

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.79 of 2016**

Arising Out of PS.Case No. -39 Year- 2012 Thana -TIYAR District- BHOJPUR

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1. **Ramakant Ram**
 2. **Ramchandra Ram**, both sons of Shyam Lal Ram
 3. **Shyamlal Ram**, son of Late Ram Bachan Ram
 4. **Urmila Devi**, wife of Ram Chandra Ram, All resident of village - Hetampur, Police Station - Tiyar, District – Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Baxi S. R. P. Sinha- Sr. Advocate

Mr. Mrigendra Pratap Singh-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 28-05-2018**

All the appellants namely Ramakant Ram, Ramchandra Ram, Shyamlal Ram and Urmila Devi have been found guilty for an offence punishable under Section 304B of the I.P.C. as well as Section 201 of the I.P.C. vide judgment of conviction dated 14.01.2016 and Ramakant Ram has been sentenced to undergo R.I. for ten years under Section 304B of the I.P.C., R.I. for two years as well as fined appertaining to Rs.2000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 201 of the I.P.C. while remaining appellants namely Ramchandra Ram, Shyamlal Ram and Urmila Devi have been sentenced to undergo R.I. for seven years under Section 304B of the I.P.C. and R.I. for two



years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 201 of the I.P.C. and further, all the sentences to run concurrently vide order of sentence dated 20.01.2016 passed by the Sessions Judge, Bhojpur at Ara in Sessions Trial No.113 of 2013.

2. PW-6, Gorakh Ram, brother of deceased Sobha Devi filed written report on 26.07.2012 divulging the fact that his sister Sobha Devi was married with Ramakant Ram, son of Shyam Lal Ram, village-Hetampur, P.S.-Tiyar, District-Bhojpur in the month of Jeyeshtha of Year 2010. At the time of marriage, they have gifted according to their means. After marriage, his sister had gone to her sasural and soon thereafter, returned back. Her Gauna has been effected on 25.05.2012. While staying at her sasural after Gauna, his suster used to telephonically inform her mother that her husband Ramakant Ram, mother-in-law Gagri Devi, Bhasur Ramchandra Ram were insisting upon motorcycle as well as golden chain and for that, they were threatening that they will not allow her stay or will be murdered. On 16.07.2012, his sister during course of conversation had disclosed that she is being physically tortured by her sasuralwala. Her Gotni, wife of Ramchandra Ram and father-in-law Shyamlal Ram were threatening that as her father failed to oblige them by way of providing motorcycle, golden chain, therefore, she will be murdered and then, her husband will be remarried. Today, i.e. on 26.07.2012,



somebody belonging to village-Hetampur informed over phone that her sister has been murdered by her sasuralwala and then, her dead body has been disposed of. After receiving such information, he along with his mother, brother, elder brother-in-law along with others rushed to village-Hetampur where found the house of his sister closed, lock was hanging, all the family members were absconding.

3. On the basis of the aforesaid written report, Tiya P.S. Case No.39 of 2012 was registered under Section 304B/ 201/34 of the I.P.C. followed with an investigation. After completion of investigation, chargesheet was submitted under the aforesaid Sections whereunder cognizance had also been taken.

4. Trial commenced after framing of charge and during course thereof, prosecution had examined altogether seven PWs, who are PW-1, Ganesh Ram, PW-2, Rajendra Ram, PW-3, Nagendra Ram, PW-4, Motichand Ram, PW-5, Sanmukha Devi, PW-6, Gorakh Ram and PW-7, Munnu Prasad. Side by side, had also exhibited, signature of witness Ganesh Ram over written report as Exhibit-1, written report including signature of Moti Chand Ram as Exhibit-2, signature of informant over written report as Exhibit-3, endorsement of PW-7 over written report as Exhibit-4, formal F.I.R. as Exhibit-5, inculpatory extra-judicial confessional statement of accused Shyamlal Ram as Exhibit-6, chargesheet as Exhibit-7.



5. From the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. the defence of the appellants happen to be that of innocence. It has also been pleaded that on account of stomachache the deceased died, whereupon the members of the Naiharwala were informed, who participated during course of funeral and then thereafter, developed dishonest intention in order to squeeze money, got this case filed. However, neither ocular nor documentary evidence has been adduced on that very score.

6. During course of hearing, the L.C. Record along with judgment impugned has been gone through. From the charge, which the learned lower Court had incorporated in Paragraph-5 of the judgment also, it is apparent that charge under Section 304B/34, 201/34, 302/34 of the I.P.C. (alternatively) have been framed against the accused. No charge under Section 498A of the I.P.C. in the background of presence of alternative charge under Section 302 of the I.P.C. was taken into cognizance. Furthermore, it is apparent from the trend of the judgment that learned lower Court was very much confused whether the allegation whatever been attributed would be depicting an offence of murder or dowry death. That happens to be reason behind that while discussing the argument having at the end of the appellants/ accused recorded under Para-17 of the judgment, the learned lower Court though took notice of the submission having so advanced at the end of the appellants/ accused that no offence under



Section 302 of the I.P.C. is made out, but the learned lower Court failed to scrutinize the evidences available on the record whether the allegations whatever been attributed against the appellants/ accused were attracting Section 498A of the I.P.C., Section 302 of the I.P.C. or under Section 304B of the I.P.C. Furthermore, the learned lower Court had not formed an opinion on that very score followed with recording reason therefor as well as finding whether appellants are being acquitted for an offence punishable under Section 302/ 34 of the I.P.C. or not. That means to say, irrespective of the fact that appellants have been convicted and sentenced for under Section 304B/ 34 of the I.P.C., the learned lower Court was still confused with regard to applicability of Section 302 of the I.P.C. and allowed the chapter opened which ought not to be as, the judgment is to be in terms of Section 354 of the Cr.P.C. whereunder the conclusion should be in definite words depicting the judicial approach during course of scrutiny of the evidences available on the record.

7. In *Issac @ Kishor vs. Ronald Cheriyan and others reported in 2018 (2) P.L.J.R. 57 (SC)*, it has been held:-

“9. Section 386 Cr.P.C. defines the powers of the Appellate Court in dealing with the appeals. The powers enumerated thereon are vested in all courts, whether the High Court or subordinate courts, except that Clause (a) of the section is restricted to the powers of the High Court only, since an appeal



against an order of acquittal lies only to that court, while Clause (b) of the section is not so restricted and embraces all courts. The power to direct the accused to be retried has been conferred on the High Court not only when it deals with an appeal against acquittal but also when it deals with an appeal against conviction. Section 386 Cr.P.C. reads as under:-

"Section 386:- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may :-

(a) In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) In an appeal from a conviction:-

(i) Reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of Competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) Alter the finding, maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"



10. Under Section 386(a) and (b)(i), the power to direct retrial has been conferred upon the Appellate Court when it deals either with an appeal against judgment of conviction or an appeal against acquittal (High Court). There is a difference between the powers of an Appellate Court under Clauses (a) and (b). Under Clause (b), the Court is required to touch the finding and sentence, but under Clause (a), the Court may reverse the order of acquittal and direct that further enquiry be made or the accused may be retried or may find him guilty and pass sentence on him according to law.

11. Normally, retrial should not be ordered when there is some infirmity rendering the trial defective. A retrial may be ordered when the original trial has not been satisfactory for particular reasons like..., appropriate charge not framed, evidence wrongly rejected which could have been admitted or evidence admitted which could have been rejected etc. Retrial cannot be ordered when there is a mere irregularity or where it does not cause any prejudice, the Appellate Court may not direct retrial. The power to order retrial should be exercised only in exceptional cases.

12. In *K. Chinnaswamy Ready v. State of Andhra Pradesh and Another*, AIR 1962 SC 1788, the accused had been convicted by the trial court. The Sessions Court took the view that an important piece of evidence held against the accused was inadmissible and acquitted him. The High Court in revision by the *de facto* complainant held that the evidence held to be inadmissible by the Sessions Court was admissible and set aside



the acquittal directing the accused to be retried on the same charges. The Supreme Court agreed with the High Court that the acquittal deserved to be set aside. In para (7), this Court has spelt out what could be termed as exceptional circumstances which reads as under:-

"7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction.

This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court



has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4)....."

(underlining added)

The same principle was again reiterated in Mahendra Pratap Singh v. Sarju Singh and Another AIR 1968 SC 707.

13. In Matukdhari Singh and others v. Janardan Prasad, AIR 1966 SC 356, accused was tried for offences under Sections 420, 466, 406 and 465/471 IPC and acquitted. The trial court did not frame charge under Section 467 IPC regarding which there were prima facie materials available, that is an offence triable exclusively by the Sessions Court. The High Court, in appeal, set aside the acquittal and ordered retrial. The Supreme Court dismissed the appeal preferred before it. The court referred to earlier decisions in Abinash Chandra Bose v. Bimal Krishna Sen and Another AIR 1963 SC 316 and Rajeshwar Prasad Misra v.



State of West Bengal and Another AIR 1965 SC 1887 with reference to the facts of those cases and emphasized that wide discretion available with the Appellate Court in ordering retrial.

8. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. Matter is remitted back to the learned lower Court to proceed afresh from the stage of hearing and will decide the trial within two months from the date of receipt of the L.C. Record giving opportunity to respective parties. Appellants Ramakant Ram and Ramchandra Ram are under custody, so their appearance be accordingly, procured. Appellant Shyamlal Ram and Urmila Devi are on bail and so, their bail bonds are hereby cancelled directing them to surrender before the learned lower Court within fortnight and in case, a prayer for bail is made on their behalf, the learned lower Court will consider the same in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

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