

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.12 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BANKA

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Dhiro Yadav, son of Jaldhar Yadav, resident of village- Gorgama, P.S. Amarpur,
District- Banka.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Mukharji, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 27-01-2017

The sole appellant Dhiro Yadav along with nine accused persons faced trial for offences under Sections 323, 307, 380, 498A, 494 and 504 of the Indian Penal Code in pursuance of the charges framed on 26.07.2008. Other nine accused persons were acquitted by the same judgment and the appellant has been found guilty only for the offences under Sections 498A and 494 of the Indian Penal Code and has been ordered to undergo rigorous imprisonment of three years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for six months for offence under Section 498A of the Indian Penal Code.

The appellant was sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/- and in default of payment of fine six months simple imprisonment. Both the sentences have been directed to run concurrently.

2. The prosecution case as disclosed in Complaint Case



No.1211 of 2006, which was subsequently registered as Amarpur P.S. Case No. 168 of 2006, on being forwarded under Section 156(3) of the Cr.P.C., is that informant Munni Devi was married with the appellant, according to Hindu rites and rituals in the year 1999. For few years cordial relationship was there with her husband. Thereafter, the in-laws including the appellant started putting pressure to bring a buffalo and Rs.25,000/- cash from her parents to have a peaceful life in the matrimonial house. As instrument of torture, the complainant was not being provided with proper treatment on illness. After sometime she fell ill and for trivial matters she was being assaulted. In the meantime, a male child was born out of the wedlock. On 10.06.2006, all the accused persons bitterly assaulted to the informant and they attempted to burn her. However, on alarm the neighbours came and rescued her. On 25.07.2006 she was again assaulted in her matrimonial house in village Gorgama, P.S. Amarpur, District- Banka, and this time her ornaments were snatched and she was thrown out from the house. She was further threatened that husband would marry with another lady. On 18.08.2006, the father of the complainant died thereafter she along with her brother Pramod (not examined in this case) went to Amarpur where her husband and father-in-law were working, she found that accused Rina Devi was in the house. Rina committed assault against the informant thereafter she went to the police station for lodging criminal case, which was not lodged. Hence, the complaint case was filed.

3. Contention of the appellant is that on the very same evidence the learned trial Court acquitted other accused persons on the



ground that there is no specific allegation against the acquitted accused persons. Contrary view against the appellant is erroneous one on the same and similar nature of evidence against the appellant. His next contention is that earlier the wife/informant had filed Complaint Case No. 1087 of 2005 Exhibit-B, which was dismissed. Thereafter, the present complaint case was filed and prosecuted at the instigation of others. The evidence on the other hand would reveal that a girl child was born from this appellant to the complainant during pendency of the criminal case and the complainant had executed a registered transfer-deed in favour of the said child. Thereafter, a compromise petition was filed in this case vide Exhibit-C along with affidavit of the complainant vide Exhibit-D. Thereafter, just to pressurize for more money, in spite of the compromise, the complaint case was not closed. The aforesaid fact had been ignored by the learned trial Court while passing the judgment of conviction against the appellant.

4. It appears that the prosecution has examined altogether four witnesses. PW 1 Sushil Yadav @ Sunil Yadav is a hostile witness and has stated that he knows nothing about the occurrence of assault against the complainant Munni Devi. On her cross-examination, no other material has transpired. PW 2 Mira Devi is the mother of the complainant and PW 4 Munni Devi is the complainant herself. PW 3 Kashi Nath Mishra is the Investigating Officer of this case. No other evidence has been brought on record by the prosecution.

5. The defence has examined only one witness Parmanand Pandey, who is an Advocate Clerk, and has proved the



compromise between the parties. Exhibit-A is the order sheet in Complaint Case No.1087 of 2005, which would reveal that by order dated 12.01.2006 the earlier complaint petition brought by the present complainant was dismissed under Section 203 of the Cr.P.C. Exhibit-B is complaint petition of Complaint Case No.1087 of 2005. Exhibits-C and C/1 are compromise petitions filed in the present case and Exhibits-D and D/1 are affidavits of the complainant filed in this case supporting the compromise between the parties.

6. Learned counsel for the State submits that there is overwhelming evidence against the appellant for irresistible conclusion that the appellant has committed the offences under Sections 498A and 494 of the Indian Penal Code. Therefore, the impugned judgment requires no interference by this appellate Court.

7. One thing is evident that considering the same prosecution witnesses, the learned trial Court has acquitted other nine accused and had also acquitted the appellant from other charged offences as referred above.

8. PW 2 Mira Devi has deposed that Munni Devi, her daughter, was married with the appellant ten years back. A son was born out of the wedlock. Thereafter all the accused persons including the appellant started demanding ten grams gold and Rs.25,000/- cash along with one buffalo. She further stated that when she went to her sasural all the accused persons started assaulting her due to non-fulfilment of the dowry demand. She deposed that the appellant had married with another lady. In cross-examination, she admitted that fifteen months back the complainant gave birth to a female child. Her



statement was recorded on 18.07.2009 therefore the second child was born during pendency of the present case. She further admitted in the cross-examination that this case is going on since last four years. She further admitted that during pendency of the case, the appellant had transferred land in the name of his daughter voluntarily. In the further cross-examination, the witness was controverted with the police statement.

9. On perusal and analysis, the evidence of PW 2 clearly shows that there is no separate and exclusive evidence against the appellant rather the evidences for the offence under Section 498A of the Indian Penal Code is general and omnibus against the appellant as well as acquitted accused.

10. The complainant Munni Devi (PW 4) has deposed that she was married with the appellant in the year 1999. All the named accused persons started demanding Rs.25000/- as dowry and all the named accused assaulted her and attempted to burn her by pouring kerosene oil. However, they did not succeed as the neighbours came. Thereafter, she went back to her father's house and narrated the incident. She further deposed that appellant has already married with Rita Devi. In the cross-examination, the witness disposed that after 2003 she never went to her sasural and after residing in her father's house for two years she lodged this case in the year 2006. The witness was controverted with her earlier complaint case, which she denied. She has admitted the execution of transfer deed by the appellant in favour of the newly born female child.

11. There is nothing in the testimony of PW 4 to



distinguish the case of the appellant from other acquitted accused persons. Therefore, in my view the learned trial Court has erred in taking a different view on the basis of same evidence in the matter of appellant and in the matter of similarly situated co-accused. The law is well settled that if two views are possible on the basis of same evidence, the view in favour of the accused-appellant should be preferred. Considering the aforesaid position, the appellant deserves acquittal.

12. The learned trial Court has held that there is evidence against the appellant that he married with another lady during the life time of his wife. PWs. 2 and 4 have categorically stated that the appellant has married with Rita Devi. According to the learned trial Court, since there was no denial of the aforesaid evidence or even suggestion to the prosecution witnesses that allegation of second marriage is false one, the charge stands proved.

13. In my view, the learned trial Court has committed error while recording this finding because the law is well settled that the prosecution is bound to prove the charges beyond all reasonable doubts and this burden never shifts on the accused. Section 7 of the Hindu Marriage Act, 1955, provides for ceremonies for a Hindu marriage, which reads as follows:

“7. Ceremonies for a Hindu marriage.- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete



and binding when the seventh step is taken.”

14. Perusal of the aforesaid provision shows that the prosecution should have proved the date, the place and the manner of performance of customary rites and ceremonies by the appellant while performing marriage with Rita Devi. The prosecution has failed to bring home the evidence of proof of second marriage by the appellant to prove the charge under Section 494 of the Indian Penal Code. In *Santi Deb Berma v. Smt. Kanchan Prava Devi* reported in **AIR 1991 SC 816**, in para-7 of the judgment the Court observe as follows:

“7. The High Court in the instant case has drawn an inference that all the ceremonies essential for a valid marriage had been performed on the strength of the three letters and the oral evidence as aforementioned. We, after going through the judgment of the High Court very carefully, are of the opinion that the High Court is not at all justified in drawing such an inference in the absence of any reliable and acceptable evidence, in regard to the performance of Saptapadi. The result will be that the alleged marriage between the appellant and Namita Ghosh, celebrated in defiance of the law applicable to the parties is held to be a marriage not valid in law. Hence the judgment of the High Court is not sustainable and consequently, we allow the appeal by setting aside the conviction and sentence awarded by



the High Court and acquit the appellant.

15. Thus, it is evident that the prosecution has failed to prove both the charges under Sections 498A and 494 of the Indian Penal Code against the appellant. Hence, the judgment of conviction and order of sentence passed against the appellant is hereby set aside and this criminal appeal is allowed. The appellant is exonerated from the liability of his bail-bonds.

Mkr./-

(Birendra Kumar, J)

AFR/NAFR	AFR
CAV DATE	
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