

**THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. 89/2008

Sri Binoy Debbarma

S/O Sri Aghore Debbarma
Of Colony Bazar,
Bishramganj,
P.S. Bishramganj,
District-West Tripura.

..... Revision petitioner

Versus

The State of Tripura

.....Respondent

**BEFORE
THE HON'BLE MR. JUSTICE U.B. SAHA**

For the appellant : Mr. PK Biswas, Sr. Advocate.
Mr. P Majumdar, Advocate

For the respondent : Mr. RC Debnath, Addl. PP.

Date of hearing and
delivery of judgment : **27.01.2015.**

Whether fit for reporting : **Yes/No**

JUDGMENT AND ORDER (ORAL)

The instant revision petition is filed against the judgment and order of conviction and sentence dated 20.09.2008 passed by the learned Addl. Sessions Judge, Sonamura, West Tripura in Criminal Appeal 10(3) of 2008 whereby and whereunder the learned appellate court set aside the conviction and sentence of the appellant-petitioner along with another appellant, Aghore Debbarma under Section 420 IPC and upheld the conviction of the appellant petitioner under Section 4 of the Dowry Prohibition Act, 1961 and sentence to suffer SI for six months and to pay a fine of Rs. 5,000/-, i.d. to suffer further SI for a period of one month.

2. Heard Mr. PK Biswas, learned senior counsel assisted by Mr. P Majumdar, learned counsel for the petitioner as well as Mr. RC Debnath, learned Addl. PP for the State.

3. The prosecution case in brief is as follows:

On 03.03.2006 at about 1105 hrs PW 5, Smt. Surabala Debbarma lodged a written complaint with the Officer-in-Charge of the Sonamura PS stating inter alia, that the marriage between Smt. Suchana Debbarma (PW 7), daughter of informant PW 5 was settled with the accused Sri Binoy Debbarma, S/o Aghore Debbarma and the date of marriage was fixed on 03.06.2006 and accordingly the Mangalacharan ceremony took place in the house of the bride on 24.02.2006 when admittedly there was no demand of dowry. Subsequently, information was received from one Shibu Debbarma, a relation of the accused to the effect that without payment of Rs.15,000/- in cash and delivery of Motorcycle to the bridegroom, the marriage would not be solemnized. Getting this information the negotiators were sent to the house of Aghore Debbarma and Binoy Debbarma but they did not agree to the marriage unless the demand was fulfilled. Thus, the marriage ceremony did not take place on 03.03.2006.

4. Upon receipt of the aforesaid information a police case was registered being Sonamura PS case No. 10/2006. Thereafter, investigation was done by the Investigating authority and charge sheet was filed under Section 420 IPC and Section 4 of the Dowry Prohibition Act against the present petitioner and his father, Sri Aghore Debbarma. On 09.01.2007, the accused persons were charged for commission of offences as aforesaid in between the 24th day of February, 2006 and 3rd day of March, 2006 to which they pleaded not guilty. Thereafter, the

learned trial court recorded the evidence of 12 witnesses as produced by the prosecution and upon considering the evidence of those witnesses convicted the accused persons under Section 420 IPC and Section 4 of the Dowry Prohibition Act and sentenced them to suffer SI for one year and to pay fine of Rs. 5,000/- each, i.d. to payment of fine to suffer further SI for a period of two months for commission of offence under Section 420 IPC and further sentenced them to suffer SI for six months and to pay a fine of Rs. 5,000/- each, i.d. to payment of fine to suffer further SI for a period of one month, for commission of offence under Section 4 of the Dowry Prohibition Act.

5. Being aggrieved by the judgment of the learned trial court, the accused persons preferred an appeal before the learned Addl. Sessions Judge, Sonamura which was registered as Criminal Appeal 10(3) of 2008. Learned Addl. Sessions Judge after hearing the appeal upheld the order of conviction and sentence of the appellant petitioner under Section 4 of the Dowry Prohibition Act and set aside the conviction and sentence under Section 420 IPC and acquitted the other accused, namely, Aghore Debbarma, father of the present petitioner.

6. Aggrieved by the judgment of the learned Addl. Sessions Judge, Sonamura the accused petitioner preferred the instant revision for setting aside the judgment of the learned appellate court as well as the trial court.

7. Mr. Biswas while urging for setting aside the judgment of the learned Addl. Sessions Judge as well as that of the learned trial court would contend that both the courts below have failed to consider the evidence on record. Rather, the whole judgment is passed on the basis

of improved version of the witnesses. He further submits that there is no such evidence that after the Mangalacharan any of the accused at any point of time demanded dowry of Rs.15,000/- as well as a Motorcycle. He also pointed out that according to the prosecution, even the demand of dowry came from one Shibu Debbarma, a relation of the accused person but the said Shibu Debbarma was admittedly not examined. He has also submitted that though it is stated that upon receipt of the information regarding the demand of dowry from Shibu Debbarma, PW 1, Shibu Lal Saha and PW 2, Nittyalal Debbarma went to Bishramganj CPI(M) party office where the accused-petitioner Binoy Debbarma was present and allegedly denied to marry Suchana Debbarma (PW 7), daughter of PW 5 but none from the CPI(M) party office was examined in support of the said contention.

8. He has also taken this court to the cross-examination of PW 1 and PW 2 to show that in their 161 statement, no such statement is available that on 03.03.2006 in the CPI(M) party office Binoy Debbarma expressed that no marriage would be solemnized if an amount of Rs.15,000/- and a Motorcycle was not given to him. He also stated that there are material discrepancies between the statement of PW Nos. 1, 2, 4, 5, 6, 7, 9 and 10 which were not at all considered by the learned trial court as well as the appellate court.

9. He finally contended that PW 5, the informant in her examination in chief stated that she received the information of demand of dowry on 03.03.2006 after meeting with the negotiator Shibu Debbarma but the said Shibu Debbarma was not examined and not only that, all such contentions were also not made before the IO while recording her 164 statement. Thus, the story regarding demand of

dowry by Shibu Debbarma is an improved version and on the basis of such improved version, a person cannot be convicted.

10. Mr. Debnath in his usual fairness submits that the prosecution has failed to prove the fact regarding demand of dowry and he has also admitted that the story which has been stated in the chief regarding demand of dowry by Binoy Debbarma was not stated before the IO when 161 Statement was recorded. Thus, according to him also the story regarding demand of dowry is nothing but an improved version which happened for the first time in the court.

11. The prosecution case is mainly based on the evidence on PW 1, Shibu Lal Saha, PW 2, Nittyalal Debbarma, PW 5, Smt. Surabala Debbarma, PW 6, Subrata Debbarma and PW 7, Suchana Debbarma.

12. PW 1, Shibu Lal Saha, in his chief stated that PW 5, Surubala Debbarma asked him to go to Bishramganj and also stated that the groom's side would not come in the marriage and the marriage would be broken if Rs.15,000/- in cash and one Motorcycle was not given and she got the information from Shibu Debbarma, maternal uncle of the groom. This witnesses also stated in his chief that as the matter was not solved at the Union Office he went to the CPI(M) party Office and informed the matter to the village council leaders and other members where the accused Binoy Debbarma had demanded an amount of Rs.15,000/- and a Motorbike but in his cross it is mentioned that his attention was drawn to the 161 CrPC that such statement was not available there. Not only that, the fact regarding visit to Bishramganj is also not available in the 161 statement.

13. PW 2, Nittyalal Debbarma, in his chief stated that on 19.02.2006 marriage was settled between the accused Binoy

Debbarma and Suchana Debbarma and on 24.02.2006 Mangalacharan of Bride Suchana was performed at Meklipara and at that time there was no demand of dowry and marriage was fixed on 03.03.2006. In his chief, he also stated that on 03.03.2006 in the morning the maternal uncle of the bridegroom Binoy Debbarma, namely Shibu Debbarma came and informed that without payment of Rs.15,000/- and a Motorbike as dowry no marriage would be solemnized. He has also stated that he and another Subrata went with PW 1 to the CPI(M) Party office at Bishramganj where the accused Binoy came and he said that he would not marry Suchana if Rs.15,000/- was not given. In his cross, he has stated that regarding the discussion on marriage on 03.03.2006 at Bishramganj CPI(M) party office is not available in the 161 Statement. It is also not available in the 161 statement that in the CPI(M) party office Binoy expressed that no marriage would be solemnized if amount of Rs.15,000/- and a motor bike was not given in his marriage.

14. Similarly PW 5, Surubala Debbarma though stated in her chief regarding the demand of dowry of Rs.15,000/- and a Motorbike by Shibu Debbarma but said Shibu Debbarma was not cited as a witness. PW 6, Subrata Debbarma and PW 7, Suchana Debbarma also stated in the same line.

15. Upon going through the evidence of witnesses as well as the judgment of the learned trial court and the appellate court, it appears that the trial court mainly relied upon the improved version of the witnesses regarding the demand of dowry by the accused Binoy at the CPI(M) party office at Bishramganj but failed to consider that such statement was made for the first time in the court and such statement

cannot be relied upon. Not only that, though there is no demand of dowry from the side of the accused, the learned court below taking note of the evidence of the prosecution witnesses believed the alleged story of demand of dowry by the accused persons.

16. For commission of offence under Section 4 of the Dowry Prohibition Act the prosecution has to prove that there was demand, either directly or indirectly, from the parents or other relatives or guardian of the bride or bridegroom, as the case may be. But in the instant case, the prosecution failed to prove any demand of dowry by the accused petitioner Binoy Debbarma and admittedly Shibu Debbarma was not examined who demanded the dowry on behalf of the accused petitioner or his family. More so, none of the members of the CPI(M) Party Office who were present at the time of alleged demand of dowry by Binoy Debbarma, were examined.

17. In view of the above, this Court is of the considered opinion that the prosecution failed to make out any case under Section 4 of the Dowry Prohibition Act against the petitioner and accordingly, the order of conviction passed by the learned trial court under Section 4 of the Dowry Prohibition Act and the sentence thereto, upheld by the learned Appellate court, is hereby set aside and the accused petitioner is acquitted from the charges leveled against him.

18. As the accused petitioner is on bail, his bail bond stands discharged. In the result, the revision petition is allowed. Send down the LCR.

JUDGE