

**IN THE SUPREME COURT OF
BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No.668 of 2007

Abdus Satter Sardar

.....Convict Petitioner

-versus-

The state and another

.....Opposite Party

Mr. Sarwar Ahmed, Advocate

.... For the convict petitioner

.....For the opposite party

Mr. S.M. Golam Mostofa, DAG with

Mr. Md. A. Mannan, AAG

....For the Opposite party

Heard on 22.02.2024, 29.02.2024

Judgment delivered on 06.03.2024.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 18.04.2007 passed by Additional Sessions Judge, Court No. 2, Satkhira in Criminal Appeal No. 22 of 1996 affirming those dated 10.02.1996 passed by the Magistrate, First Class, Satkhira in C.R No. 103 of 1993(Tala), TR No. 49 of 1995 convicting the petitioner under section 4 of the Dowry Prohibition Act, 1980 and sentencing him thereunder to suffer rigorous imprisonment for one year.

The prosecution case, in short, is that the accused Abdus Sattar Sardar and complainant Most. Jahanara Akter @ Shiuli were previously known to each other. The accused had given a proposal to the complainant Jahanara Akther @ Shiuli for co-habitation but she refused. The accused having touched the Holy Quran on 07.04.1992 expressed his desire to marry her and both of them touching Holly Quran told that the marriage had been solemnized. The accused said that from now he is the legally married husband of Most. Jahanara Akter. Subsequently, the accused married the victim on 3.6.1993 fixing the dower at Tk. 10,000. Since then they have been enjoying their conjugal life. At one point in time, the accused in connivance with accused Nos. 2 and 3 demanded Tk. 40,000 as dowry to purchase a motorcycle but she refused to pay the dowry which the accused used to torture her mentally and physically. He forced her to leave the house of her husband on 03.06.1996 due to nonpayment of dowry and she informed the matter to her parents. After that, the accused persons came to the house of the father of the complainant on 18.06.1993 at 4/4.30pm but on that day they also demanded Tk. 40,000 as dowry to purchase a motorcycle and informed that if they do not pay Tk. 40,000 as dowry the accused persons will not take her to their house. Thereafter, the complainant filed the complaint petition on 20.06.1993.

After filing the complaint petition, the complainant was examined under section 200 of the Code of Criminal Procedure, 1898 and the learned Magistrate by order dated 20.06.1993 took cognizance of the offence under section 3/4 of the Dowry Prohibition Act, 1980. Thereafter, the case record was transmitted to the Court of Magistrate, First Class, Satkhira. On 05.08.1993 charge was framed against the accused under section 4 of the Dowry Prohibition Act, 1980 on 05.09.1993 which was read over and explained to the accused and he

pleaded not guilty to the charge and claimed to be tried following the law.

During the trial, the prosecution examined 5 (five) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and the defence examined one DW. After concluding the trial, the learned Magistrate, First Class, Satkhira by judgment and order dated 10.02.1996 convicted the accused under section 4 of the Dowry Prohibition Act, 1980 and sentenced him thereunder to suffer rigorous imprisonment for one year. Against the said judgment and order of conviction and sentence, the accused preferred Criminal Appeal No. 22 of 1996 before the Sessions Judge, Satkhira which was transferred to the Additional Sessions Judge, Court No. 2, Satkhira. After hearing, the appellate court by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial court against which the convict petitioner obtained the Rule.

P.W. 1 Most. Jahanara Akter @ Shiuli is the complainant and wife of the accused Abdus Satter Sardar. She stated that accused Abdus Satter married her on 11.11.1992 and they enjoyed their conjugal life. Subsequently, the accused demanded a dowry of Tk. 40,000. Since she refused to pay the dowry, the accused Abdus Satter Sardar compelled her to leave the house of her husband. She informed the matter to the local Member of Parliament through a registered post. Thereafter he attempted to compromise between them and they again enjoyed their conjugal life with the accused for two and half months. On 03.06.1993 accused demanded dowry and compelled her to leave his house. When she refused to pay the dowry, the accused persons came to the house of the father of the complainant on 18.06.1993 at 4/4.30 pm and again the accused and his brother

demanded Tk. 40,000 as dowry. She affirmed that the accused Abdus Satter is a Moulana. She proved the complaint petition as exhibit-1 and her signature as exhibit-1/1. During cross-examination, she stated that her sister Chompa also filed a case under the Dowry Prohibition Act against her husband and the accused was acquitted. Her uncles were not present at the time of their marriage. The marriage was solemnized at Keshobpur. At the time of shalish Tk. 40,000 was demanded. At that time Samsur Rahaman was present in the meeting. He was also present at the time of the marriage. On 21.10.1992 in the presence of the Chairman, the dowry was demanded and at that time, the marriage was not solemnized. A shalish took place at Tikapara School. Lastly on 18.06.1993 accused demanded dowry from the brother of the victim and her mother was also present there. The shalish took place for about half an hour on 18.06.1993. The house of her husband is situated 10 miles away from the house of her father. After two days of demanding dowry, she filed the case. Before filing the case, she filed the case with the local Chairman. She denied the suggestion that on 18.06.1993 the accused did not demand any dowry and no shalish took place and that the accused divorced her on 02.07.1994.

P.W.2 Mobarak Ali is the brother of the complainant. The accused Abdus Satter, Rezaul and Kuddus are his nephews. The marriage was solemnized on 27th Kartik, 1399 between the accused and complainant. They enjoyed their conjugal life. After a few days, the accused demanded Tk. 40,000. When she refused to pay the dowry, the accused compelled her to leave his house. She made the allegation to the local Member of Parliament and thereafter she was taken to the house of her husband. After a few days, on 20th Joistha the accused demanded Tk. 40,000 to buy a motorcycle failing which he refused to live along with the complainant. On 4th Ashar at 4/4.30

pm accused came to the house of his father and again demanded a dowry of Tk. 40,000 failing which he refused to take the victim. The marriage was solemnized at the house of the local Member of the Parliament at Keshobpur. Before marriage, a shalish took place at the house of the Chairman. At that time, the accused demanded a dowry of Tk. 40,000. He denied the suggestion that he deposed falsely.

P.W. 3 Soleman Sarder stated that accused Abdus Sattar is the husband of the complainant. About 3 (three) years ago, they married and after marriage, they enjoyed their conjugal life. Subsequently, the accused demanded a dowry of Tk. 40,000 to purchase a motorcycle. Since the complainant did not pay Tk. 40,000, he compelled her to leave his house. The local MP made a compromise between them. After enjoying their conjugal life for two months, on 20th Jaistha the accused again compelled her to leave his house for dowry of 40000. On 4th Ashar, at 4/4.30 pm accused persons came to the house of the father of the victim. The accused persons demanded a dowry of Tk. 40,000 to purchase a motorcycle failing which they refused to take the victim. During cross-examination, he affirmed that lastly on 4th Jaistha she was beaten. On the last day, the witness Mobarak called him to the house of the father of the victim. More than two years ago in the house of Seraj Sardar sitting on the cot, the dowry was demanded. He was sitting on the bench in the house. The complainant and the accused were sitting in the same room. Kaiem Ali and Abdus Sattar, cousins of the accused, were also present there. He denied the suggestion that the accused did not demand dowry and he deposed falsely.

P.W. 4 Abdus Samad stated that accused Abdus Satter is the husband of Jahanara. On 18.06.1993 he went to the house of the accused persons at 4/4.30 pm and they came to the house of the father of the complainant and demanded Tk. 40000 as dowry to purchase a

motorcycle failing which they refused to take the complainant. At that time, the witness Kaiem Ali accompanied him. During cross-examination, he stated that on 28.08.1995 he was deposed in court in a case filed by the brother of the complainant. He was not present at the time of the marriage of the complainant. At the time of occurrence, 8/10 people were present there. Solman and Mobarak were also present there and the accused Abdus Satter sitting on the cot in the house of the accused demanded dowry at 10.00 am He brought the accused persons along with him. At that time, Kaiem Ali was also present along with them. He denied the suggestion that the accused persons did not demand any dowry and he deposed falsely.

P.W. 5 Kaiem Ali Sheikh stated that accused Abdus Satter is the husband of the complainant and the accused Reduan and Quddus are brothers of accused Abdus Satter. On 18.06.1993 at 4/4.30pm, the occurrence took place at the house of the father of the complainant. On that day they were present at the house of the father of the complainant. The accused Abdus Satter demanded a motorcycle or Tk. 40,000 as dowry. He along with Abdus Satter went to their house to bring them. During cross-examination, he stated that he was an HSC examinee and they went to the house of Satter. At the time of occurrence, Ashraf Ali was present. The complainant and her father instructed him to call the accused persons at 4/4.30pm. He came back to the house of the father of the victim. He denied the suggestion that the accused persons did not demand dowry and he deposed falsely.

D.W. 1 Samsur Rahman is the Chairman of No. 4, Biddhanandankathi Union Parishad. He stated that the accused and the complainant were known to him. On 18.06.1992 or any date, the accused did not demand any dowry in his presence. Subsequently, he came to know that he was cited as a witness in the case. Before marriage, the accused did not demand any dowry. During cross-

examination, he stated that on 21.10.1990 a shalish took place in his presence and an agreement was executed between the accused and the complainant. He proved the agreement as material exhibit 1. He also affirmed that before marriage he made attempt to compromise between them. The accused did not demand any motorcycle. In the shalish it was decided that a motorcycle would be given to the accused. He stated that in the shalish the accused was not present, but subsequently stated that all were present there. The accused is a resident of his Union and the complainant is a resident of another Union. He denied the suggestion that the accused demanded Tk. 40000 as dowery.

The learned Advocate Mr. Sarwar Ahmed appearing on behalf of the convict petitioner submits that the marriage between the accused and the complainant was solemnized under compelling circumstances and after the marriage, miss-understanding developed between the husband and wife and consequently, the accused divorced his wife on 02.07.1994 and the witnesses examined by the prosecution are the members of the family of the complainant. He also submits that the Chairman of No. 4 Biddhanandankathi Union was cited as a witness in the complaint petition but the prosecution with-held him and he was examined as D.W. 1 who stated that the accused did not demand any dowry to the complainant or her father. He lastly submits that the prosecution failed to prove the charge under section 4 of the Dowry Prohibition Act, 1980 by adducing neutral and reliable witnesses and the courts below failed to assess and evaluate the evidence properly and illegally passed the impugned judgment and order. Therefore, he prayed to make the Rule absolute.

No one appears on behalf of the complainant.

I have considered the submission of the learned Advocate Mr. Sarwar Ahmed who appeared on behalf of the convict petitioner, perused the evidence, the impugned judgments and orders passed by the courts below and the records.

On perusal of the judgment and order passed by the trial court, it appears that the trial court convicted the accused holding that the marriage was solemnized between the accused and complainant on 11.11.1992 and on 03.06.1993 the accused demanded Tk. 40,000 as dowry and when she refused to pay the dowry, the accused compelled her to leave his house and subsequently on 18.06.1993 at 4/4.30pm, the accused again demanded the dowry of Tk. 40,000. The above evidence of P.W. 1 as regards the demand of dowry of Tk. 40,000 to purchase a motorcycle is also corroborated by P.Ws. 2 to 5.

P.W. 1 is the complainant, P.W. 2 is the brother of P.W. 1, P.W. 3 Soleman Sardar is the nephew of the complainant, P.W. 4 Abdus Samad and P.W. 5 Kaiem Ali Sheikh is the neighbour of the complainant. D.W. 1 Shamsur Rahman is the Chairman of No. 4 Biddhanandankathi Union Parishad and the accused Abdus Satter is a resident of the said Union. The complainant cited D.W 1 Samsur Rahman as a witness in the complaint petition but he was not examined as P.W. The defence examined Samsur Rahman as D.W 1. He stated that accused did not demand any dowry in his presence or any time but during cross-examination, he affirmed that before marriage on 21.10.1992 in a shalish (exhibit-1) a shalishnama was executed between the accused and the complainant party and in that shalish it has been written that a motorcycle will be given to the accused and he also affirmed that the accused was also present in that shalish. From the evidence of D.W. 1, it transpires that before the marriage there was a demand for a motorcycle by the accused.

The evidence of witnesses examination by both parties depicts that before marriage there was a demand of Tk. 40,000/- as dowry to the complainant by the convict petitioner to purchase a motorcycle and the marriage was solemnized between the accused and the complainant on 11.11.1992 at the house of the local Member of Parliament. Subsequently, on 03.6.1993 the accused demanded Tk. 40,000 as dowry to purchase a motorcycle and lastly on 18.06.1993 accused in the presence of P.Ws. 2 to 5 demanded dowry of Tk. 40,000 to purchase a motorcycle to enjoy conjugal life with his wife. The convict petitioner failed to prove the defence case that he divorced his wife (P.W. 1) on 02.07.1994. At the time of demand of dowry of Tk. 40,000 on 18.06.1993 by the convict petitioner to P.W. 1, their marital tie was subsisting. Therefore, the demand of dowry by the accused to the complainant P W 1 is proved beyond all reasonable doubt.

I am of the view that both the courts below on proper assessment and evaluation of the evidence of both the parties arrived at concurrent findings of facts regarding the demand of dowry by the convict petitioner to the complainant P W . 1 and legally passed the impugned judgments and orders of conviction and sentence.

Considering the evidence, facts and circumstances of the case and the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the courts below is modified as under;

The accused is found guilty of the offence under Section 4 of the Dowry Prohibition Act, 1980 and he is sentenced to suffer rigorous imprisonment for 06(six) months.

Because of the above observation, findings and reasoning the Rule is disposed of with modification of the sentence.

Send down the lower Court's records at once.