child. It is also a fact that due to absence of medical care specially in the villages and for want of awareness among illiterate and semi-literate and also sometimes due to financial compulsions every body does not approach a qualified allopathic doctor to get the delivery done. In this case; from the material available on record specially taking cognizance of the fact that P.W. 6 the I.O. in paragraphs 14 has said that the village “Dangrin” Dulari Devi has fully supported the case of the defence in her statement u/s 161 Cr.P.C. and despite her name figuring in the charge-sheet she was not examined by the prosecution goes to show that the prosecution version of death otherwise than under normal circumstance cannot be

accepted. Death due to excessive bleeding and post delivery complications cannot be said to be otherwise than under normal circumstance. Though unfortunate as is every woman's death more so when the lady is yond the only opinion that could be formed is that there is some delay in taking the lady for medical advice but there is nothing on record to suggest that the said delay was either deliberate or intentional. In that view of the matter the prosecution has not been able to prove one of the essential ingredients of section 304B, therefore, this court finds and hold all the four accused persons not guilty u/s 304 'B' & section 201 of the IPC."

18. So far as the allegations under Section 498A of IPC is concerned, the learned court has considered the ingredients of the offence under Section 498A of IPC and has recorded that there is ample evidence which goes to show that the deceased lady was being tortured and assaulted by her husband and in-laws namely, father-in-law, brother-in-law and mother-in-law with regard to demand of dowry of Rs.10,000/- to be brought from her *Naihar*. The learned trial court has recorded in paragraph 25 of the impugned judgement that there is ample evidence which goes to show that the deceased was tortured and assaulted by her husband and in-laws regarding dowry of Rs. 10,000/-. The finding is quoted as under:

"In the instant case there is ample evidence which goes to show that the deceased lady was being tortured and assaulted by her husband and in-laws namely, father-in-law, brother-in-law and mother-in-law with regard to demand of dowry of Rs.10,000/- to be brought by her from her 'Naihar'. All the prosecution witness are consistent on this point and even the I.O., P.W. 6 has not said anything in his cross-examination; so that this aspect could be disbelieved. There is consistent evidence that after one year of his marriage deceased Huro Devi was asked to bring a sum of Rs.10,000/- by way of dowry from her 'Maika', but she could not met the demand she was being coerced, harassed, tortured and even assaulted by her husband and in-laws. Even the defense witness has not said anything on this point. Thus, in view of the Court, the prosecution has been able to frame charge u/s 498 'A' against all the four accused persons, accordingly, all four accused persons namely, Phuldeo Mahtha, Dinu Mahtha, Dhaneshwar Mahtha & Girija Devi are held guilty u/s 498 'A' I.P.C."

19. This Court finds that all the prosecution witnesses are consistent on the point of torture and demand of dowry from the deceased and even the Investigating Officer (PW-6) has not stated anything contradictory during his cross-examination to disbelieve this aspect of the matter. This Court has already discussed the evidences placed on record and also finds that there is consistent evidence of the Informant, the brother and the mother of the deceased from the side of the prosecution to the extent of demanding Rs.10,000/- from the deceased and torture of the deceased, after she lived peacefully in her matrimonial house for a period of one year, and three years had elapsed thereafter and other witnesses have also supported the allegation regarding demand of dowry. There is evidence against each of the accused persons. So far as non-filing of complaint before the occurrence is concerned, the informant has duly explained the same by stating that he did not file any complaint earlier in order to save the prestige of the family and accordingly, he has fully supported the prosecution case.

20. This court is of the considered view that the learned trial court has rightly convicted the appellants under section 498A of I.P.C. Based on the materials available on record. The basic ingredients of offence under section 498A of I.P.C. has been fully satisfied in the present case. This Court finds no reason to differ with the findings recorded by the learned trial court with respect to the conviction of the appellants under Section 498A of IPC. This court further finds that the sentence imposed is also proper. This Court finds no reason to interfere with the impugned judgment and sentence.

21. Accordingly, both the appeals are dismissed.

22. The bail bonds furnished by the appellants are cancelled.

23. Let the Original Records of the case be transmitted to the court concerned forthwith.

(Anubha Rawat Choudhary, J.)