

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.12 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Ramayan Singh @ Ram Narayan Singh, s/O Late Aliyar Singh, R/o Village Ugar Bigha, P.O. Jaipur, P.S. Sasaram, District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar
2. Radha Kirshna Singh @ Radhe Krishna Singh @ Rupesh Kr. @ Rupesh Singh
3. Megha Kunwar w/o Late Baikunth Singh
4. Gangatri Devi w/o Chandrahansh Singh
5. Sanpato Devi w/o Ramji Singh
6. Sangita Devi w/o Dinesh Singh
7. Chandrahansh Singh
8. Ramji Singh
9. Dinesh Singh

Both are S/o Late Baikunth Singh

All are R/o Village Jina, P.O. + P.S. – Nasriganj, District- Rohtas.

.... Opposite Parties

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Appearance :

For the Appellant/s : Mr. Ashutosh Tripathy, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-10-2016

The present application under clause (4) of Section 378 of the Code of Criminal Procedure (for short ‘Cr.P.C.’) has been filed by the petitioner seeking leave to appeal against the judgment and order dated 29th January, 2016 passed by the learned Sub Divisional Judicial Magistrate, Rohtas in Complaint Case No. 875 of 2010/ T.R. No. 641 of 2016, whereby the learned Magistrate has acquitted the accused opposite parties no.2 to 9 of the charges under Sections 498-A/34, 323/34 of the Indian Penal Code and Sections 3 and 4 of the

Dowry Prohibition Act.

2. The complainant-petitioner, who is father of the victim lady, filed a written complaint in the court of Chief Judicial Magistrate, Rohtas vide Complaint Case No. 875 of 2010 alleging, inter alia, that the complainant had married his daughter Sheela with accused Radha Krishna Singh @ Rupesh Singh in the year 2003 and spent handsome amount against gift to the tune of Rs.5 lakhs. It is alleged that after marriage his daughter went to her in-laws house but after few days all the accused persons started demanding motorcycle and a refrigerator. They also used to give threatening of second marriage of the accused Radha Krishna Singh. It is further alleged that the accused persons are criminals. They had earlier deserted the first wife of accused Ramji Singh for dowry and made his second marriage with one widow lady, who was getting pension. It is alleged that the accused persons tried to burn his daughter on several occasions and deprived her to meet the complainant and his son. On receiving information of torture upon his daughter, the complainant went to her in-laws house along with Garjan Singh and Lal Bihari Singh and the accused persons assaulted his daughter in their presence also. It is alleged that on 9th June, 2010, the accused Radha Krishna Singh came to the village of the complainant along with accused Ramji Singh and Chandra Hansh Singh and threatened him

to cause murder of his daughter if any case is instituted against them and uttered that till the fulfillment of demand of motorcycle and refrigerator his daughter would be subjected to harassment.

3. In course of inquiry, the complainant was examined on solemn affirmation. Some other witnesses were also examined on behalf of the complainant. After inquiry and examination of complainant and his witnesses, the trial Magistrate found prima facie case to be made out against the accused persons under Sections 498-A/34, 323/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. Accordingly, cognizance of the offence under the aforesaid Sections was taken and the accused were summoned to face trial.

4. After appearance, charges were read over to the accused persons to which they pleaded not guilty and claimed to be tried. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they have stated that the daughter of the complainant after getting job had illicit relation with one Sachchidanand Singh and she used to complain regarding non-satisfaction from her husband owing to his impotency and in this connection the husband had instituted a divorce case against the daughter of the complainant.

5. During trial, the complainant examined three witnesses.

They are P.W.1 Dhanji Singh, P.W.2 Sheela Devi and P.W.3 Ramayan Singh. The defence has also produced one formal witness D.W.1 Jitendra Singh.

6. Having considered the evidence on record and the submissions advanced on behalf of both the parties, the trial Magistrate found that the complainant has not produced Garjan Singh and Lal Bihari Singh, who were material witnesses and who had gone to the in-laws house of the daughter of the complainant and had witnessed the fact of demand of dowry, pouring of kerosene oil over her and assault made to her and the complainant. The trial Magistrate also found that the marriage had taken place in the year 2003 but the complaint was made in the year 2010 mentioning allegation of demand of dowry and harassment since the day of marriage but the occurrence of only two dates have been given in the complaint. The trial Magistrate has given his specific findings in paras 9 to 16 of the judgment, which read as under :

“9. This is strange that none of prosecution witnesses has whispered anything about those two specific events of 08.06.2010 and 09.06.2010 as narrated in complaint i.e. about the allegation to the effect that when on receiving information of harassment of her daughter the complainant along with Garjan Singh and Lal Bihari Singh went to her in-law house all accused assaulted her in presence of complainant on 08.06.2010 at about 12 O’noon and poured kerosene oil and tried to burn her and on protest made by the complainant they assaulted him too and on arrival of villagers that could be avoided

and further on 09.06.2010 accused Ramji Singh, Chandra Hans Singh and Radhakrishna Singh came to the village of complainant along with some unknown persons and threatened him to cause murder of her daughter if complainant would institute any case and uttered that till the fulfillment of demand of Motorbike and Refrigerator they would keep going the harassment of her daughter.

10. Further, complainant has not bothered to adduce the evidence of Garjan Singh and Lal Bihari Singh who allegedly had visited the in-law house of the daughter of the complainant along with complainant and witnessed the fact of demand of dowry, pouring of kerosene oil over her and assault made to her and the complainant.

11. Marriage of the daughter of complainant admittedly took place in the year 2003 whereas instant complaint was instituted in the year 2010 mentioning allegation of demand and harassment since day of marriage but account of only two specific dates of events and that too of the year 2010 was given in the complaint and no endeavour at all has been made on behalf of the prosecution to establish even those two specific events.

12. On the point of demand of dowry before 2010 there is there is omnibus assertion in the complaint and the same has continued in version of prosecution witnesses. All accused have been attributed to the guilt of demand of dowry by the prosecution witnesses in one go as may be gleaned from para 4 of PW1, Para 3 of PW2, Para 2 and 5 of PW3 and there is not a single assertion about the specific mannerism of any of the specific accused while engaged in alleged acts. There is nothing as to the outward exposition of the state of affairs really going on at relevant point of time, so as to have any inference of culpability under adjudication.

13. In the backdrop of the assertion of giving gift to the tune of 5 lacs at the time of marriage as narrated in complaint itself and also found place in the

versions of prosecution witnesses, the story of mere absence of Motorcycle and Fridge in Gift-Box, would not keep haunting so long of seven years and even till now.

14. To adjudge the allegation by observing the turmoil in any nuptial realm, there is need of caution as well as a need to purge out other possible causes which may not be culpable in themselves. Suggestions have been tendered to the prosecution witnesses to the effect that complainant used to complain the absence of covetousness in the husband and display of her dislike to him. Here this is an admitted position that there has been no offspring to the wedlock of the daughter of complainant with her accused husband and of such a tenure. This is also not the case that it was deliberate act of extreme family planning. This can only be attributed either to physical or mental impotency or to the lack of such emotions which hinder an arousal to that effect. Referring previous statements of complainant and her daughter made during course of inquiry, the story of defence moves further to the allegation of extra-marital affair of complainant with one Sachidanand Singh (Para 22 of PW1, Para 31 of PW2 and Para 41 of PW3) constraining the husband accused to keep himself away from the daughter of complainant by remaining at his place of posting for long and prompting him to institute a divorce case and in counter to that the present one.

15. One more specific thing has been asserted in complaint petition that the accused did not allow complainant's daughter to meet her kith & kin and in eventualities of happening of any such meeting, complainant was used to be retributed with harassment. Neither complainant nor her daughter has anywhere said anything in this regard during course of their examination.

16. Till alleged facts are established this is imprudent to discuss the course of substantial law in that regard and as may be gathered from above discussion, same is the case here. Here is dearth of established facts so as to constitute essential

components of offences punishable U/s 498A/34, 323/34 of IPC & S.4 of D.P. Act r/w S.34 of Indian Penal Code.”

7. On the strength of the above discussions, the trial Magistrate acquitted all the accused persons of the charges leveled against them.
8. I have heard learned counsel for the petitioner and perused the impugned judgment passed by the learned Sub Divisional Judicial Magistrate, Rohtas in Complaint Case No. 875 of 2010.
9. The above reasonings assigned by the learned Magistrate are cogent and convincing. They are neither ill-founded nor perverse. In that view of the matter, this Court does not find any reason to interfere with the impugned judgment of acquittal. Accordingly, leave to appeal is rejected.
10. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	-----
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