

In the Supreme Court of Bangladesh
High Court Division
(Criminal Revisional Jurisdiction)

Present:
Mr. Justice Md. Khairul Alam

Criminal Revision No. 2160 of 2022.

Md. Sohel Rana.

..... Petitioner.

-Versus-

The state and another.

..... Opposite parties.

Mr. Md. Harunur Rashid, Advocate

..... For the petitioner.

Mr. Md. Zahedul Bari, Advocate

..... For the opposite party No.2.

Heard on 06.11.2024 and
Judgment on 12.11.2024.

Md. Khairul Alam, J.

This Rule was issued calling upon the opposite parties to show cause as to the judgment and order of conviction and sentence dated 26.05.2022 passed by the learned Sessions Judge, Chapainawbaganj in Criminal Appeal No. 171 of 2022 allowing the appeal in part and setting aside the judgment and order of acquittal dated 10.03.2022 passed by the learned Senior Judicial Magistrate, 2nd Court, Chapainawabgonj in C.R. Case No. 297 of 2021 (Shibgonj) and thereby convicting the present petitioner under section 3 of the Dowry Prohibition Act, 2018 and sentencing him to suffer rigorous imprisonment for 2 (two) years

and also to pay a fine of Taka 2,000/- in default to suffer simple imprisonment for a further period of 1 (one) month more and maintaining the order of acquittal of other two accused.

The relevant facts for disposal of the Rule, in short, are that the present opposite party No.2, Most. Karima Khatun filed C.R. Case No. 297 of 2021 (Shibgonj) before the court of Senior Judicial Magistrate, 2nd Court, Chapainawabgonj implicating the present petitioner and two others alleging, inter alia, that on 18.02.2019 the petitioner married the opposite party No. 2 with a dower of Taka 8,00,000/-. The petitioner was a member of the Bangladesh Air Force, therefore, the marriage could not be registered as the authority did not approve the marriage of the petitioner. Since the marriage, the accused had been demanding dowry. Some days before the alleged occurrence, the accused sent the complainant to her father's house for the dowry of Taka 5,00,000/-. On the date of occurrence, at the request of the father of the complaint, the accused persons went to the father's house of the complainant for an amicable settlement. But on that day the accused persons, in the presence of the witnesses, disclosed that without the dowry they would not continue the marriage and leave the house leaving the complainant therein. Hence, the case.

After receiving the petition of complaint the learned Magistrate examined the complainant under section 200 of the Code of Criminal Procedure (shortly, the Code) and took cognizance against the accused under section 3 of the Dowry Prohibition Act, 2018. Subsequently, the charge was framed against all the accused under the same section and the charge was read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined as many as five witnesses to prove the case. The defence cross-examined the prosecution witnesses but did not adduce any defence witnesses. After taking the evidence of P.W.s, the accused were examined under section 342 of the Code and the accused again pleaded not guilty.

After the conclusion of the trial, the learned senior Judicial Magistrate, 2nd court, Shibgonj, Chapainawabgonj by the judgment and order of acquittal dated 10.03.2022 found all the accused including the petitioner not guilty and discharged them from the charge brought against them.

Against the said judgment and order of acquittal dated 10.03.2022, the complainant filed Criminal Appeal No. 171 of 2022 before the court learned Sessions Judge, Chapainawabgonj.

The learned Sessions Judge, Chapainawabgonj after hearing the said appeal by the judgment and order of conviction and sentence dated 26.05.2022 allowed the said appeal, in part, and thereby convicted the present petitioner and acquitted two others accused.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence the convict petitioner preferred this criminal revision and obtained the Rule.

Mr. Md. Harunur Rashid, the learned Advocate appearing for the petitioner submits the prosecution failed to prove the time, place and manner of occurrence and that the trial court upon considering the evidence rightly acquitted the petitioner and others but the court of appeal below, misread and misconstrued the evidence on record and passed the impugned judgment and order of conviction and sentence which requires to be set aside.

On the other hand, Mr. Md. Zahidul Bari, the learned Advocate appearing on behalf of the opposite party No. 2 submits that the petitioner demanded dowry to the father of opposite party No. 2 which is an offence under section 3 of the Dowry Prohibition Act, 2018 and therefore the court of appeal below rightly found the petitioner guilty of the offence and

rightly passed the impugned judgment and order of conviction and sentence.

Heard the learned Advocates of the contending parties and perused the materials on record including the impugned judgment and order of conviction and sentence.

The point to be adjudicated is whether the impugned judgment and order of conviction and sentence passed by the court of appeal below is maintainable or not.

Let us examine the witnesses in the light of the said issue.

P.W.1, Most. Karima Khatun deposed that accused No. 1 was her husband who married her on 18.02.2019. The accused persons ousted her from their house demanding a dowry of Taka 5,00,000/. She exhibited the petition of the complaint as Exhibit No. 1.

P.W. 2, Md. Dulu Rahman, the father of the complainant deposed that accused No.1 was her son-in-law and accused No. 2 and 3 were his brother-in-law and sister-in-law respectively. He called the accused persons to his house. The accused persons came to his house and demanded a dowry of Taka 5,00,000/-.

P.W.3, Maruf deposed that accused No.1 demanded Taka 5,00,000/- as dowry to the complainant.

P.W.4, Khairul deposed that hearing the hue and cry he went to the place of occurrence and found that the accused No.1 had been saying that he would not continue the marriage tie without a dowry of Taka 5,00,000/-.

P.W.5, Firoz is the uncle of the complainant who deposed that the accused person left his niece in their house for the demand of dowry of Taka 5,00,000/-.

P.W.6, Alamgir Kabir was a teacher of a Madrasha who only deposed regarding the marriage.

These are the evidence adduced by the prosecution. From the said evidence it appears that P.W.1, Most. Karima Khatun, the complainant did not mention the time, place and manner of demanding the dowry. P.W. 2, Md. Dulu Rahman, the father of the complainant though mentioned the place of occurrence as his house but he did not mention the time and the manner i.e. who demanded the dowry. P.W.3, Maruf in his deposition neither mentioned the place of the occurrence nor the time of the occurrence. P.W.4, Khairul also did not mention the place of occurrence and time of occurrence. He also did not mention the person to whom the accused No. 1 demanded the dowry. P.W.5, Firoz, the uncle of the complainant did not mention the time, place and manner of the occurrence. All the prosecution

witnesses stated in very vague terms that the accused persons demanded a dowry of Taka 5,00,000/-. Therefore, the trial court rightly found that the prosecution failed to prove the time, place and manner of occurrence and thereby failed to prove the case beyond reasonable doubt and acquitted all the accused including the petitioner.

As observed that the said judgment of the trial Court was neither perverse nor fanciful nor there was any error of law occasioning failure of justice despite that the court of appeal below, considering an appeal filed by the complainant, reversed the judgment and order of acquittal of the trial Court and therefore, I am of the view that the judgment and order of conviction and sentence passed by the court of appeal is requires to interfere.

Considering the above facts on record, I find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned judgment and order of conviction and sentence dated 26.05.2022 passed by the learned Sessions Judge, Chapainawabgonj in Criminal Appeal No. 171 of 2022 is hereby set aside and the judgment and order of acquittal dated 10.03.2022 passed by the learned Senior Judicial Magistrate, 2nd

Court, Chapainawabgonj in C.R. Case No. 297 of 2021 (Shibgonj) is hereby affirmed.

The convict-appellant-petitioner is hereby acquitted from the charge and he is released from the bail bond.

Send down the lower court's record and communicate the order at once.

Kashem/B.O