

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.49 of 2016

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Babita Devi, wife of Abhay Singh, daughter of Late Kameshwar Singh, resident of Village-Shiva Bigha, Police Station-Kutumba, District Aurangabad, at present resident of village Budhai Khurd, Police Station Goh, District Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar
2. Abhay Singh son of Late Bhuneshwar Singh
3. Kalita Devi wife of Umesh Singh
Both resident of village Shiva Bigha, Police Station Kutumba, District Aurangabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamendra Pd. Singh

For the Respondent/s : Mr. Sri Shyed Ashfaque Ahmad

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 20-12-2016 This is an application under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) seeking leave to appeal against the judgment and order, dated 15.07.2016 passed in Complaint Case No. 383 of 2009 by learned Sub Divisional Judicial Magistrate, Aurangabad, whereby he has recorded acquittal of Respondent Nos. 2 and 3 of the offence punishable under Section 498A of the Indian Penal Code.

2. The petitioner is wife of Respondent No.2. It is her case in the complaint petition that she was married to Opposite party No.2 in the year 1999 and thereafter she lived at her in-laws' place only for eight days since she was put to harassment and torture for demand of dowry. After eight days, she returned to



her parents house. It is alleged that after two year, she came back to her in-laws' place with her father-in-law and on reaching there, the in-laws again started torturing her in various ways and demanding dowry of a sum of Rs. 50,000/-. It is further alleged that attempt was made to resolve the dispute through *Panchayati* which failed and after snatching her all belongings, she was ousted from her matrimonial house with her minor child. She also alleged that Respondent No.2 is having illicit relationship with another woman.

3. After taking of cognizance, charge was framed against Respondent No.2 and the lady with whom Respondent No.2 was allegedly having illicit relationship. Father-in-law and mother-in-law of the complainant died, in the meanwhile, even before framing of the charge.

4. At the trial, altogether 5 witnesses were examined including the complainant (petitioner) as P. W.1, her mother as P.W.2, her brother as P.W.3, her father as P.W. 4 and an Advocate Clerk as P.W.5. Upon analysis and appreciation of evidence, the trial court recorded acquittal of the Respondents on the ground that the allegation of demand of dowry could not be established.

5. Assailing the impugned judgment and order, learned counsel appearing on behalf of the petitioner has submitted that



despite there being definite evidence in support of the case of the prosecution, learned trial Court has recorded acquittal on erroneous grounds on the basis of which suggestion made to P.Ws. He has also submitted that only on the basis that the witnesses were related to the complainant, learned trial Court has held them to be the interested witnesses and wrongly refused to consider the evidence for convicting the Respondent Nos. 2 and 3.

6. I have perused the impugned judgment and order and other materials on record. I have given my anxious consideration to the submissions advanced on behalf of the petitioner.

7. So far as Respondent No.3 is concerned, except for an allegation in the complaint petition that Respondent No.2 was having illicit relation with her, no evidence could be pointed out to me, which was adduced at the trial to support the case of the prosecution of the demand of dowry against her. The Respondent No.2 is the husband of the petitioner. It is evident from the materials on record that all the prosecution witnesses are highly interested witnesses and their evidence has not been corroborated by any other material. In such circumstance, the trial Court concluded that the prosecution failed to prove its case beyond all reasonable doubt. It is true that evidence of interested witnesses



cannot be brushed aside altogether but at the same time the evidence of such witnesses are to be appreciated with much care and circumspection and can be relied on only if the evidence is duly corroborated.

8. In the present circumstance, giving benefit of doubt to the Respondents in the absence of any corroborative evidence in support of the evidence of interested witnesses, by the trial Court and thereby acquitting the Respondent Nos. 2 and 3 cannot be said to be unjustified.

9. In any circumstance, the view taken by the Court below is a reasonably possible view, which could have been taken on the basis of evidence adduced at the trial as noted above.

10. I do not consider it to be a fit case, accordingly, for grant of leave to appeal. Leave is, accordingly, rejected.

11. This application stands dismissed.

(Chakradhari Sharan Singh, J)

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