REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.211 OF 2011

NIMAY SAH … **APPELLANT**

VERSUS

STATE OF JHARKHAND … **RESPONDENT**

JUDGMENT

N.V. RAMANA, J.

1. This appeal arises out of the impugned judgment dated 11.02.2010, passed by the High Court of Jharkhand at Ranchi in Criminal Appeal (S.J.) No. 176 of 2001, whereby the High Court has confirmed the judgment and order passed by the Additional Sessions Judge, Pakur in Sessions Trial Case No. 235/1998; 45/1998 dated 09.05.2001 and upheld the conviction of the appellant-accused under Section 498-A read with Section 34 IPC along with other accused persons.

2. The present appeal pertains to Nimay Sah, accused no.3, who is the elder brother of the deceased's husband, Gora

Sah, accused no.1. The present appellant-accused has suffered conviction along with accused no.1, Gora Sah, husband of the deceased and accused no.2, Nitai Sah, father-in-law of the deceased.

3. The deceased, Asha Kumari had been married to accused no.1, Gora Sah, and had been living in her matrimonial home. As per the prosecution story, she was harassed for demand of dowry of Rs. 10,000/- (Rupees Ten Thousand Only) by the accused persons. This demand was originally made to her father, Devendra Sah (P.W.10), the complainant, at the time of her VIDAI ceremony. Owing to her complaints of harassment, her father, Devendra Sah (P.W.10), went to her matrimonial home to pacify her in-laws and assured them of payment of the said amount. Eventually when the harassment did not stop, the complainant sent his son, Munna Sah (P.W.8), to the deceased's matrimonial home who brought her back to her parental home.

4. Accused no.1, Gora Sah, husband of the deceased, went to deceased's parental home on 18.02.1998. On the fateful day, I.E., 20.02.1998, he took the deceased for a

morning walk. Having come back alone after an hour, he hurriedly packed his belongings to leave. When confronted about the whereabouts of the deceased, he said that the deceased was attending the call of nature and would be back soon. He left thereafter. When the deceased did not return after an hour, the complainant started searching for her and she was ultimately found dead, near the canal with strangulation marks on her neck. An FIR was registered against the accused persons under Section 304-B read with Section 109 IPC. After the completion of investigation, charge-sheet was presented in the court.

5. The accused persons were charged under Section 498-A read with Section 34 IPC and Section 304-B read with Section 34 IPC. The accused persons in their statements under Section 313 CrPC, denied all the evidence tendered by the prosecution, claimed false implication and pleaded innocence.

6. By the judgment and order dated 09.05.2001, the trial court, relying upon the prosecution version, convicted the accused persons as under:

ACCUSED	CHARGES	SENTENCE

[1]. Gora Sah [A-1]	S. 304-B/ 34 IPC	RI for 10 years
	S. 498-A/ 34 IPC	RI for 3 years
[2]. Nitai Sah [A-2]	S. 498-A/ 34 IPC	RI for 3 years
[3]. Nimay Sah [A-3]	Acquitted of charges under S. 304-B/ 34 IPC	

7. Aggrieved by the abovementioned order of conviction and sentence, the accused persons appealed before the High Court. The High Court on analysis of evidence found it to be consistent and corroborative, thereby, confirmed the judgment and order of conviction passed by the trial court as well as the sentence VIDE the impugned order.

8. Aggrieved by the impugned order passed by the High Court wherein the conviction and sentence of all the accused persons has been confirmed, accused no.3, Nimay Sah, brother of the deceased's husband, has preferred this appeal.

9. The learned counsel on behalf of the appellant-accused has submitted that none of the independent witnesses have supported the prosecution story. It was contended that the prosecution story comprises of vague allegations, unsubstantiated by evidence. The entire family of accused

no.1, Gora Sah, husband of the deceased, has been roped in this case. Thus, the conviction of the appellant-accused cannot be sustained.

10. On the other hand, the learned counsel appearing on behalf of the respondent-State stressed the fact of concurrent conviction and argued that there existed sufficient evidence to prove the culpability of the appellant-accused.

11. Heard the learned counsel for the parties through Video Conferencing and perused the record.

12. As per the prosecution story, the role of the appellant-accused is limited to the demand of dowry of Rs. 10,000/- at the time of VIDAI ceremony, and subsequently, harassment on non-payment of the same. The High Court has relied upon the testimonies of Shyam Sunder Sah (P.W.7), Munna Sah (P.W.8), Champa Devi (P.W.9) and Devendra Sah (P.W.10) to uphold the factum of harassment for dowry.

13. On perusal of the testimonies of the witnesses, we find that, Devendra Sah (P.W.10) names the appellant-accused to have been troubling the deceased for demand of dowry of Rs. 10,000/-. However, in his deposition, the appellant-accused is

named in the same breath along with other accused persons and their family members. Apart from this witness, Shyam Sunder Sah (P.W.7), Munna Sah (P.W.8) and Champa Devi (P.W.9) depose that the deceased was being troubled at her matrimonial home, without particularly naming the appellant-accused, Nimay Sah.

14. It ought to be noted that apart from these vague allegations, no specific instance of hostile attitude or persistent demands of dowry have been pointed out by any of these witnesses. Further, Shyam Sunder Sah (P.W.7), brother of the deceased, has admitted in his cross-examination that the deceased used to write him letters from her matrimonial place, and that, none of the letters mention any harassment on account of demand of dowry.

15. All other independent witnesses have turned hostile and have not supported the prosecution story. In fact, even Panchanan Sah (P.W.2) who is the paternal uncle of the deceased and a witness named in the FIR, has not supported the prosecution story.

16. Thus, on consideration of the oral testimonies of the

witnesses, the ingredients of Section 498-A IPC have not been proved against the appellant-accused by the prosecution at the standard of beyond reasonable doubt. In such circumstances, there is nothing on record to convict the appellant-accused for the charge under Section 498-A IPC.

17. In light of the above, we are of the view that the conviction of the appellant-accused cannot be sustained. Accordingly, the judgment and order dated 11.02.2010, passed by the High Court of Jharkhand at Ranchi in Criminal Appeal (S.J.) No. 176 of 2001 is hereby set aside and the appellant-accused is acquitted of the charges levelled against him. By order dated 17.09.2010, this Court had enlarged the appellant-accused on bail. His bail bonds stand discharged.

18. The appeal is accordingly allowed in the aforementioned terms. Pending applications, if any, shall also stand disposed of.

……..J.
(N. V. RAMANA)

……..J.
(SURYA KANT)

NEW DELHI,
DECEMBER 2, 2020.