

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.643 of 2017

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Aamna Khatoon, W/o Late Md. Chhedi, resident of Village- Wajitpur, P.O.- Kanbehri, P.S.- Aurangabad (M), District- Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Md. Khalil, S/o Late Zinnat Ali, resident of Hussain Karma, P.S.- Rafiganj (Kasma), District- Aurangabad (Bihar).

.... Respondent/s

with

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Criminal Revision No. 663 of 2017

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Wasi Ahmad, Son of Late Md. Chhedi, Resident of Village- Wajitpur, P.O.- Kanbehri, P.S.- Aurangabad (M), District- Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Md. Khalil , Son of late Zinnat Ali, Resident of Hussain Karma, P.S.- Rafiganj (Kasmal), District- Aurangabad (Bihar).

.... Respondent/s

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Appearance :

(In CR. REV. No.643 of 2017)

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mrs. Meena Singh, Advocate.
For the State : Mr. Madan Kumar, A.P.P.
Mr. Nand Kishore Prasad, APP

(In CR. REV. No.663 of 2017)

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mrs. Meena Singh, Advocate.
For the State : Mr. Madan Kumar, A.P.P.
Mr. Nand Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 14-12-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. Both the revision applications are disposed of by this
common judgment as both the petitioners have been convicted by the
same judgment by the trial court and upheld by the appellate court.



3. The petitioners have preferred revision application being aggrieved by the judgment and order dated 13.04.2017 passed by the Additional Sessions Judge-I, Aurangabad in Cr. Appeal No. 96 of 2006 whereby he has upheld the judgment of conviction as well as order of sentence passed by Sub Divisional Judicial Magistrate, Aurangabad in Trial No. 496 of 2006 against the petitioners convicting them under Sections 498A of the Indian Penal Code as well as Section 4 of the Dowry Prohibition Act and directed to undergo rigorous imprisonment of two years each and a fine of Rs. 2000/- each and in default of making payment of fine, to further undergo one month rigorous imprisonment. In addition, they were further directed to undergo three months rigorous imprisonment for committing offence under Section 4 of the Dowry Prohibition Act and also to pay a fine of Rs. 1000/- each and in default of payment of fine, further to undergo 15 days rigorous imprisonment, however, directed that both sentences shall run concurrently.

4. The prosecution case, in brief, is that O.P. No. 2, Md. Khalil, lodged Aurangabad Mufassil P.S. Case No. 73 of 1997 dated 13.02.1997 under Sections 498A and 304B of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against his son-in-law, Md. Washi Ahmad and his parents making allegation that marriage of his daughter Jahida Khatoon was solemnized six years back with Md. Washi Ahmad. All accused persons were making



further demand of motorcycle right since the marriage but he expressed inability to fulfill the demand. It is also alleged that all family members used to taunt her being a barren lady not bearing a child, as a result of which she always used to come back to her parent's home. On 03.02.1997, Taukir Mian, a co-villager, informed him that his daughter was missing from her matrimonial home since 02.02.1997. He went to her matrimonial home and enquired about his daughter from Chhedi Mian, who informed that from yesterday she is traceless. He raised suspicion that her daughter Jahida Khatoon might have been killed by husband and his family members.

5. The police, after lodging the case, started making investigation and on conclusion of investigation submitted charge sheet under Sections 304B and 498A of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. During trial, altogether 08 witnesses were examined by the prosecution, out of which PW-1 Md. Hakim, PW-2 Md. Usman, PW-3 Nazawat Hussain and PW-4 Gulam Navi have turned hostile to the prosecution case and PW-6 Md. Sadik is also a hearsay witness on the point of making demand of dowry and torture and PW-8, a formal witness, proved the FIR. In this case, the Investigating Officer has not been examined by the prosecution.

6. Learned counsel for the petitioner submits that both the courts below committed error in appreciating the evidence on record as the genesis of the case is apparently false one. F.I.R. was



instituted under Sections 304B and 498A of I.P.C. raising suspicion that her daughter was killed by the accused persons even the police wrongly submitted charge sheet under the said sections though Jahida Khtoon, examined as PW-7, herself in her testimony in para-14 of the cross-examination admits that after ousting from the matrimonial home, she came to her parents home thereafter her father lodged the case leading to her disclosure about this occurrence; so even after knowing the fact that her daughter is alive, the false allegation was levelled that she was killed by accused persons and kept her secretly in his house and police also submitted charge sheet under Section 304B of I.P.C. whereas evidence shows that she wanted to live with her husband who was engaged in a private company at Delhi but the husband was not ready to take her to Delhi because of his meager earning and to take care for her old parents. She also admits that at the time of living her matrimonial home, husband Washi Ahmad was not present in the village rather he was in Delhi. The allegation of demand of dowry is false as the his father-in-law- informant (PW-5) himself admits in Para-11 of his cross-examination that demand of motorcycle was made by Washi Ahmad after four years of marriage, there was major contradiction in the case of the prosecution evidence as the case is that just after marriage they started making demand of motorcycle and in his testimony he said that after four years of marriage, demand of motorcycle was made. Learned counsel submits that no other



witnesses have supported the case of the prosecution, except informant (PW-5), father of the girl and Jahida Khatoon (PW-7) though their evidence too is not acceptable due to major contradiction in their evidence on the point of making demand of dowry or torture. In addition to that, PW-5 went to the extent of making false allegation of killing PW-7 at the time of institution of case though the informant was knowing the fact that her daughter is alive. The defence has also been prejudiced due to non-examination of the investigating officer, as the defence could not get an opportunity to cross-examine the witness on the point of recovery of Jahida Khatoon (PW-7) and attention of contradiction in the evidence of witnesses and how police submitted charge sheet under Section 304B of I.P.C. when Jahida Khatoon was alive. It is also the case of the prosecution that she was examined by a doctor but the said doctor was not examined by the prosecution. Learned counsel submits that one of petitioners, Amna Khatoon, is mother-in-law and is a 68-year old lady.

7. Learned counsel for the State submits that there is evidence of committing torture against the petitioners and in the statement of the complainant also recorded under Section 164 Cr.P.C.

8. Having considered the rival submissions and on perusal of record, the Court finds that, except informant (PW-5) and his daughter (PW-7), PWs-1 to 4 have been declared hostile and PW-6 has also not supported the case of the prosecution and PW-8 is a



formal witness and the testimony of two witnesses, PW-5 Md. Khalil and PW-7 Jahida Khatoon, is full of major contradictions going to the root of the matter. PW-7, in her testimony, at para 12, admits that she wanted to live with her husband in Delhi where her husband was employed though he had promised to take her to Delhi but later on refused and scolded her for the reason who would take care of his old parents in the village. In para-13 of her cross-examination, she admits that from that very day differences started in between them. Prosecution case is that just after the marriage, approximately in the year 1991-92, demand of dowry was being made by the husband but in his deposition at para-11, informant made statement that demand of motorcycle was made by the husband after four years of the marriage whereas cause of the matrimonial discord in between Jahida Khatoon and Washi Ahmad arose due to her husband's refusal for taking her to his work place situated in Delhi. In para-14 of cross-examination, PW-7 admits that she was ousted from the matrimonial home and she was treated in the hospital by Dr. Vinod thereafter she went to her parents' home and informed about the incidence then PW-5 instituted the case but asked her to remain at home, so this goes to prove that PW-5 Md. Khalil had intention to lodge false case of dowry death even after knowing his daughter is alive. Prosecution has failed to examine the doctor who is said to have treated PW-7, so injury is proved by the prosecution.



9. Thus, in the light of the aforesaid discussion, it is held that demand of motorcycle in dowry after marriage is not proved by cogent evidence rather the evidence on this point is contradictory as discussed above, also the fact remains, as admitted by PW-7, that matrimonial discord is due to refusal of his husband in taking her to his work place in Delhi. The major contradictions, as discussed above, go to the root of the matter making the case of the prosecution doubtful. So the concurrent findings of both the courts below are due to the misappropriation of the evidence on record. Hence, the conviction and sentence passed by both the courts against the petitioners is set aside as they are entitled for giving benefit of doubt. Since both the petitioners are on bail, they are discharged from the liabilities of their respective bail bonds. Accordingly, both the applications stand allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2017
Transmission Date	22.12.2017

