

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.852 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

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1. Ashok Kumar, son of Amrendra Kumar Matwala.
 2. Sunil Kumar Mahto, son of Amrendra Kumar Matwala.
 3. Amrendra Kumar Matwala, son of Dhorai Mahto.
 4. Ahilya Devi, wife of Amrendra Kumar Matwala.
- All residents of village & P.O. Dighra, P.S. Pusa, District Samastipur.
- Appellants.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellants : Mr. Mahendra Thakur, Adv.
Mr. Shashi Bhushan Pandey, Adv.
Mr. Ajay Kumar Sinha, Adv.

For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 22-09-2017

This appeal has been preferred against the judgment and order of conviction dated 04.11.2009 and order of sentence dated 05.11.2009 passed by the 4th Additional District and Sessions Judge, Muzaffarpur in Sessions Trial No.389 of 1996, arising out of Maniari P.S. Case No.80 of 1993, whereby learned lower Court convicted the appellant Ashok Kumar, Sunil Kumar Mahto, Amrendra Kumar Matwala @ Fekan Mahto and Ahilya Devi for the offence punishable under Section 498-A/34 of the Indian Penal Code & Section 4 of D.P. Act & sentenced Ashok Kumar to undergo R.I. for three years under Section 498A of the Indian Penal Code and slapped him with a fine of Rs.5000/- and, in default of payment of fine to undergo S.I. for one month and further sentenced him to undergo R.I. for six months for



the offence under Section 4 of the Dowry Prohibition Act. Both the sentences were directed to run concurrently. Sentenced Sunil Kumar Mahto to undergo R.I. for 2 years under Section 498A of the Indian Penal Code and slapped him with a fine of Rs.2000/- and in default in payment of fine to undergo S.I. for one month and further sentenced him to undergo R.I. for six months under Section 4 of the Dowry Prohibition Act. Both the sentences were directed to run concurrently & sentenced Amrendra Kumar Matwala @ Fekan Mahto & Ahilya Devi to undergo R.I. for 6 months each under Section 498-A of the Indian Penal Code & slapped them with fine of Rs.1500/- each & in default of payment of fine to undergo S.I. for one month each & further sentenced them to undergo R.I. for 6 months each under Section 4 of the D.P. Act. Both the sentences were directed to run concurrently.

2. The factual matrix of the case is that Maniari P.S. Case No.80/1993 was instituted against the accused Ashok Kumar, Amarendra Kumar Matwala alias Phekan Mahto, Sunil Kumar Mahto, Arun Kumar Mahto, Manoj Kumar Mahto, Ahilya Devi and Most. Reshmi Devi, on the basis of complaint filed by Veena Kumari, wife of Ashok Kumar, daughter of Dholan Mahto, resident of village Silout, P.S. Maniari, District West Muzaffarpur, with the allegation in succinct that the marriage of the informant was solemnized with



Ashok Kumar on 06.07.1988. After marriage, she went to her marital house located at Dighra, P.S Pusa, District Samastipur. Thereafter, Sunil Kumar Mahto, who was working in Delhi, demanded radio, wrist watch, tape recorder, motorcycle and television from her father by sending inland letters from Delhi. On receiving the said letters, her father went to her marital house and vented his inability to cough up their demand. But her in-laws started mounting pressure upon him else Bidai of the informant would not be made. Her in-laws started mounting pressure upon her to fetch the aforesaid articles from her father and they also started extending threatening of dire consequences to her and to perform second marriage of her husband. Her father took her to his house on bidai. After Bidai from her marital house, Sunil Kumar again demanded the aforesaid articles by giving three inland letters to his father from Delhi on 13.02.1989, 08.05.1989 and 17.06.1989. Any how her in-laws took her to marital house performing Bidai after 1½ years & they started abusing and assaulting her over the aforesaid demand on arrival at marital house. Her husband and brother-in-law took her to Delhi in the year 1991 and set her ablaze by dousing kerosene oil on her. Thereafter, she was got treated by the private doctor. Thereafter, she was sent to the matrimonial house at Dighra. After coming to know about her predicament her father came to meet her. She divulged him her sorry



tale. Her father was ready to inform the police but her parents-in-law told that this will not be repeated. In the year 1991, her father took her to parental house on the occasion of Dushara. Her in-laws did not take her back to her marital house performing bidai and they told that her husband has performed second marriage at Delhi.

3. The aforesaid case was investigated by the police and on conclusion of the investigation and finding the case true, I.O. submitted chargesheet against the accused Ashok Kumar, Sunil Kumar Mahto, Amrendra Kumar Matwala @ Fekan Mahto, Arun Kumar Mahto, Manoj Kumar Mahto, Ahilya Devi and Most. Reshmi Devi under Section 498A, 494 and 307 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

4. On receiving the chargesheet & case diary and perusing the same, the learned Magistrate took cognizance of the offence. During course of trial, accused Reshmi Devi passed away. Hence, her name was expunged. Thus, the only six accused persons faced the trial. Charge against the accused Ashok Kumar was framed under Section 494 of the Indian Penal Code. Charge against the accused Ashok Kumar, Amrendra Kumar Matwala alias Fekhan Mahto, Sunil Kumar Mahto, Arun Kumar Mahto, Manoj Kumar Mahto & Ahilya Devi was framed under Section 3 of the Dowry Prohibition Act and Section 498A of the Indian Penal Code. The



charge against the Sunil Kumar Mahto and Ashok Kumar was framed under Section 307 of the Indian Penal Code. The charges were read over & explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

5. To substantiate its case, in ocular evidence the prosecution has examined altogether eight prosecution witnesses, namely, Murari Sah as P.W.1, Asarfi Jha as P.W.2, Ramdhari Sah as P.W.3, Dholan Mahto, father of the informant as P.W.4, informant Veena Devi as P.W.5, Dr. Tarkeshwar Prasad Thakur as P.W.6, I.O. Ram Murti Singh as P.W.7 and Ratnesh Rai as P.W.8. Out of the aforesaid witnesses, P.W.8 happens to be formal witness. In documentary evidence, the prosecution has filed and proved several documents.

6. The statement of the accused persons were recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence. In ocular evidence, the defence has also adduced seven witnesses, namely, Md. Shamsheer as D.W.1, Patekhan Das as D.W.2, Devendra Ram as D.W.3, Mohit Mahto as D.W.4, Bisundeo Rai as D.W.5, Satya Narain Rai as D.W.6 and Upendra Das as D.W.7.

7. After hearing the parties and perusing the record, the learned lower Court passed the impugned judgment and order of



conviction and sentence as detailed in earlier paragraph.

8. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the convicts have preferred this appeal.

9. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

10. It is submitted by learned counsel for the appellants that no cause of action took place at Muzaffarpur, rather the alleged occurrence of demand of dowry and subjecting the victim to torture is said to have taken place either at marital house of the informant at Dighra or at Delhi. Though the prosecution has made an abortive bid to show the taking place of part of the cause of action at Muzaffarpur by inland letters allegedly sent by Sunil Kumar Mahto to the prosecution party from Delhi regarding demand of dowry but no such letter has been brought on record to substantiate the aforesaid case of the prosecution to the effect of taking place of the cause of action at Muzaffarpur. It is further submitted that as no occurrence or part of the cause of action took place at Muzaffarpur, the Court of Muzaffarpur has no jurisdiction to try the case. Hence, the entire trial by the Court of Muzaffarpur stands vitiated. It is further submitted that the circumstances of demand of dowry by the accused persons by



giving letters to the prosecution party from Delhi has not been put to the accused persons in their statements recorded under Section 313 Cr.P.C., hence, the accused persons were not given the opportunity to explain the aforesaid circumstances and so the said letters cannot be used against them & they cannot be convicted on the basis of said letters for the said charge of demanding dowry and subjecting the informant to torture and harassment. It is further submitted that Pramod Kumar Mehta happens to be brother of the informant, to whom inland letters were addressed by the accused Sunil Kumar Mahto, has also not been examined by the prosecution to substantiate the aforesaid case. Thus, the prosecution has utterly and miserably failed to substantiate the charges levelled against the appellants beyond all reasonable doubt and appellants are entitled to be acquitted.

11. On the other hand, the learned Additional Public Prosecutor, advocating the correctness and validity of the impugned judgment and order of conviction and sentence, has submitted that the witnesses examined by the prosecution have fully supported the prosecution case of demand of dowry and subjecting the informant to cruelty over the said demand by the accused persons. The ocular evidence of the prosecution also stands corroborated by the documentary evidence and the learned lower Court, correctly



appreciating the facts and evidence available on record, has passed the impugned judgment and order of conviction and sentence, which is liable to be sustained and this appeal has no substance in it and is liable to be dismissed.

12. From perusal of the record, it appears that the appellants have been convicted only for the offence of demanding dowry from the informant and subjecting her to torture and harassment over the said demand.

13. In ocular evidence, the prosecution has examined seven prosecution witnesses but from perusal of the testimony of P.W.1-Murari Sah and P.W.3-Ramdhari Sah, it appears that they happen to be sweetmeat makers (*Halvai*) and they also happen to be hearsay witnesses of the demand of dowry and subjecting the informant to torture for the aforesaid demand as P.W.1 has stated in paragraph-1 of his cross-examination that he learnt from P.W.4-Dholan Mahto and his wife that in-laws of P.W.5-Veena Devi used to subject her by various sorts of torture in lieu of dowry demand and Ramdhari Sah-P.W.3 has stated in his examination-in-chief that P.W.4-Dholan Mahto, who happens to be the father of the informant, divulged him that the in-laws of the informant thrashed her over the dowry demand. P.W.2-Asarfi Jha happens to be priest of the family. He has also stated in his examination-in-chief that Dholan Mahto



P.W.4 had divulged him that despite giving of sufficient articles in the marriage of Veena Devi, she is in trouble in her marital house and they are demanding motorcycle and colour television after marriage. But said Dholan Mahto and his wife have not corroborated the factum of the divulgence of the aforesaid occurrence to P.Ws.1, 2 & 3. Hence, for want of corroboration of the said statement, the evidence of the aforesaid hearsay witnesses is not admissible in law.

14. P.W. 5-Veena Devi (informant) has stated in her examination-in-chief that her father-in-law, mother-in-law and brother-in-law started subjecting her to harassment and thrashing and stopped according food in the marital house for dowry. They used to mount pressure upon her to fetch watch, radio, tape, scooter and T.V. In paragraph-3 of her examination-in-chief she has further stated that on receiving letters her father arrived at her marital house and met with her parents-in-laws and vented his inability to cough up the demand. P.W.4-Dholan Mahto who happens to be the father of the informant has stated in paragraph-4 of his examination-in-chief that after receiving inland letters, he arrived at the marital house of his daughter and met with her in-laws and vented his inability to cough up the demand but they refused to budge and stated that they will not perform the Bidai of his daughter till the fulfillment of the aforesaid demands. The aforesaid testimony of P.W.4 and P.W.5 indicates that



there was dowry demand by the appellants and the informant was subjected to harassment and cruelty over the said demand at the hands of the appellants.

15. In order to show the accruing of the cause of action in the Muzaffarpur district, falling under the jurisdiction of Civil Court, Muzaffarpur, the prosecution has made an abortive bid by taking the case that appellant-Sunil Kumar Mahto by four inland letters sent from Delhi demanded the aforesaid articles of dowry and refused to perform the 'Bidai' of the informant due to non-fulfillment of the aforesaid demand but the aforesaid letters, which is said to have been written by the appellant-Sunil Kumar Mahto to the P.W.4 and his son, Pramod Kumar Mahto have not been brought on record. Though to fill-up the aforesaid lacuna the prosecution has got the extract of the aforesaid letters recorded by the I.O. in the case diary marked as Ext.5 but, in my considered opinion, the said effort of the prosecution is fruitless. As the writing and signature of the author of the said letters have not been proved by the prosecution. P.W.4 in paragraph-12 of his further examination-in-chief has stated that he had witnessed all the four letters in the original case diary. In paragraph-14 of his cross-examination, he has further stated that his learned Advocate had displayed original letters to him. Likewise the informant has stated in paragraph-5 of her cross-examination that she



had filed all the four letters along with the complaint petition in the Court of Chief Judicial Magistrate but in the said paragraph itself resiling from the aforesaid statement regarding filing of the original letters in the Court, she has further stated that she had filed photocopy of the said letters in the Court and the original letters were taken from her by the Sub Inspector. The aforesaid contradictory statements of P.W.4 & P.W.5, about existence of the letters, create serious doubt about the existence of the original letters. Thus, the prosecution has utterly and miserably failed to substantiate its case that any part of cause of action arose in the Muzaffarpur District by filing & proving the aforesaid original letters given by the appellant-Sunil Kumar Mahto to P.W.4-Dholan Mahto (father of the informant) and his son from Delhi to Muzaffarpur regarding demand of dowry. Moreover, in the case in hand, circumstance of giving letter to the prosecution party by appellant Sunil Kumar Mahto from Delhi to Muzaffarpur by which the dowry demand is said to have been made from prosecution party from Delhi has also not been put to the appellants in his statement recorded under Section 313 Cr.P.C. Hence, the said letters cannot be used against them. The Hon'ble Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **AIR 1984 Supreme Court 1622** has been pleased to rule that when the circumstances appearing against the accused were not put to accused in his



examination under Section 313 Cr.P.C. then it cannot be used against him. In **Hate Singh Bhagat Singh Vs. State of Madhya Bharat** reported in **AIR 1953 Supreme Court 468**, **Shamu Babu Chaugale Vs. State of Maharashtra** reported in **(1976) 1 Supreme Court Cases 438** and in **Harijan Megha Jesha Vs. State of Gujarat** reported in **AIR 1979 SC 1566**, the Hon'ble Apex Court has been pleased to observe that circumstances not put to the appellant in his examination under Section 313 Cr.P.C. have to be completely excluded from consideration.

16. An offence under Section 498A of the Indian Penal Code is not a continuing offence. For filing a case under Section 498-A of the Indian Penal Code, in the particular district, either entire or part of the cause of action must have arisen there. From perusal of the record, it appears that the demand of dowry and subjecting the informant to cruelty over the said demand has been made in the marital house of the informant located in Dighara in the district of Samastipur and no part of the cause of action has arisen in the district of Muzaffarpur, hence the Civil Court, Muzaffarpur has got no jurisdiction to conduct trial of the case and the entire trial stands vitiated for inherent lack of jurisdiction. Hon'ble Apex Court in the case of **Bhura Ram and others Vs. State of Rajasthan and another** reported in **2008 (3) PLJR 367 (SC)** has been pleased to rule that the



entire cause of action accrued within the jurisdiction of the Court where complainant was residing with her husband and in-laws and no part thereof has accrued at the parental house where complainant is now residing, hence the offences could not be tried by the Court where cause of action has not accrued at all. Further, the Hon'ble Apex Court in the case of **Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another** reported in (2004) 8 Supreme Court Cases 100 has been pleased to rule that the complaint filed under Section 498A and 406 IPC and Section 4 of the Dowry Prohibition Act against the husband and his relation by the wife at the place where she came to stay after leaving her husband's house while all the offences are alleged to have taken place at her husband's house. The said offences are not continuing one. No part of the cause of action arose at the place of residing of the wife, hence Magistrate at the place where wife is residing has no jurisdiction to deal with the matter. However, the complainant was given liberty to file complaint in appropriate Court. This Court in the case of **Krishna Ballabh Prasad and another Vs. State of Bihar and another** reported in 2008 (2) BBCJ 220 has ruled that demand of Rs. 5 lacs, torture and cruelty took place in Bangalore whereas complaint was filed and cognizance was taken by the Court at Jamui. The Court of Jamui where no occurrence giving rise to any cause of action took



place, has got no jurisdiction in the case and quashed the impugned order and the petitioner was given liberty to file a fresh case at Bangalore.

17. In view of the aforesaid facts and circumstances of the case, I find and hold that though the prosecution has been able to substantiate the demand of dowry and subjecting the informant to torture and cruelty at the hands of the appellants but has utterly and miserably failed to substantiate that any part of the cause of action took place in the district of Muzaffarpur. Hence, the learned lower Court has got no jurisdiction to try the case and the entire trial stands vitiated. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower Court is set aside. As the appellants are on bail, they are discharged from the liabilities of bail bonds.

18. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

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