

HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABAPLUR

SB: HON. SHRI JUSTICE N.K.GUPTA.

CRIMINAL APPEAL NO.1385 OF 1997

State of Madhya Pradesh.

Vs.

Jagdish alias Jawahar & others.

Shri Prakash Gupta, Panel Lawyer for the
appellant/State.

Shri Basant Daniel, Advocate for the respondents.

J U D G M E N T

(Delivered on the 6th day of July, 2012)

The State has preferred this appeal against the judgment dated 20.9.1996 passed in Criminal Case No.284/1992 by the Judicial Magistrate First Class, Bina District Sagar (Shri M.H.Ansari) by which the respondents were acquitted from the charges of offence punishable under Section 498-A of IPC and Section 4 of Dowry Prohibition Act.

2. The prosecution case, in short, is that the marriage of the complainant Meena (PW-1) took place with the respondent Jagdish alias Jawahar on 26.6.1990. At the time of marriage swing machine, table fan, wall clock, wrist watch, radio, bed and utensils were given to Jagdish and his family members. A sum of Rs.21,000/- was spent for those articles. After the performance of the

marriage, respondents started harassing the complainant. She was kept hungry and she was directed to do much work. Her husband was assaulting the complainant in a closed room whereas her mother-in-law was threatening her that she would be set on fire after pouring oil upon her. Her brother-in-law was also assaulting with *chimta*. They were demanding a sum of Rs.20,000/- so that the respondent Jagdish could do some business. Jagdish was also demanding for a golden chain and ring whereas mother-in-law of the complainant was demanding for almirah and cooler. They were threatening the complainant that second marriage of Jagdish will be performed. Jagdish and his father Hiralal went to the house of parents of the complainant with a threat that the complainant will be divorced, if such amount of dowry is not given. Some quarrel took place between the respondents and father & brothers of the complainant at Bina, and therefore a report was lodged at Bina Police Station. Ultimately the father of the complainant had approached the SDM Khurai and got search warrant issued by which the complainant was taken. The complainant was produced before the SDM Khurai and thereafter she was residing with her father. On 26.2.1992 she had submitted a typed FIR Ex.P-1 along with an affidavit Ex.P-2 to the Superintendent of Police, Sagar,

which was sent to the Police Station Khurai. The Superintendent of Police, Sagar vide letter dated 26.2.1992 Ex.P-3 directed the SHO Gopalganj to transfer entire matter to Police Station Khurai. After due investigation, a charge sheet was filed by the Police Station Khurai before the competent Magistrate.

3. The respondents abjured their guilt. They have stated before the trial Court that they were falsely implicated in the matter. The complainant was a shirker. She was not ready to do the routine domestic work and therefore she was interested in living with her parents. The FIR was lodged after six months of her recovery by a search warrant, and therefore it was an after thought. However, no defence evidence was adduced from the side of the respondents.

4. The learned Judicial Magistrate First Class Khurai (Shri M.H.Ansari) after considering the prosecution evidence acquitted the respondents from all the charges.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the State has submitted that a great harassment has been done with the complainant by the respondents, and therefore father of the complainant Ratan (PW-2) was liable to get a search

warrant and to recover his daughter. Under such circumstances, the learned JMFC has committed an error in acquitting the respondents.

7. On the other hand, learned counsel for the respondents has submitted that the evidence given by the prosecution was concocted and it was apparent from that evidence that the witnesses were friends and relatives of the brothers of the complainant, who created the story. Looking to the material contradictions to the evidence given by various witnesses, the entire story of the prosecution appears to be a falsehood, and therefore the trial Court has rightly acquitted the respondents.

8. After considering the submissions made by learned counsel for the parties and after going through the evidence adduced by the prosecution, it is apparent that the marriage of the complainant Meena (PW-1) took place on 26.6.1990 with the respondent Jagdish. She had lodged a report in typed manner on 26.2.1992. She was examined before the trial Court on 7.1.1993. She has admitted in para 3 of her cross examination that she was with her parents since last one and half years. Therefore, it appears that she left the house of her husband in the month of June or July 1991, and therefore her total period of living in her husband's house appears to be of only one year.

9. If the evidence of all the witnesses is considered, then it would be apparent that Ratan (PW-2) was father of the complainant whereas Bhaiyalal (PW-5) and Phool Singh (PW-6) were friends of brother of the complainant Ramesh (PW-7) and Kishanlal (PW-9). They have alleged that the respondents were harassing the complainant for demand of dowry. It is specifically alleged that Hiralal father of the respondent Jagdish came to the shop of Ramesh and demanded dowry. He also threatened that if a sum of Rs.20,000/- is not given, then either the complainant would be divorced or her dead body will be supplied to her parents. It is also stated by these witnesses that after two months of the incident, respondent Jagdish came to the shop of Ramesh and he gave the same threat. None of these witnesses could say about the date of such incidents. They could not even inform about any season or month of such incidents. If FIR Ex.P-1 is perused, then it is apparent that various allegations are made in the FIR but no fixed date or month of the incident was given in the FIR. In the FIR it is stated that Jagdish and Hiralal went simultaneously to the shop of Ramesh and made their demand whereas all the witnesses are now telling that respondent Jagdish came two months after the respondent Hiralal. It is contradictory to the FIR. If period is ascertained which

was shown by the witnesses, then it would be clear that period of such demand comes in that period in which complainant was already summoned by search warrant and she was residing with her parents, and therefore there was no possibility from the side of the respondents Hiralal and Jagdish to demand anything from the brothers or father of the complainant.

10. The statement of witness Ramesh clearly indicates that at the time of demand made by the Hiralal and Jagdish, the complainant was residing in the house of the respondents, but it is not correct position. Ramesh (PW-7) has admitted in para 2 of his statement that after 8-9 months of marriage of the complainant, the complainant visited her in-laws house for the first time, and she remained there for eight days. Thereafter she remained in the in-laws' house for two months and thereafter she came back to her parents house and she remained there for sometime. Thereafter she remained for one month in her in-laws' house, whereas it is already mentioned above that the marriage of the complainant Meena took place on 26.6.1990 and she was summoned by a search warrant in July 1991. Under such circumstances, it would be clear that story relating to demand made by Hiralal and Jagdish is concocted. No such incident took place. The complainant with the help

of her brothers, father and friends of her brothers had cooked a story which is away from the reality.

11. It is also alleged that one Kishan went to fetch the complainant and complainant was not sent with him, on the contrary the complainant was assaulted by respondent Jagdish by a stick. It is also stated that a report was lodged at Police Station Bina. Initially it was said that one Dharmendra accompanied with witness Kishan, but Dharmendra (PW-3) informs that he was already present at Bina because he wanted to purchase some spare parts of bicycle for his shop and he met with Kishan at Bina and thereafter they went to take the complainant Meena to their house. Witness Banshilal (PW-11) was examined to produce the *Rojnamcha* of Police Station Bina dated 13.7.1991. It is strange that neither any exhibit was marked on the *Rojnamcha* nor any copy of that *Rojnamcha* was taken on record by marking some exhibit and therefore *Rojnamcha* was not duly proved. However, a handwritten copy of *Rojnamcha* is annexed in the case file. There is a prosecution document which is in favour of the accused, then it may be read in the favour of the accused, though it is not proved. Under such circumstances, *Rojnamcha* dated 13.7.1991 may be perused in favour of the respondents. In this connection the statement of witness Pancham

(PW-4) may be perused, who has also stated that he visited the house of Jagdish with witness Kishan. Similarly, Bhaiyalal (PW-5) has also stated that he accompanied brother of the complainant when he went to bring her whereas name of witness Dharmendra is mentioned in that Rojnamcha that he went with witness Kishan, brother of the complainant. Looking to such conduct, it is possible that before issuance of the search warrant, it was for the father of the complainant to create some evidence so that search warrant could be issued for recovery of the complainant. Therefore it is possible that a fake report was lodged at Police Station Bina to create a case of search warrant, and therefore story told by Dharmendra and Kishan cannot be believed.

12. The submission raised by learned counsel for the respondents is acceptable that if the complainant was in torture, then after her recovery on 15.7.1991 why she has delayed for six months in lodging the FIR. All the alleged incidents took place at Bina, but the written report (typed) was submitted to the Superintendent of Police, Sagar and the case was directed to be investigated by SHO Khurai. Under such circumstances, it would be apparent that the FIR was highly delayed and it appears to be cooked document prepared by the father and brothers of the complainant.

13. It is also alleged that complainant Meena (PW-1) was sent to the house of her parents whereas all her ornaments were taken by the respondents, but if list the articles given to the complainant is perused, then it is nowhere mentioned that any ornament was given to the complainant Meena (PW-1) by her parents, and therefore there was no possibility of snatching her ornaments. Similarly, it is alleged that after giving threats by Hiralal and Jagdish, complainant was assaulted by Jagdish with a stick. But as it is observed that FIR in *Rojnamcha* of Police Station Bina appears to be a cooked document, such allegation cannot be accepted. No injury was found to the complainant when she was recovered. Complainant Meena (PW-1), Ratan (PW-2) have also stated that Ramesh (PW-7) was assaulted by Jagdish by a stick, but after examination of these two witnesses, they changed their view, and therefore Bhaiyalal (PW-5), Phool Singh (PW-6) and Ramesh (PW-7) have stated that respondent Jagdish held the neck of Ramesh and therefore some injuries were caused because his nails were pierced in the neck of witness Ramesh. It is material contradictions to the statements of various witnesses. If respondent Jagdish held the neck of witness Ramesh, then why complainant Meena (PW-1) and Ratan (PW-2) are not

confirming this fact and they are telling contrary to the evidence that witness Ramesh was assaulted by a stick.

14. It is apparent that the marriage of complainant Meena (PW-1) took place on 26.5.1990 and she went to her father-in-laws' house for the first time after 8-9 months of her marriage i.e. in the month of March 1991 whereas she was recovered with the help of search warrant in July 1991. In the meantime she remained in the house of her father for two times for 15 days and one month. Under such circumstances, it appears that the complainant Meena (PW-1) resided in her in laws house for few days and she was recovered by a search warrant by her father by fictitious reasons and she was residing with her parents thereafter. Under such circumstances, such type of harassment as alleged by various witnesses is not proved to be done by the respondents in any manner. Looking to the material contradictions of the evidence of various witnesses and impossibility of the event, the entire evidence led by the prosecution appears to be fictitious and concocted. The learned Magistrate has rightly held that there was no dowry demand from the side of the respondents and no harassment has been done by the respondents to the complainant Meena (PW-1) by any manner. Each allegation which was made by the complainant was found hypothetical and baseless.

Under such circumstances, no interference can be made in the judgment passed by the Judicial Magistrate First Class Khurai.

15. Consequently, the appeal filed by the State is hereby dismissed.

16. The respondents are on bail, therefore their presence is no more required. It is directed that their bail bonds shall stand discharged.

17. A copy of this judgment be sent to the concerned trial Court with its record for information and compliance.

(N.K.Gupta)
Judge
6/7/2012

Ansari.