

**Ram Narayan Shah @ Narayan Shah and anr. Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Aug-01-2003

**Judge :** Anil Kumar Sinha and Bal Krishna Jha, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302 and 498A

**Appeal No. :** Criminal Appeal No. 169 of 1999 (DB)

**Appellant :** Ram Narayan Shah @ Narayan Shah and anr.

**Respondent :** State of Bihar

**Advocate for Def. :** Bhagya Narayan Gupta, APP

**Advocate for Pet/Ap. :** Binay Kumar, Adv.

**Disposition :** Appeal allowed

**Prior history :** 1. This appeal is directed against the judgment and order passed on 9-4-1999 in Sessions Trial No. 73 of 1989 by the then learned Additional Sessions Judge II Saharsa. 2. Both the appellants, Ram Narayan Sah @ Narayan Sah and Ram Chandra San, have been convicted and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for two years under Section 498A of the Indian Penal Code. They have further been! convicted under Section 201

**Judgement :**

1. This appeal is directed against the judgment and order passed on 9-4-1999 in Sessions Trial No. 73 of 1989 by the then learned Additional Sessions Judge II Saharsa.

2. Both the appellants, Ram Narayan Sah @ Narayan Sah and Ram Chandra San, have been convicted and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for two years under Section 498A of the Indian Penal Code. They have further been convicted under Section 201 of the Indian Penal Code and sentenced to rigorous imprisonment for five years and to pay a fine of Rs. 5000/- to be paid to the informant, Lochan Sah.

3. On 19-1-1984 the informant, Lochan Sah, son of Asharfi Sah of village Dabhari Punerbas, P.S. Supaul District Saharsa lodged FIR alleging inter alia that his younger sister Dukhni Devi, aged about 19 years, was married with the accused appellant, Narayan Sah, son of Laxman Sah of village Jolahania, PS Pipra, District Saharsa, two years ago and at the time of second marriage Silver Ornaments, Old Coins and Gold etc. were given to her sister in dowry. But prosecution side was not satisfied with the said dowry. His brother-in-law, accused appellant, Nayrana Sah and other accused persons were further made dowry demand of Rs. 1000/-. 15 days after her second marriage, Nunu Lal Sah, the younger brother of his brother-in-law came to his house and demanded the payment of dowry amount of Rs. 1000/- for purchasing the land. He also threatened to desert his sister in case of non fulfilment of dowry demand. Then Asharfi Sah, the father of the informant paid him Rs. 500/- only to Nunu Lal Sah and expressed his inability to pay the rests of the dowry amount. The informant further alleged that on 16-1-1984, Maheswari Sah, PW 3 Son of Ram Kishun Sah of village Jolahania came at the house of the informant and made enquiry as to whether his sister had come to his house. Maheswari Sah also informed him that one day before her husband Narayan Sah, brother-in-law, Ram Roop Sah and Ram Chandra Sah and Dewar, Nunu Lal Sah and father-in-law, Laxman Sah at 2 p.m. tied her with coconut rope and assaulted her with sugarcane. Thereafter, they confined her inside a room. Maheswari Sah further informed him that he protested them from doing so but of no effect. Then the informant at once went to village Jolahania but he could not

find his sister in her Sasural house. The informant also learnt from Jagdish Sah, Satya Narayan Sah, Basudeo Sah and many others of village Jolahania that on 15-1-1984 the husband and his other family members assaulted his sister for dowry and confined her in a room. The informant returned to his village and told his other family members about the occurrence. Thereafter, he alongwith his father started searching of his sister, Dukhni Devi. On 18-1-1984 he went to village Jolahania in search of his sister, Dukhni Devi and found her dead body floating in the pond of Satya Narayan Sah, PW 23. In no time a number of villagers assembled including the Mahal Chaukidar, Satyadeo Paswan and he was sent to police station for giving information. The informant and others of village Jolahania remained there for keeping a watch over the dead body of his sister Dukhni Devi. The informant further alleged that all the five named accused persons committed a planned murder of his sister, Dukhni Devi for non fulfilment of dowry demand and threw her dead body in the pond of Bachha sah.

4. On 19-1-1984 at 6.30 a.m. N.N. Singh, the O.C. of Pipra Police Station recorded the fardbeyan (Ext. No. 5) of the informant, Lochan Sah at the tank of Baccha Lal Sah of village Jolahania. On the basis of his fardbeyan a formal FIR (Ext. No. 5/1) was drawn up and a case was registered under Sections 302/201/34 of the Indian Penal Code, against the five accused persons, namely, Narayan Sah, Ram Roop Sah, Nunu Lal Sah, Ram Chandra Sah and Laxman Sah. On completion of investigation the police charge-sheeted both the accused-appellants, Ram Narayan Sah and Ram Chandra Sah for trial which ultimately ended in their conviction and sentence as indicated above.

5. The defence of the appellant is that they are quite innocent and has not committed her murder. Their further defence is that Dukhni Devi was entangled with Nunu Lal Sah the younger brother of her husband for which she was scolded by her husband Narayan Sah and consequently she deserted her Sasural house and committed suicide by drawing herself in the pond of Satya Narayan Sah from where later on her dead body was recovered.

6. At trial the prosecution examined altogether 7 witnesses in support of its case. They are Lochan Sah, PW1, the informant, Satya Narayan Sah, PW2, Sheo

Charan Sah, PW3 Maheswari Sah, PW4, Jagdish Sah, PW5, Dr. Jageshwar Lal PW 6 and Bhola Paswan PW 7 is a formal witness and has proved case diary of this case (from pages 1 to 113) (Ext. No. 3), inquest report (Ext. No. 4), fardbeyan (Ext No. 5) and formal FIR (Ext. No. 5/1). The prosecution has failed to examine the Investigation Officer in this case.

7. It may be mentioned here that in the present case there is no directed evidence to the crime and the entire case solely rests on the circumstantial evidence.

8. The evidence of Dr. Jageshwar Lal, PW6 is that on 19-1-1984 at 4.00 p.m. he conducted autopsy on the dead body of Dukhni Devi and found Rigor Mortis present on all limbs. He found the following ante mortem injuries:

- (i) Abrasion 2' X 1/2' on the outer side of right leg.
- (ii) Bruise 2' X 1/2' on the outer side of left upper arm.

According to him both the injuries were caused by hard and blunt substance such as stick made by Sugar Cane plant.

2. The following visceras were preserved for chemical analysis:

- (a) Stomach with its contents.
- (b) A portion of small intestine with its contents.
- (c) Spline.
- (d) A portion of liver.
- (e) Both kidneys.
- (f) A portion of lung.
- (g) A portion of heart.

In his opinion the time elapsed since death was about 48 hours.

Opinion regarding cause of death was reserved till the receipt of the report of the chemical analysis of viscera. He proved the post mortem report (Ext. No. 2).

On the basis of chemical analysis report of the viscera (Ext. No. 1) he found the injuries present on the body of the deceased trivial in nature and the chemical report was negative. In his opinion the death might have been caused due to sudden heart failure. Further according to him mental agency may be a cause of sudden heart failure.

In cross examination his evidence is that the abrasion and bruise may be caused by fall and there may be so many reasons for sudden heart failure, even in case for a man having normal health.

9. PW 1, Lochan Sah, is the informant. He has supported the case of the prosecution in toto as outlined by him in the FIR. In cross-examination he has stated that after the second marriage of his sister he never visited her Sasural house. His sister remained only for three days in her sasural. PW 2 Satya Narayan Sah, has stated that his house is situated adjacent to east of the house of the accused persons. On 15-1-1984 at about 1.30/2.00 p.m. he saw from his roof that hands of Dukhni Devi were tied and she was being assaulted by the accused, Ram Narayan Sah, Ram Roop Sah, Nunu Lal Sah, Ram Chandra Sah and Laxman Sah by sugarcane. Thereafter, they confined her in a room. On 16-1-1984 the informant, Lochan Sah, when came to his village he informed him about the said occurrence. In the evening of 18-1-1984 when he went towards pond found a dead body floating in the water. He informed about it to his father, Bachha Lal Sah. On the same day, i.e. 18-1-1984, the informant, Lochan Sah again came to his village and he told him about the floating of the dead body in the pond. The informant, Lochan Sah went there and identified the dead body of his sister, Dukhni Devi. On hulla, Chaukidar and many others arrived there. In cross-examination his evidence is that from before the present occurrence his family has got a land dispute with the family of the accused, Ram Roop Sah. After the occurrence of the present case the accused Ram Roop Sah brought a kidnapping case of a girl against him and others. He has stated that Baldeo Mandal is Mukhiya of his Panchayat but he was not informed about this occurrence. He has

further stated that his house is in the east of the said pond. At para 18 his evidence is that Most. Akili was a grand mother in relation. He has denied his knowledge that Ashok, the son of Ram Roop is her adopted son. But in same breath at para 19 he has stated that his father has brought a case against the adoption which is still pending for disposal in a Court at Supaul.

The evidence of PW 3 Shiv Charan Sah, is that his house is situated adjacent west of the house of the accused persons. On 15-1-1984 at about 1.30/2.00 p.m. on hearing hulla he came out from his house and saw that all the accused persons, namely, Narayan Sah, Ram Chandra Sah, Nunu Lal Sah, Ram Roop Sah and Laxman Sah were assaulting Dukhni Devi. Thereafter, they confined her in a room. Three days after the occurrence her dead body was seen floating in the pond by the witness, Satya Narayan Sah, PW 2. The informant, Lochan Sah, the brother of the deceased, Dukhni Devi, identified her dead body. In cross-examination he has stated that Adhik Lal Sah is his cousin uncle in relation and the witness, Jagdish Sah, PW 5 is his son. His further evidence is that he went away from there after confinement of Dukhni Devi.

PW 4, Maheswari Sah, has stated that at the time of occurrence Dukhni Sah was in her sasural house. On hearing some quarrerling in the Aangan of the accused-appellant, Narayan Sah, he went there and found him assaulting his wife Dukhni Devi with sugarcane. He protested but of no effect and then he came out of his Aangan. On the following day he went at the house of the informant, Lochan Sah and informed the family members regarding the assault on Dukhni Devi by the accused persons. On return from there he learnt about the recovery of her dead body from the pond of Bachha Lal Sah, the father of the witness, Satya Narayan Sah, PW 2. In cross-examination his evidence is that the present occurrence is not due to non-fulfilment of dowry demand. He has further stated at para 14 that on the following day of the occurrence of assault on Dukhni Devi, the accused-appellant, Narayan Sah informed him about her missing from his house. He has further stated at para 15 that the accused-appellant, Narayan Sah and his other family members were also searching Dukhni Devi in course of which they had also visited different villages. He has further stated at para 17 that his co-villagers, accused Ramroop and Bachha Lal Sah, the father of the witnesses Satya Narayan

Sah, PW2, are on litigation and many cases are pending in between them. Shaukhi Sah, the father of Bachha Lal and Laxman Sah, the father of the appellant, Ram Narayan Sah @ Narayan Sah, were also on litigation. At para 18 his evidence is that Mostt. Akali was well known to him. She had adopted the son of the accused Ramroop. After the recovery of the dead body, Bachha Lal and his family members took the informant, Lochan Sah, to their house and he gave his statement there.

PW 5, Jagdish Sah, is a hearsay witness. He saw the dead body of Dukhni Devi in the pond of Satya Narain Sah (PW 2), the son of Bachha Lal Sah. He has stated that Akali Devi was the aunt of Bachha Lal Sah and she died issueless, Bachha Lal Sah and Ramroop are on Litigation from before the occurrence. He has further stated that the relationship in between Asharfi, the father of the deceased and Laxman the father of the appellant was not strained. When Dukhni slipped away from her sasural house Laxman Sah and his son started searching her and in course of which they had also contacted him.

10. On the other hand, the defence has also examination three witnesses. All of them are of P.O. village . DW1 Mahabir Mandal, has stated that Satyanarayan Sah, PW 2 looks after this case on behalf of the informant. His evidence is that Dukhni Devi was entangled with Nunu Lal Sah, the brother of husband for which she was scolded by her husband, Ram Narayan Sah @ Narayan Sah, as a result of which she slipped away from her sasural house. Then her in-laws sent necessary information to parents and all started searching here 3/4 days after her dead body was found in the pond of Bachha Lal Sah, the father of Satya Narayan Sah (PW 2). He alongwith Chaukidar informed the police about the occurrence where upon Daragoji came to the place of occurrence. He has further stated that the appellant Ram Narayan Sah alias Narayan Sah and Satya Narayan Sah PW2 are on litigation since a long time. Ashok Kumar is the nephew of the appellant Narayan Sah and Mostt. Akali is the aunt of Bachha Lal Sah. Mostt. Akali adopted Ashok which resulted in litigation in between both sides. The deceased Dukhni was never subscribed to assaulted by the accused for want of dowry. In cross-examination he his stated that adoption paper was registered in has presence in Supaul and the adoption case is still pending in the Court in between the appellant

Narayan Sah and Satyanarain Sah (PW2). DW2 Jagdish Mandal has stated that he saw the dead body of the deceased Dukhni in the pond of Bachha Lal Sah. Then, Bachha Lal Sah and Jagdish Sah, PW 5, sent necessary informant to the informant, the brother of Dukhni Devi. The informant, Lochan Sah, came and stayed in the night at the house of Bachha Lal Sah. But he had neither disclosed the names of accused nor had raised any suspicion against them. His further evidence is that on the following morning Daroga Ji came to the P.O. village at the darwaza of Bachha Lal Sah and recorded the fardbeyan of the informant on the dictation of Bachha Lal. He (this witness) put his signature thereon (Ext. A). DW 3, Balaeshwar Mandal, is a Member of Panchayat Committee of Pathraha. His evidence is that Most. Akili had adopted Ashok, the son of accused Ramroop and since then both the parties are on litigation and since then parties are fighting cases. The appellant Ram Narayan Sah never made dowry demand from his in-laws.

In addition defence has also brought on record some documentary evidence to show enmity between the parties.

11. Thus, it is evident from the above discussions that there is no direct evidence to connect the appellants to the commission of the alleged crime. The circumstantial

evidence let in by the prosecution also suffers from a number of following infirmities

and probative links produced by it failed to make out with certainty the guilt of the appellants:

(i) PW 6, Dr. Jageshwar Lal, who conducted autopsy on the dead body of the deceased, Dukhani Devi, found two injuries on her person trivial in nature and cause of death due to sudden heart failure and mental agony. He found the chemical report negative. Further according to him abrasion and bruise found on her body might have been caused by fall. It disproves the case of the prosecution that Dukhani Devi was severely beaten up with sugar cane by the appellants.

This also finds corroboration even by the prosecution evidence. PW 4 Maheswari Sah at para 13 has clearly averred that the appellant, Narayan Sah, had a sugar cane in his hand tout he had not assaulted her with it.

(ii) The post-mortem examination was held on 19-1-1984 at 4 p.m. and the time elapsed since death and the post mortem held was found about 48 hours. It means her death must have been caused after 4 p.m. on 17-1-1984 when she was not in her sasural house. As per the prosecution evidence she fled away from her sasural house on 16-1-1984, after the occurrence of assault on her on 15-1-1984.

(iii) There evidence of the informant, Lochan Sah (Para 21) shows that PW 4, Maheswari Sah, had informed him on Monday about the missing of his sister from her sasural house. The evidence of Maheswari Sah, further indicated that one day after the occurrence of assault on Dukhani Devi the appellant, Ram Narayan Sah, made enquiry from him about her missing from his house and asked him to inform her parents accordingly. The evidence of PW4, Maheswari Sah and PW 5, Jagdish Sah, further indicates that the appellant and his family members started searching Dukhani Devi in course of which they visited different villages. From their evidence it is also established that Dukhani Devi fled away from her sasural house on 16-12-1984.

(iv) Bachha Lal Sah, the father of Satya Narayan Sah, PW2 and the appellants are on litigation from before the occurrence on account of land dispute. Satya Narayan Sah, PW 2 has clearly admitted it in his evidence. PW 4, Maheswari Sah (Para 17) and PW 5, Jagdish Sah (Para 13) have also affirmed about the pendency of litigation in between the both sides.

(v) The evidence of PW4, Maheswari Sah, in clear terms (para 12) shows that the present occurrence had not taken place due to non fulfilment of dowry demand.

(vi) On 18-1-1984, PW 2, Satya Narayan Sah noticed the dead body of Dukhani Devi floating in his pond and accordingly he informed his father about it. In normal course he should have informed the appellants about it. Further on arrival of the informant, Lochan Sah and on identification of the dead body of her sister, Dukhani Devi, Bachha Lal and his family members took him at his house and

where his fardbeyan was recorded on the dictation of Bachha Lal Sah.

(vii) It is also evident from the prosecution evidence that Most. Akli Devi was the aunt of Bachcha Lal Sah and she died issue less. She had adopted the son of the accused, Ram Roop which gave birth to litigations in between appellants and Bachcha Lal Sah.

12. The defence case is also that at the instance of Bachcha Lal Sah this case was lodged falsely against the appellants to feed the old grudge of enmity. In fact on account of illicit relationship with her Dewar, Nunu Sah, Dukhani Devi was scolded by her husband as a result of which she committed suicide. Thus, the above discussed circumstantial evidence lend credence to the plea of the accused and reasonable doubts to the prosecution case. In case of Kali Ram v. The State of Himanchal Pradesh, Reported in (1973) 2 SCC 806, the apex Court has held that 'if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him.'

13. I find and hold that the prosecution has failed to prove, its case against the appellants beyond all reasonable doubts and they are acquitted of the charges framed against them.

14. In the result, this appeal is allowed. The order of conviction and sentence passed against them is set aside. The appellant, Ram Chandra Sah, is on bail. So, he is discharged from the liability of the bail bond. The appellant, Ram Narayan Sah @ Narayan Sah, is in custody so, he is ordered to be released forthwith in this case, if not wanted in any other case.

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