

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.18 of 2016

Arising Out of Complaint Case No. -973 Year- 2002 Thana -null District- GAYA

1. Renu Sinha @ Rani wife of Manish Kumar Sharma, resident of Mohalla-
Murarpur, Purani Godam, P.S.- Kotwali, District- Gaya.

.... Appellant/s

Versus

1. The State of Bihar
2. Ranjeet Kumar Sinha S/o Late Raj Nandan Prasad Sinha
3. Subodh Kumar Sinha S/o Late Raj Nandan Prasad Sinha
4. Mukesh Kumar Sinha S/o Late Raj Nandan Prasad Sinha All are residents of
Samastipur.
5. Manish Prasad S/o Rajesh Prasad
6. Rajesh Prasad S/o Vidya Nand Prasad Both are residents of Barhamasiya, Bidya
Nath Dham, Deoghar, P.S.- Deoghar, District- Deoghar (Jharkhand).
7. Sheela Kumari Sinha, Wife of Late Vijay Kumar Srivastava
8. Nimla Sharan wife of Mahesh Kumar Sharan
9. Mahesh Kumar Sharan S/o Siyabar Sharan
10. Manish Kumar Sharan son of Mahesh Kumar Sharan All are residents of
Mohalla- Magadh Colony, P.s.- Magadh Madical, District- Gaya.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Dubey, Adv.
For the Respondent/s : Mr.

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 26th February, 2016 passed by the learned Sub Divisional
Judicial Magistrate, Gaya in Trial No. 126 of 2016 arising out of
Complaint Case No. 973 of 2002, whereby and whereunder the
learned Sub Divisional Judicial Magistrate has acquitted the accused

opposite parties no.2 to 10 of the charges under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

2. The complainant-petitioner filed a written complaint on 19th March, 2002 in the court of Chief Judicial Magistrate, Gaya vide Complaint Case No. 973 of 2002 alleging, inter alia, that she was married to opposite party no. 10 Manish Kumar Sharan on 10th March, 1999 as per Hindu rites and rituals and on the even of marriage her father gave Rs.6,00,000/- in cash and other articles to accused Manish Kumar Sharan and his father Mahesh Kumar Sharan. After marriage the complainant went to her matrimonial home at Magadh Colony and after a brief stay of 3-4 days she returned back to Barauni to her father's official quarter and again came back to her matrimonial home with her husband. After some time, her husband left for Gorakhpur where he was working as an auditor through he continued to make occasional visit to the complainant and his parents. It is further alleged that with the passage of time when the complainant became pregnant, her husband took her to her parents home where she gave birth to a female child on 24th December, 1999 which did not please her in-laws family.

3. It is further alleged that in February, 2000 when the complainant again came to her matrimonial home along with her daughter, the behaviour of her in-laws was very rough and on the eve



of Holi festival in March, 2000 while some of the accused persons including her husband were assembled, they suggested that since the complainant has given birth to a female child, Rs.1,00,000/- should be demanded by her father in order to keep the same in fixed deposit for the purpose of marriage of the child. The complainant objected to this upon which the opposite party no.7 and her husband suggested to send the complainant to Gorakhpur where she would be explained everything. It is further alleged in the complaint petition that her brother-in-law was unemployed and resided at Deoghar but he always used to live at his *sasural* and he instigated his father-in-law, mother-in-law and the husband of the complainant against her. Thereafter, the complainant went to Gorakhpur along with her husband where she could learn that her husband had bad habit of wine and cigarette which was protested by her upon which her husband assaulted her and inflicted all sorts of mental atrocities on her. It is alleged that on the occasion of Dussehra her husband brought her to Gaya where the accused persons tortured her variously which was informed by the complainant to her parents by letter upon which the opposite party nos. 6 and 9 sent her to her parents home where she explained everything to her parents. It is further alleged that after 4-5 months when no body came from her matrimonial home, the father of the complainant brought her and her child to her matrimonial home along



with his relatives and requested her in-laws to keep his daughter and her female child and further assured to give some money but in June, 2001 when the husband of the complainant fell ill and was going to Delhi for treatment, she also desired to accompany her husband but all the family members protested and suggested to perform remarriage of her husband. It is alleged that on 12th November, 2001 the husband and father-in-law of the complainant after snatching her all belongings including jewelleryes took her to her parents home at Barauni and threatened not to take back her. Thereafter, the father of the complainant fell ill due to shock and on 2nd June, 2002 he expired due to heart attack and since then the complainant was facing mental agony.

4. The complainant was examined on solemn affirmation. After inquiry under Section 202 of the Cr.P.C., the learned Magistrate finding a prima facie case to be made out under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, took cognizance of the offence against all the accused persons and summoned them to face trial.

5. After appearance of the accused persons, evidence was recorded under Section 244 of the Cr.P.C. and charges were framed against them under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, to which the accused persons

pleaded not guilty and claimed to be tried.

6. In course of trial, one of the accused, namely, Vijay Kumar Srivastava died and proceeding against him was dropped on 21st May, 2014 and the case proceeded against the remaining nine accused persons.

7. During trial, the complainant examined altogether six witnesses. They are C.W.1 Sonu Kumar, C.W.2 Santosh Kumar Sinha, C.W.3 Kunti Devi, C.W.4 Renu Sinha, the complainant herself, C.W.5 Krishnadeo Prasad and C.W.6 Birendra Singh. Some documents were also produced by the complainant. The defence also examined seven witnesses. They are D.W.1 Mahesh Kumar Sharan, D.W.2 Anup Kumar, D.W.3 Rajesh Prasad, D.W.4 Rakesh Kumar Sinha, D.W.5 Sudesh Kumar Sinha, D.W.6 Manisha Prasad and D.W.7 Manish Sharan. The accused also produced some documents in support of their defence.

8. The trial Magistrate discussed the evidence as well as the arguments advanced on behalf of both the parties in detail. It found that there are allegations and counter allegations. The root cause of the dispute was that the complainant wanted to live with her husband at Gorakhpur. The trial Magistrate doubted the factum of demand of dowry and came to the conclusion that the defence has succeeded in creating doubt over the prosecution story. Thus, having considered

the entire facts and circumstances of the case, the trial Magistrate acquitted all the accused persons of the charges leveled against them. The findings of the trial court recorded in the impugned judgment are as under :

“Perused the record in the light of submission of parties. In this case the accused faced charges u/s 498A of IPC and sec 4 of Dowry Prohibition Act. In this case allegation against the accused is that they demanded a sum of Rs One lakh after the birth of the girl child and turned the complainant out of the house for non fulfillment of demands. The prosecution has specifically mentioned about the occasion of Holi and Dusshehra when all the accused gathered and tortured the complainant as she gave birth to a daughter. In support the witnesses examined, including the complainant have stated that the accused have ill-treated the complainant and she was tortured even in their presence. They actually wanted to get rid of the complainant and wanted Manish Sharan to remarry. They sent the complainant back home on 12.11.01 and said that if no payment was made they would not take her back. She was not received well by anyone of the members of her husband. In reply the defence has denied and submitted that this case has been filed with a view to harass the accused and by way of reply to the case of judicial separation filed by the accused. The true state of fact is that the complainant Renu Sinha pressurized her husband to leave his parents and she refused to perform her obligations as a wife and her behaviour towards the family of her husband was not good. The prosecution side has alleged that all the accused are distant relatives and had gathered on the occasion of holi and they were involved in making a demand and even instigating the accused Manish Sharan and his parents. The defence has brought on record the documents Ext-E/2, Ext-E/1, Ext-F, Ext-G and G/1 all of which show that the averments made by the complainant that her brother-in-law was unemployed and regarding the presence of all these accused at her marital home is dubious. They



were all present at their respective workplaces so the question of making a demand does not arise, rather it creates a view that the intention of complainant is to harass the accused. The plea of prosecution is that minor omissions should be ignored however no argument was put forward to counter the stance taken by the defence regarding the absence of the accused on the alleged occasion of holi. The prosecution side has alleged that PW1 has also supported the fact in para 8 and 18 of the cross examination, CW2 in para 9 and CW3 in para 14 have said that they witnessed the occurrence. Here it is pertinent to mention that all the witnesses say that they were witness to the ill-treatment by all the accused. PW1 says in para 3 of his chief that all accused at the time of holi in the year 2000, PW2 in para 2 have said all the accused were involved. The defence has tried to question the veracity of witnesses by pointing out the replies of witnesses on questions relating to the visit by the brother to Gorakhpur, regarding the involvement of all the accused. It is alleged that the main reason for the demand of dowry was because of the birth of the daughter. The version of prosecution is that they did not come to see their daughter when she was born. However, the defence side says that Manish and Mahesh Sharan visited on the occasion of Chathhi of the daughter which is admitted by the prosecution though the witnesses believed that it was only to show the society and actually they had no affection for the daughter. The defence side also drew the attention of this Court to another Ext-E that is the newspaper wherein the accused Mahesh Sharan got a good wishes message published on the occasion of his grand daughter's birth. A very strong point raised by the defence was that the family has daughters so the question of torture on the birth was beyond imagination. It has also been stated that the accused side intended to perform a second marriage of the accused and prosecution side filed Ext-3 wherein she was referring to the marriage of her son Babloo. The defence side replied that babloo is one of the cousin' of Manish Sharan. The main defence of the accused side is that the complainant actually intended to stay with her parents and for that reason her conduct



towards her in-laws was not good. In support the defence has filed some letters written by Mahesh Sharan to Mithilesh Sinha complainant Renu Sinha's father. Ext-D is one such letter, the Photostat copies of other letters were filed as the originals had been delivered and were naturally not available with the sender. The defence contention was that Mahesh Sharan always made an attempt to inform his daughter-in-law's conduct to his father. He even made an attempt to inform him that she always threatened and that she could even harm herself. Her letter written to her mother was a reflection of such behaviour of hers. Even in the case of judicial separation after hearing both the parties the court had passed a decree in his favour on account of the conduct of the complainant. Ext-H is the order of judgment passed in Matrimonial suit no. 40/02 wherein in a detailed order the circumstances under which the decree of judicial separation was granted has been explained. No appeal is pending against it as well. The prosecution side has stressed the fact that even at the time of marriage a sum of Rs. 6,00,000/- was given, the defence has questioned it and has submitted that the complainant's father was not in a position where he could give so much when the marriage was solemnized nearly seventeen years back and from the statement of witnesses it is evident that the marriage took place in a cordial atmosphere and the parties had no grudges against each other. Thus in the light of the above discussions it can be inferred that the relationship of the couple was admittedly strained there are allegations and counter allegations but the fact of commitment of atrocities in pursuance of demand of dowry is doubtful. The defence has succeeded in creating a doubt over the prosecution story and the benefit goes in favour of the accused. The accused are thus acquitted of the charges u/s 498A of IPC and sec 4 of Dowry Prohibition Act."

9. I have heard learned counsel for the petitioner and perused the materials on record.

10. I find that the learned Magistrate has suspected the veracity of the allegations made by the complainant. She has assigned several reasons for coming to the conclusion that the complainant has failed to prove her case beyond reasonable doubts. The reasonings assigned by the learned Magistrate are neither ill-founded nor perverse. They are clear, cogent and convincing reasons.

11. In that view of the matter, I see no merit in the present application. Accordingly, leave to appeal against the impugned judgment of acquittal is refused.

12. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	----
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