

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No.162 of 2014

1. Smt. Krishna Sahu wife of Amritlal Sahu, aged about 34 years, R/o N.T.P.C. Colony, Colony Yamuna Vihar Jamnipali, P.S. Darri, District Korba, Civil and Revenue District Korba (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, through the District Magistrate Korba, District Korba (C.G.)
 2. Amrit Lal @ Kallu S/o Bisahu Ram Sahu, aged about 34 years,
 3. Smt. Shakuntala Sahu wife of Bisahu Ram Sahu, aged about 60 years,
- Respondent No.2 and respondent No.3 are residents of Irani Chowk, in front of Masjid, Melapara, Chantidih, Sarkanda, District Bilaspur (C.G.)

---- Respondents

For Appellant — Mr. Basant Kaiwartya, Advocate.

For Respondent No.1 — Ms. Pushpa Dwivedi, Panel Lawyer.

For Respondents 2 and 3 – Mr. D.K.Shukla, Advocate.

Judgment on Board

13-07-2015

1. Heard on admission and maintainability of this acquittal appeal.
2. Learned counsel for the appellant submits that earlier a criminal revision was filed. On 30-06-2014 while hearing on Criminal Revision No.795/2013, the counsel for the applicant sought permission of the Court to withdraw the criminal revision with a liberty to file an acquittal appeal. The Court permitted and the revision was dismissed as withdrawn. Thereafter, this acquittal appeal under proviso to Section 372 of the Cr.P.C. has been filed.
3. The appeal may be admitted for consideration as the appellant is a victim and the Additional Sessions Judge, Katghora, C.C. while passing the judgment dated 24-09-2012 in Criminal Appeal No.47/2011 reversed the findings of the Judicial Magistrate First Class, Katghora, allowed the appeal and acquitted

respondents 2 and 3 from the charges framed against them. Respondents 2 and 3 before the Additional Sessions Judge, Katghora, C.G. had challenged the judgment and sentence passed in Criminal Case No.1452/2005 vide judgment dated 23-08-2011 whereby and whereunder they were convicted for offence under Section 498A/34 of the IPC and were sentenced accordingly.

4. Heard on admission and maintainability.

5. Upon perusal of the judgment passed by the trial Court, it goes to show that the trial Court while hearing the matter filed by the prosecution in the said criminal case, convicted the present respondents 2 and 3 and sentenced them accordingly. Against the said sentence and conviction, both present respondents 2 and 3 preferred the abovementioned criminal appeal. The learned appellate Court vide judgment dated 24-09-2012 allowed the appeal and acquitted respondents 2 and 3 from the charges.

6. Against the judgment passed by the Additional Sessions Judge in Criminal Appeal No.47/2011, the victim preferred this acquittal appeal under the proviso to Section 372 of the Cr.P.C. The appellant is victim as per definition of Section 2(wa) of the Cr.P.C. as he suffered for cruelty as per allegation made in the charge sheet. So far as maintainability of this acquittal appeal is concerned, the proviso to Section 372 of the Cr.P.C. is constituted with two limbs, the second limb is as under :-

“....., and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

7. Upon minute examination, this is not the Court where the appeal ordinarily lies against the order of sessions court passed in a criminal appeal. It also goes to show that the sessions court may not be held under the definition clause “such Court”; the word such Court is not intended for the trial Court, for all reasons, the word such Court is for sessions Court; and for against the order

of the sessions court passed in criminal appeal, second limb of proviso to Section 372 of the Cr.P.C. is not attracted.

8. With the aforesaid discussion, in the considered view of this Court, the instant acquittal appeal preferred against the judgment passed by the Additional Sessions Judge in the criminal appeal is not maintainable under the proviso to Section 372 of the Cr.P.C.

9. Consequently, the appeal is dismissed as not maintainable.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE