

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.2 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

1. Shakila Khatoon Daughter of Abdul sAmad @ Ahmad Khan, Resident of Village - Khajuri, P.S. - Kalyanpur, District - Samastipur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Shamsheer Ali Khan @ Kalo Khan
3. Babar Ali Khan
4. Iftekhar Khan All Sons of Late Rahamatullah Khan @ Jalka Khan All Residents of Village - Dewana, P.S. - Barauni, District - Begusarai.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Syed Firoz Raza, Adv.

For the Respondent/s : Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-02-2015

This application under section 378(4) of the Code of Criminal Procedure has been filed by the complainant of Complaint Case No.1003 of 2006 seeking leave to appeal against the judgment and order of acquittal dated 12th September, 2014 passed in Cr.Appeal No.35 of 2013, whereby the learned 3rd Additional District & Sessions Judge, Samastipur has reversed the judgment and order of conviction and sentence dated 29th April, 2013 passed by the learned Judicial Magistrate 1st Class, Samastipur in T.R. No. 488 of 2013 arising out of the aforesaid complaint case.

The complainant had filed a complaint on 16th September, 2006 pursuant to which cognizance of the offence was taken and on 11th August, 2010 and charge was framed under section 498-A of the Indian Penal Code. The accused persons pleaded not guilty and accordingly the trial commenced. In course of trial, five witnesses were examined on behalf of the complainant. On conclusion of trial, learned magistrate vide judgment dated 29th April, 2013

convicted the accused persons under section 498-A of the Indian Penal Code and sentenced them to undergo R.I. for two years each.

The accused persons preferred appeal before the Appellate Court vide Cr.Appeal No. 35 of 2013. On appreciation of evidence recorded by the trial court, the appellate court acquitted the accused persons.

According to the prosecution case, the complainant was married to opposite party no.2 on 19th May, 2001. Even prior to the alleged date of marriage, the opposite party threatened not to bring barat if his demand of Rs.40,000/- for purchase of motorcycle is not fulfilled. Under threat and coercion the illegal demand of dowry was fulfilled and at the time of marriage also about Rs.1,00,000/- was spent in giving different articles as dowry. However, after marriage, the accused opposite parties started subjecting the complainant to cruelty in various ways mainly due to bringing insufficient amount as dowry. Within a week of arrival of the complainant at her marital home, an attempt was made by the accused persons to set her on fire but due to intervention of the neighbours the life of the complainant could be saved. When the father of the complainant came to the marital house of the complainant to resolve the issue, the accused persons misbehaved with him also and forced him to put his signature on a blank paper. It has further been alleged that on 31st October, 2003, the complainant was assaulted and kicked out from her marital house but before that the accused persons had forcibly retained her jewellery and other articles. A complaint case bearing 1380 of 2003 was filed before the court in which cognizance was taken on 3rd January, 2004 and a maintenance case was also filed vide Maintenance Case No.40 of 2004 prior to the institution of the present complaint. The aforesaid Complaint Case No.1380 of 2003 was withdrawn due to intervention of friends and well wishers on the promise made by the accused persons that they would not torture the complainant in future and keep her in her



marital house with full dignity and honour. Thereafter, the complainant started leading normal life in her marital house and out of the wed-lock a child was also born. It has also been alleged that subsequently the accused persons again started subjecting the complainant to cruelty for non-fulfillment of rupees one lakh as dowry and in this regard, she was assaulted on 13th September, 2006 and driven out from her marital house. The entire incident was narrated by the complainant to her parents, who, along with the witnesses, went to the house of the accused persons and tried to persuade them not to harass the complainant for demand of dowry but the accused persons paid no heed to their request and as such a subsequent complaint was filed.

Learned counsel for the petitioner has submitted that, despite being sufficient evidence on record, the appellate court has erred in law in acquitting the accused persons.

I have heard Mr. Syed Firoz Raza, learned counsel for the petitioner and with his assistance perused the record.

P.W.1 father of the complainant has stated in his deposition that the accused persons demanded rupees one lakh for purchase of motorcycle when his daughter was at her marital house prior to 2003. He has stated that after arriving at a compromise in the complaint case lodged in 2003, the accused persons subjected her to cruelty for non-fulfillment of demand of rupees one lakh and ousted her from her marital home on 13th September, 2006. There is no specific allegation of cruelty or demand of dowry in his evidence. The evidence of this witness has been doubted by the appellate court as the case of the complainant in the complaint is that money was being demanded for purchase of Jeep and not of motorcycle. The evidence of P.W.2 the brother of the complainant has been doubted by the appellate court on two grounds. The first ground is that he has stated that when his sister went to her Sasural after

compromise in the case in 2003, Khanam Khatoon and Soni Khatoon tried to kill her by setting her on fire but in the complaint lodged in 2003 it has not been alleged that Khanam Khatoon and Soni Khatoon had tried to kill the complainant by setting her on fire. On the same ground, P.W.4 has also been disbelieved. The second ground is that P.W.2 had stated that the complainant came to her Naihar from Sasural on 31st October, 2006, whereas, according to the complainant, she came back on 13th September, 2006. P.W.3 has also not stated anything specific in his deposition. He has simply stated that in the year 2006 the accused persons ousted the complainant from her marital house. P.W.5 has simply stated that after compromise in the first case the complainant went to her Sasural and became pregnant. She was assaulted by the accused persons. She has not stated a word regarding demand of rupees one lakh after she went to her Sasural after compromise in the complaint case instituted in 2003.

The appellate court has considered the aforesaid inconsistencies and discrepancies in the prosecution case on the basis of which it has come to the conclusion that the prosecution has failed to bring home the charge framed against the accused persons. The view taken by the appellate court is plausible one. It has given cogent reasons for acquitting the accused. The reasons assigned by the appellate court are neither perverse nor unreasonable.

In that view of the matter, I find no merit in this application. Accordingly, the prayer for leave to appeal against the impugned judgment is rejected. As a consequence thereof, the application stands dismissed.

(Ashwani Kumar Singh, J)

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