

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (U/S) No.1 of 2017

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Smt. Madhulika Sinha wife of Gautam Sinha, resident of B-32, Anjali, Apartment, Mitra Compound, Boring Road, Patna at present c/o Dr. Karthik Charan DAs, Line Mohalla-Post Office and Police Station and District Kishanganj.

....(Complainant-Respondent No. 02) Appellant/s

Versus

The State of Bihar.

2.Sri Gautam Sinha son of Late Sarju Pd. Sinha.

3.Mrs. Lakhi Sinha, widow of Late Sarju Prasad Sinha. Nos. 2 and 3 are resident of B-32, Anjali Apartment, Mitra compound, Police Station, Buddha Colony, Town and District Patna.

....(Nos. 2 and 3 are accused-Appellants) Respondent/s

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Appearance :

For the Appellant/s : Mr. Najmul Hoda, Adv

For the Respondent/s : Mr. Sujit Kumar Sinha, APP.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 17.02. 2017

This is an appeal against judgment and order dated 11.12.2015 passed in Criminal Appeal No. 18 of 2001 whereby the court of learned Additional District & Sessions Judge, Kishanganj has reversed the judgment and order dated 15.02.2001 passed by the learned Judicial magistrate, First Class, in Complaint Case No. C/431/1993/ Tr. No. 57/2001 and has thus acquitted the respondent nos. 2 and 3 of the charges punishable under Sections 323/498A and 406 of the Indian Penal Code.

The petitioner is the appellant who is the wife of Opposite Party No. 2 and Daughter-in-law of Opposite Party No. 3.



The appellant had filed a complaint case in the year 1993 with an allegation that she got married to respondent no. 2 on 10.06.1992 and at the time of marriage certain valuables and cash were given by her parents to her in laws. It is also alleged that a draft of Rs. 10,000/- was given to respondent no. 3, the Mother-in-law and Father-in-law (since deceased) to buy new furnitures, but after encashing the said amount, only a sum of Rs. 3000/- was utilized for the purpose of purchase of a new Cot. It was also alleged that a sum of Rs. 51,000/- was entrusted to respondent no. 1 and his father for purchase of VCR, Colour T.V., Washing Machine and they did not purchase it, rather converted it, for their own personal use. There are allegations of demand of dowry and torture. The complaint petition was filed on 17.08.1993. On charge of commission of offences punishable under Sections 323, 498A and 406 of the Indian Penal Code, the respondents were put on trial. At the trial, altogether nine witnesses were examined to support the case of the prosecution.

It is noticeable that the prosecution led evidence to establish charge under Section 406 of Indian Penal Code to the effect that the parents of the complainant had paid certain amount through draft/cash for the purpose of purchase of certain household articles which the respondents did not purchase and utilized the same for their own use. The trial court held the respondent nos. 2 to 3 guilty of the



offences punishable under Sections 323, 498A and 406 of the Indian Penal Code.

The appellate court has reversed the findings of conviction mainly on the ground that the prosecution could not establish the charge beyond all reasonable doubt. The appellate court has recorded acquittal mainly on the ground that the prosecution witnesses were not trustworthy and on the basis of quality of evidence adduced at the trial, the respondent nos. 2 and 3 could not have been convicted of the aforesaid offence.

From the impugned judgment, I find that the learned court below has noticed the material contradictions in the statement of the prosecution witnesses, who did not appear to be trustworthy. With reference to specific occurrence of 01.08.1992, on the one hand PW-1 deposed that there was no injury on the body of the complainant, worth being treated by a Doctor, one of the prosecution witnesses deposed that he had seen bandage on the body of the victim. Similar contradiction has been noticed in the deposition of PW-9.

The case of the prosecution that some amount (Rs. 10,000) was given for purchase of articles i.e. furnitures out of which only Rs. 3000/- was utilized and therefore, offence under Section 406 is made out and has rightly not been accepted by the appellate court below. The amount of Rs. 51,000/- was given apparently for the



purchase of TV, VCR and Colour TV etc., neither as consideration for marriage nor against any demand of dowry.

I do not find any illegality in the judgment and order impugned.

It is well accepted rule that unless it is found to be clearly unreasonable or perverse, manifestly illegal or grossly unjust, this Court in appeal against acquittal is not required to interfere. On the ground that another view is also possible on the evidence on record and the order of acquittal cannot be reversed. It is also equally accepted that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted as has been held in the case of **Harbeer Singh Vs. Sheeshpal and others** reported in **AIR 2016 SC 4958**.

I did not find any such illegality in the impugned order of the appellate court, which could have required this Court's interference, in the present appeal against acquittal.

This appeal is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Ranjan/-

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