

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.645 of 2017

Arising Out of PS. Case No.-80 Year-2010 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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1. Md. Nur Alam, S/o Md. Yunus.
 2. Md. Mustaffa, S/o Md. Yunus.
 3. Md Murtuja, S/o Md. Yunus. All are Resident of Village Bashant
Kurd Maniya, P.S. Majorganj, District- Sitamarhi.

... .. Petitioners

Versus

1. The State of Bihar.
2. Sohana Khatoon, Wife of Md. Nur Alam, D/o Md. Alauddin, at present
residing at Village Bhairo Kothi (Lichi Bagan) P.S. Sitamarhi, District
Sitamarhi.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Uday Kumar
For the Respondent/s : Mr. Md. Anzarul Haque Sahara

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

CAV JUDGMENT

Date : 26-04-2018

The petitioners have preferred this revision application against the judgment and order dated 04.12.2015, passed by learned Sessions Judge, Sitamarhi in Criminal Appeal No.82 of 2015 thereby dismissing the appeal filed by them by affirming the judgment of conviction and order of sentence dated 28.07.2015, passed by learned SDJM, Sadar, Sitamarhi in Trial No.827 of 2015, arising out of Complaint Case No.C1-80/2010 whereby the trial court has convicted the petitioners under Section 498(A) of the Indian Penal Code and awarded sentence of 1½ years simple imprisonment and also directed to pay fine of Rs.1000/- each and



in case of non-payment to further undergo simple imprisonment of three months.

2. The brief fact giving rise to the complaint case is that on 10.01.2008, marriage of Sohana Khatoon was solemnized with Md. Nur Alam, the petitioner no.1, but the bridegroom asked for Hero Honda motorcycle in dowry before performance of *Nikah* but any how on persuasion of some well wishers *Nikah* was performed and thereafter she came to her in laws house. The complainant was being tortured at the place of her in laws for fulfilling the demand of motorcycle. The accused persons used to keep her hungry not providing food and always used to abuse her. On 22.01.2010, mother, sister and other members of the complainant's family came and persuaded not to torture the complainant but in their presence she was assaulted and keeping all her articles kicked her out of the matrimonial home. All accused persons were put on trial after framing of charge and on its conclusion have been convicted by the trial court as aforesaid.

3. Altogether six witnesses have been examined by the prosecution, namely, Munni Khatoon (PW1), mother of the complainant, Hasmeena Khatoon (PW2), sister of the complainant, Md. Mahamdeen has been examined twice as PW3 and PW5, grandfather of the complainant, Sohana Khatoon (PW4), the



complainant, and Md. Alladdin (PW6), father of the complainant, and one defence witness examined by the accused persons is Sheikh Ayub (DW1).

4. The learned counsel appearing on behalf of the petitioners submitted that petitioner no.1 is the husband of the complainant and petitioner nos.2 and 3 are elder brothers, who live separately and have no concern with the matrimonial and household affair of petitioner no.1 and the complainant. Further it was contended that there is no evidence that the complainant was driven out of the matrimonial home. However, the fact remains that she herself left the house of the petitioners and started living with her parents. It is also submitted that all prosecution witnesses are family members of the complainant, so they are interested witnesses and contradiction is also found in their depositions. Learned counsel for the petitioners also submitted that the complainant Sohana Khatoon (PW4) also did not turn up for cross examination, so her evidence is to be expunged and cannot be considered as no opportunity of her cross examination was given to the accused persons.

5. Learned counsel appearing on behalf of the State and the complainant submitted that the torture and harassment of the complainant by the accused persons for realizing demand of a



motorcycle have been proved beyond all reasonable doubt, so there is no illegality in the trial court judgment as well as in the appellate court's finding and attention of no specific major contradiction has been drawn by the learned counsel for the petitioners. It is also submitted that the evidence of the complainant Sohana Khatoon (PW4) cannot be expunged because she did not turn up and refers Section 246 (4) Cr.P.C. that after framing of the charge if the accused pleads not guilty then the accused persons are required to furnish the list of prosecution witnesses to Magistrate to whom they wish to cross examine but in the present case no such option was exercised by the accused persons and in support of such contention placed reliance in a case reported in CRA-D-340-2002 [2006] RD- P& H 83 (10 January 2006) (Naresh Kumar Sethi v. Bal Krishan & Ors.

6. Having considered the rival submissions and on perusal of evidence on record, the Court has to analyze the evidence to come to conclusion whether ingredients of the offence under Section 498A of the Indian Penal Code in present case has been proved beyond all reasonable doubt. The only constituent of offence under Section 498A of the Indian Penal Code is cruelty which means willful conduct and the word 'Willful' contemplates obstinate and deliberate behaviour on part of offender amounting



to cruelty, so *mens rea* is an essential ingredient of the offence. The evidence on record in the present case lacks any evidence regarding any obstinate and deliberate behaviour on part of the accused persons amounting to cruelty. The allegation in the complaint is that she was denied food and kept hungry in the matrimonial home; whereas in the deposition there is no such evidence in the testimony of the complainant (PW4). There is also evidence on record that the husband does not live in the village home where complainant used to live as he was living in Delhi and engaged in doing as a labourer in manufacturing bags. This fact is deposed by PW4, the complainant and no specific instance of committing cruelty is found in her deposition except that her husband was making demand of motorcycle and as demand was not fulfilled, she was driven out of the matrimonial home. There is also vital contradiction on this point that she was driven out in presence of her mother (PW1) and sister (PW2) who are witness nos.3 and 4 of the complaint petition but the mother (PW1) has deposed that she had never been to the matrimonial home of the complainant situated at Basantpur. This admission of PW1 demolishes the case of the prosecution that the complainant was ousted from the matrimonial home in her presence and demand of motorcycle was made. Moreover, the principle is that standard of



proof of cruelty is higher in degree in criminal law than in civil law under the matrimonial causes. The intention or *mens rea* on the part of one spouse to injure the other is not a necessary element of cruelty in civil law in matrimonial cases while it is an essential element in criminal law. In civil cases relating to matrimonial matters cruelty is proved by preponderance of probabilities while in criminal trials the conduct of cruelty against accused persons is to be proved beyond all reasonable doubt. In the present case, the conduct of the accused/petitioners relating to committing cruelty by willful conduct showing any deliberate behaviour on the part of them constituting cruelty is not proved beyond all reasonable doubt. The Court further finds major contradictions in the evidence of the prosecution witness. Munni Khatoon (PW1), mother of the complainant Sohana Khatoon (PW4) has stated in her deposition that she never went to matrimonial home of her daughter Sohana Khatoon (PW4) as this fact is admitted in paragraph-2 of the cross examination stating therein that she never got any opportunity to go to village Basantpur. She also stated in her testimony that only after three days of the marriage, her daughter, the complainant returned back to her parents home after *Vidai* thereafter no one turned up to take her back. There is no cogent evidence on record that thereafter how long she remained at her parents home and



further no date or period is disclosed when she again went to her matrimonial home and how long she further stayed there and in what manner she was tortured and harassed by the accused persons. The specific case in the complaint is that PW1, mother of the complainant had gone to her daughter's matrimonial home on 23.01.2010 along with her another daughter, Hasmeena Khatoon (PW2) to persuade accused persons not to torture her daughter but in their presence accused persons assaulted and abused the complainant and also abused them thereafter kicked her daughter out of the matrimonial home but in testimony her mother (PW1) admits that she never got any opportunity to go to complainant's matrimonial home which demolishes the case of the prosecution that complainant (PW4) was ousted from matrimonial home in their presence. The case of the complainant is that *Panchayati* was also held but PW1 also admits in paragraph-6 that never any *Panchayati* was held with respect to demand of motorcycle; whereas according to the complainant's case, the *Panchayati* was held with the accused persons. Such vital contradiction completely demolishes the allegation of demand of motorcycle and torture. Hasmeena Khatoon (PW2), sister of the complainant has deposed that she along with her mother had gone for *Panchayati* but they were driven out whereas her mother (PW1) says that she never got



any opportunity to go to the matrimonial home of the complainant. Sohana Khatoon (PW4), the complainant in her deposition stated that she was driven out of the matrimonial home and they asked her to come back along with motorcycle. The prosecution case, as stated in the complaint petition, is that on 23.01.2010, she was driven out of the matrimonial home in presence of her mother (PW1) and sister (PW2) but such evidence is lacking in testimony of her mother (PW-1) as not stated that they were present on that very day in complainant's matrimonial home and in their presence demand of motorcycle was made and complainant was driven out of the matrimonial home. Even testimony of complainant (PW4) lacks evidence on this point. She has further deposed expressing her grievance that her husband does not give money for meeting her expenditure. The grandfather of the complainant (PW5), Md. Mahamdeen's testimony is also not trustworthy, according to him neither demand of motorcycle was made in his presence nor such demand was made directly from him; according to him *Panchayati* was also held but no one participated as a *Panch* from his side and also failed to disclose the names of any *Panch*, who participated therein. Such statement of the witness creates doubts regarding demand of motorcycle and subsequently holding of *Panchayati* for persuading the accused persons for keeping the complainant and



forgo the demand of a motorcycle. Md. Alladdin (PW6), father of the complainant has deposed that when his wife and elder daughter had gone to the complainant's matrimonial home then in their presence the complainant was assaulted by the accused persons and also driven out from the matrimonial home. This fact is not supported by his wife (PW1). Moreover sister of this witness is also next door neighbour of the complainant's husband but she also never made any complaint to him that his daughter was being tortured by the accused persons. Further he has deposed that never any *Panchayati* was held with accused persons in context of torture being meted out to her daughter for demand of motorcycle. He also admits that in his presence, her daughter was never assaulted or tortured, so having considered the major and vital contradictions in the deposition of the complainant's witnesses particularly with respect to demand of motorcycle and committing torture in that connection the charge under Section 498A of I.P.C. is not proved by the prosecution beyond all reasonable doubt. The trial court as well as the appellate court have not appreciated the evidence in proper perspective rather over looked major contradictions going to the root of the matter, therefore, the order dated 04.12.2015, passed by the learned Sessions Judge, Sitamarhi in Criminal Appeal No.82 of 2015 as well as the judgment of



conviction and order of sentence dated 28.07.2015, passed by learned SDJM, Sadar, Sitamarhi in Trial No.827 of 2015, arising out of Complaint Case No.C1-80/2010 is hereby set aside and all the accused persons including these petitioners are acquitted from the charge under Section 498(A) of the Indian Penal Code. Since all three petitioners are on bail, therefore, they are also discharged from liabilities of their respective bail bonds.

7. The criminal revision application stands allowed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
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