

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.1 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

Rukhsana Khatoon wife of Perwej Alam resident of village - Manisrisya, P.S. Amnaur, District - Saran

.... Appellant/s

Versus

1. The State of Bihar
2. Perwej Alam son of Zeyaur Rahman
3. Nasima Begum wife of Zeyaur Rahman
Both residents of village - Manisrisya, P.S. Amnaur, District - Saran

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Anis Akhtar, Advocate
Mr Arifdaula Siddiqui, Advocate
For the State : Mr. S.N.Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-02-2015

The present application under section 378(4) of the Code of Criminal Procedure has been filed seeking leave to appeal against the judgment dated 12.11.2014 passed by learned Additional Sessions Judge-VIII, Chapra, Saran in Criminal Appeal No.195 of 2013 arising out of Complaint Case No.1995 of 2009 whereby and whereunder the judgment and order dated 26.11.2013 passed by the learned Sub-Divisional Judicial Magistrate, Saran at Chapra has been set aside and two accused persons i.e., respondent nos. 2 and 3 have been acquitted. In complaint case no.1995 of 2009 respondent nos.2 and 3 were charged under sections 379 and 498A of the Indian Penal Code as well as sections 3 and 4 of the Dowry Prohibition Act.



2. According to the prosecution case, the complainant was married to respondent no.2 on 4th May, 2008 according to Muslim customs and rituals. After marriage, the accused persons started demanding dowry and coercing the appellant. On non-fulfillment of demand of dowry, the respondent no.2 started assaulting and abusing the complainant. He also stopped providing her food for many days. Ultimately, on 10th June, 2009 the accused persons assaulted the appellant with fists and slaps and kicked her out of her marital home after snatching her ornaments and clothes. Thereafter, she came to her *Maike* and narrated the entire incident to her family. Thereupon, her parents came to the accused persons and tried to settle the matter amicably. However, when the accused persons refused to keep the complainant in her marital home, the complainant was compelled to go to the police station but as the police refused to institute an FIR, a complaint case was instituted.

3. In course of trial, altogether four persons including the complainant were examined in support of the prosecution case. The trial court convicted the respondent nos. 2 and 3 under section 498A of the Indian Penal Code but acquitted them of the charges under section 379 of the Indian Penal Code as well as sections 3 and 4 of the Dowry Prohibition Act. The respondent nos. 2 and 3 preferred an appeal. After hearing the parties, the appellate court set aside the

judgment of the learned Magistrate and acquitted the respondent nos. 2 and 3 of the charge under section 498A of the Indian Penal Code.

4. I have heard Mr. Anis Akhtar, learned counsel for the appellant and perused the records. I find that P.W.1 Asraf Ali, P.W.3 Deep Narain Sah and P.W.4 Md. Ansari have admitted in their cross-examination that neither any demand of dowry was ever made by the accused persons in their presence nor they have ever witnessed any incident of subjecting the victim to cruelty. They are hearsay witnesses. P.W.2 Ruksana Khatoon, who is complainant of the case, admits that her mother, father and brother are alive but they have not been examined by the complainant. In the complaint itself it has been stated that *Panchayti* had taken place between the parties. The complainant has stated in her deposition that the decision of the *Panches* was taken in writing but no written document has been filed by the complainant in course of trial. Though there is allegation that the complainant was assaulted with fists and slaps but no injury report has been filed in the court. In absence of sufficient evidence, the appellate court has acquitted the respondent nos. 2 and 3.

5. I find no error in the judgment passed by the appellate court. The judgment of the appellate court is based on sound reasoning. It is neither perverse nor erroneous.

6. In that view of the matter, I find no merit in the present

application. Accordingly, leave to appeal is refused. The application is, thus, dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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