

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1154 of 2018

In
CRIMINAL APPEAL (SJ) No.2872 of 2018

Arising Out of PS. Case No.-6 Year-2015 Thana- MAHILA P.S. District- Rohtas

=====

Rasida Khatoon Wife of Sameer Khan, Daughter of Towfeeq Khan, Resident of Village- Kerpa, Police Station- Amjhor, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sameer Khan @ Kuddus Khan, Son of Late Mehrab Khan, Resident of Village- Jaishree, Police Station- Karakat, District- Rohtas.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Pritish Kumar Lal
		Mr. Birendra Kumar Singh
For the opposite party no.2		Mr.Sanjay Sinha
		Mr. Md. Fazle Karim
For the State		Ms. Meena Singh

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 17-12-2019

Heard learned counsel for the petitioner as well as learned counsel for opposite party no.2 and also heard learned Addl. Public Prosecutor for the State.

The case arises out of GR no.114 of 2015 instituted on the basis of Mahila P.S. case no.06 of 2015 alleging for the offences under sections 498(A), 377, 354A(ii), 323, 341, 506, 406/34 of the IPC.

Prosecution case based on written report of PW 1 submitted before the Station House Officer (SHO) of Mahila Police Station, Dehri, on 12.02.2015 is that she was married with



Samir Khan @ Khuddus Khan (opposite party no.2) on 09.06.2013. She went to her sasural, and after six months of marriage opposite party no.2 and his family members started treating her with cruelty demanding Rs one lac and a motorcycle as dowry. Then the informant/ petitioner informed her father. Her father on 29.06.2013 came to her sasural. Her father thereafter informed Karakat Police. The police warned the accused persons not to do anything wrong with Rasida Khatoon. Thereafter Rasida Khatoon with her husband and his relative went to Kolkata where she lived for three months properly. Again accused and his relatives started the same treatment so Rasida Khatoon informed her father. Her father arrived at Kolkata where with the help of Nauzaban Millat Society a bond was prepared and the society sided with accused persons and told them to allow the informant to go with her father. Accused persons snatched her ornaments and all her belongings and then allowed her to go to her Naihar. Again on 10.02.2015 accused persons came to house of informant and demanded Rs.1 lac and one motorcycle. Family members of informant told them not to do so upon which the accused persons said that they would kill her at village Jaishree.

Petitioner was convicted under the said offences and directed to undergo rigorous imprisonment for three years. A fine



of Rs 10,000/- was also imposed upon the petitioner by judgment dated 20.12.2017. In default of fine, simple imprisonment for three months for the offence under section 498(A) IPC was also directed by the trial court.

Being aggrieved by the said judgment, accused (husband) has approached the court of learned Addl. Sessions Judge III, Rohtas at Sasaram in Cr. Appeal no. 11 of 2018. The same has been allowed and the opposite party no.2 has been acquitted on the allegation levelled against him under judgment dated 12.06.2018 passed in the said criminal appeal.

Instant revision has been preferred by wife (informant) against the order passed by the appellate court acquitting opposite party no.2.

It is submitted by counsel representing the petitioner that there was sufficient material in the trial court wherein PW 1 who happens to be informant has supported the allegation in dock. It is also submitted that evidence of PW 3 Mobin Khan (wrongly described as PW 2 in the order of the appellate court) is also supporting the allegation levelled against opposite party no.2. In view of evidence of Pws 1 and 3, specific allegation regarding demand of dowry in the form of motorcycle and Rs one lac; as also physical and mental torture by opposite party no.2 was clearly



established at the trial. Therefore, trial court had rightly convicted opposite party no.2. Acquittal therefore, in face of such evidence and witnesses being brought in the trial court is clearly unsustainable.

It is submitted that cruelty contemplated under section 498A IPC does not necessarily mean physical cruelty. Mental torture is also contemplated. In view of the trauma to which petitioner was subjected clearly stated by PW1 as well as PW 3, conviction ought not to have been interfered with and set aside by the Appellate court.

On careful consideration of the material this court would observe that learned counsel for the petitioner has rightly submitted that evidence of PW1 and PW 3 is inconsistent that she was tortured due to non-fulfillment of dowry demand. Inconsistency is even in respect of alleged date of marriage solemnized between the parties. PW1 has claimed the same to be solemnized on 09.06.2015 whereas PW3 who happens to be cousin brother of PW1 in his statement before the court has claimed that marriage has been solemnized on 09.06.2013.

It is further submitted by counsel for the opposite party no.2 that allegation regarding demand of dowry is vague and there is no specific allegation about any specific instance either in the



deposition of PW1 or PW3, which could have been proved at the trial.

PW 3 in his statement has clearly stated that PW1(informant) has resided at her *sasural* for six months. Demand of dowry and quarrel between the informant and the petitioner is said to have been witnessed by him thereafter.

On consideration of rival submissions this court would observe that irresistible conclusion of the deposition is that PW3 was witness of such demand after the informant had been ousted from her sasural. PW 3. However in his statement has not mentioned details about informant's ouster from her sasural. No details such as date or place where demand of dowry was made and when accused persons had assaulted her and treated her with cruelty has been stated.

No specific allegation has been stated either in the deposition of PW1 or PW3.

Moreover, though family members of the informant are charge sheeted witnesses, none has come to support the case of the prosecution.

Medical evidence of PW5 as well as evidence of two Investigating officers namely, PW2 and PW4 also do not support the case of the prosecution. The court below has rightly come to



the conclusion that offences could not be established beyond all shadow of reasonable doubts.

Application stands dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2020
Transmission Date	12.02.2020

