

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.521 of 2024

Arising Out of PS. Case No.-20 Year-2018 Thana- MAHILA P.S. District- Rohtas

Sunita Pandey, W/o Binod Kumar Pandey, R/o Mohalla-Gaurakshani
(Gajradh), P.S.- Sasaram, DIST- Rohtas, BIHAR.

... .. Appellant

Versus

1. The State of Bihar
2. Binod Kumar Pandey S/o Parshuram Pandey R/O Village- Sidhabadh, P.S.-
Itadih, Dist- Buxar
3. Ashok Kumar Pandey @ Daya Pandey S/o Parshuram Pandey R/o Village-
Sidhabadh, P.S.- Itadih, Dist- Buxar
4. Urmila Devi W/o Shambhu Choubey R/V- Devariya, P.S.- Niwaon, Dist-
Kaimur

... .. Respondents

Appearance :

For the Appellant/s : Mr. Ravindra Kumar Shukla, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-01-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State. The trial court records
have been received.

2. This appeal against the judgment of acquittal
(hereinafter referred to as the ‘impugned judgment’) has been
preferred for setting aside the judgment dated 24.02.2024 passed
by learned Additional Sessions Judge-IV, Rohtas at Sasaram
(hereinafter referred to as the ‘learned trial court’) in Sessions Trial
No. 411 of 2018 arising out of Dehri Rohtas Mahila P.S. Case No.



20 of 2018 for the offence punishable under Sections 307, 498A and 120B of the Indian Penal Code (in short 'IPC').

Prosecution Case

3. The prosecution story is based on the written report submitted by Sunita Pandey, Prosecution Witness '5' (hereinafter referred as the informant/PW-5/Victim) which reads as under:-

“The informant states that she was married on 12.06.2010 in accordance with Hindu rites and customs with Binod Kumar Pandey (respondent no. 2). She claims that her father had given a sum of Rs. 10 lakhs in cash and other articles together by way of gift. She has further stated that for some time after the marriage, everything was going well, but later on her husband Binod Kumar Pandey, *bhaishur* Ashok Kumar Pandey @ Daya Pandey, father-in-law Parshuram Pandey, *nanad* Urmila Devi and *nandoi* Shambhu Chaubey acting with preconcert of mind, started asking her to tell her father to purchase a piece of land in any of the towns in the State of Uttar Pradesh. She alleged that on her refusal to do so, all of them together started torturing her mentally and physically whereafter under compulsion, she told her father, thereafter her father got registered 1½ *kattha* of land in Siddharth Nagar Mohalla of Mughalsarai in the joint name of the informant and her husband. She alleged that the price of the land



being Rs. 12 lakhs was paid by her father. She has further alleged that thereafter, for some time again, everything went well but once again, the accused persons started demanding a four-wheeler vehicle and for that she was being tortured in many ways. Her father was not able to meet the said demand. She states that her husband is working as a Teacher in Primary School Akhari Shahpur, Maiza, Allahabad. On 15.03.2018 her husband took her to Mughalsarai for showing under construction house where her Bhaisur Ashok Kumar Pandey was already present. At about 10:00 PM, she asked her husband as to when they would return to Allahabad then her husband and bhaisur asked her to bring either a four-wheeler vehicle or allow her husband to solemnise a second marriage and for this, they demanded a written consent. She alleged that when she denied this, then she was assaulted and her neck was pressed by a towel ('*gamchha*') whereafter, she became unconscious. Thereafter, they left her thinking that she had died. The informant stated that when she regained consciousness then somehow concealing herself, she came out of the house and reached her *mai*ke, where her father took her to Sadar Hospital, Sasaram for treatment. She stated to have enclosed a xerox copy of the slips with her written application. Her father and brother went



to her *sasural* to inquire into but they were abused and threatened that situation will not change till the demand is fulfilled.”

4. On the basis of the written report of the informant, Dehri Rohtas Mahila P.S. Case No. 20 of 2018 was registered on 21.03.2018. After investigation of the case, the Investigating Officer (in short ‘I.O.’) submitted a chargesheet under Section 307, 498A and 120B IPC. The learned ACJM, Sasaram took cognizance of the offence on 13.08.2018 whereafter the police papers were supplied and records were committed to the Court of Sessions. The accused persons, namely, Binod Kumar Pandey, Ashok Kumar Pandey @ Daya Pandey who are respondents in appeal were explained the charges which they denied and claimed to be tried. Accordingly, charges were framed against them on 27.03.2019 for the offences punishable under Sections 307, 498A and 120B IPC. Against the rest of the accused, charges were framed under Sections 498A and 120B IPC. After framing of the charges, the accused, namely, Parshuram Pandey and Shambhu Choubey died during trial, therefore, only three accused faced trial.

5. On behalf of the accused persons, as many as nine witnesses were examined and six documentary evidences were marked exhibits. On behalf of defence, no oral evidence was adduced, however, three documentary evidences were brought on



record which were marked Exhibit ‘A’, Exhibit ‘A/1’, Exhibit ‘A/B’ to ‘B/1’ and Exhibit ‘C’. A complete description of the witnesses and the documentary evidences adduced by the parties are given hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Chandra Deep Chaubey
PW-2	Shashi Bhusan Chaubey
PW-3	Ram Paramhans Tiwary
PW-4	Ramakant Pandey
PW-5	Sunita Pandey
PW-6	Dr. Sri Bhagwan Singh
PW-7	Arun Kumar Singh
PW-8	Manager Singh
PW-9	Nandu Singh

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Computer typed petition (FIR)
Exhibit ‘1/1’	Registration note on typed application
Exhibit ‘1/2’	FIR
Exhibit ‘2’	Injury Report
Exhibit ‘2/1’	Supplementary Injury Report
Exhibit ‘3’ to Exhibit ‘3/1’	Medical Prescription dated 16.03.2018 and 23.03.2018
Exhibit ‘4’	Ordersheet of matrimonial case no. 385/2018, Family Court, Allahabad
Exhibit ‘5’	FIR dated 26.01.2015 lodged by S.B. Chaubey
Exhibit ‘6’	Evidence of Binod Kumar Pandey adduced in matrimonial case no. 351/2019 in Family Court, Rohtas.



List of Exhibits on behalf of Defence

Exhibit ‘A’ to ‘A/1’	Evidence of Shashi Bhushan Chaubey & Ramnath Singh
Exhibit ‘B’ to ‘B/1’	Judgment & Decree of M.C. No. 351/19
Exhibit ‘C’	Sale deed dated 23.07.2012

Findings of the Learned Trial Court

6. The learned trial court framed the following points for determination:-

(a) Whether the accused Ashok Kumar Pandey and Binod Kumar Pandey attempted to kill the informant Sunita Pandey at Mughalsarai on 15.03.2018 and thereby committed an offence punishable under Section 307 IPC.

(b) Whether the accused persons committed cruelty against the informant in connection with demand of dowry and thereby committed an offence under Section 498A IPC.

7. The learned trial court examined the evidences available on the record and found that in the instant case, admittedly the marriage of the victim was solemnised with the accused Binod Kumar Pandey according to Hindu Rites and Customs on 12.06.2010. Regarding the demand of a plot in the State of Uttar Pradesh and supply of Rs.12,00,000/- by victim’s father for the same, the prosecution examined the victim’s father as PW-1. PW-1 has stated in his cross-examination that he handed



over the said money in cash. He did not use to get acknowledgment for the same. He borrowed the money from a Mahajan but declined to divulge his name. The learned trial court found that according to his deposition, the accused used to harass his daughter since 2010 but he tendered the money after 5-6 years. Later, he voluntarily stated that it happened in 2010 but sale-deed got registered in 2012. PW-1 has stated in paragraphs '31', '32' and '33' of his deposition that when the incident of physical assault used to happen with his daughter, he was not present at the spot. He is, thus, not an eye witness to any incident.

8. The defence filed a sale deed dated 23.07.2012 of the plot and got it exhibited as Exhibit 'C' wherein it is mentioned that the said plot was purchased only on the payment of Rs.7,35,000/-. The plot was purchased in the name of both victim and her husband and it was the argument of the defence that it was done due to love and affection of the accused-husband towards victim. The learned trial court found that the deposition of the brother of the victim who has been examined as PW-2 is relevant. He stated in his cross-examination that he gave a loan of Rs.3,00,000/- to accused Binod Kumar Pandey in 2012 after the registration of the plot. In paragraph '24', he has stated that when he advanced loan, there were good relation among them. The victim has been



examined as PW-5. She has deposed in paragraph '12' that after six months of her marriage, she went to Bijpur at the place of her husband's posting where she lived continuously for two years and thereafter she returned to Sasaram where she stayed for 10 days. Her husband also stayed there for two days and there he was accorded proper respect and he was treated with all dignity and care and no complaint of any sort was made by any member of her family. In view of this deposition of PW-2 and PW-5, the learned trial court held that statement of the victim corroborates the assertions of his brother that when he gave loan of Rs.3,00,000/- in 2012 after purchase of the plot, there existed good relation among them. Thus, the court came to a conclusion that demand for purchase of a plot in State of U.P. and harassment in this regard to the victim has not been duly proved beyond all reasonable doubts.

9. About the demand of four-wheeler vehicle and harassment in relation to it, again, learned trial court examined the evidence of victim (PW-5) and her brothers, namely, PW-2 and PW-4. The learned trial court found that nowhere in her deposition, the victim has stated categorically that she was tortured or harassed in relation to demand of four-wheeler except on the alleged fateful night on 15.03.2018, when her neck was throttled as she refused to accede to their demand of four-wheeler. The



learned trial court found that the victim is still issueless. She has admitted in her cross-examination about the effort and expenditure made by her accused husband in her treatment for enabling her to get a child. In paragraph '17' of her deposition, she has stated that she was treated through IVF Method and she visited last time Kolkata on 23.06.2016. In the kind of deposition of victim available on the record, the defence claimed that till 2016, there was cordial relation between the husband and wife and the accused never tortured the informant-wife. This assertion of the defence has been found credible by the learned trial court.

10. Learned trial court found that so far as the issue of second marriage of the accused-husband is concerned, it was submitted before the court that initially, it was the informant-wife who used to persuade him to perform second marriage as she was unable to conceive even after lapse of so many years and despite long treatment but the accused-husband refused to do so. Learned trial court took a view that the husband was hopeful of having a child from her but later on, when she became cruel in her behaviour and became intolerable, the husband filed divorce petition which was granted by the Family Judge, Sasaram.

11. For the reasons discussed in the impugned judgment, the learned trial court ultimately reached to a finding that the



prosecution had failed to bring home all the necessary ingredients to convict the accused under Sections 307, 498A and 120B IPC. Accordingly, the learned trial court directed acquittal of the four accused persons who were facing the charges.

Submissions of the Appellant

12. In appeal before us, Mr. Shukla, learned counsel for the appellant has assailed the impugned judgment. It is his submission that from perusal of the evidence of the prosecution witnesses, it would be crystal clear that the prosecution had established its case beyond all reasonable doubts but the learned trial court ignored the evidences and has acquitted the accused persons in a most mechanical manner.

13. Learned counsel submits that the allegation of demand for land was substantiated by the deposition of the prosecution witnesses, namely, PW-1, PW-2, PW-3, PW-4 and PW-5 as also by producing the sale deed of the land but the learned trial court could not appreciate the same.

14. Learned counsel submits that from the evidence of the victim (PW-5), it is crystal clear that she was subjected to harassment and torture and was being pressurised for bringing a four-wheeler vehicle and also for consenting to second marriage of her husband since she could not bear a child because of her marital



relation. Referring to the injury report and the deposition of PW-6, learned counsel submits that the injury report suggests tenderness caused by hard and blunt substance but the learned trial court failed to appreciate the fact that the informant's neck was pressed using a *gamcha* by her husband and elder brother-in-law which was getting corroborated from the injury report.

Submissions of the State

15. On the other hand, learned Additional Public Prosecutor for the State has opposed the appeal. It is submitted that in this case, the marriage was solemnised between the parties in the year 2010 whereas the instant case was registered after about eight years alleging that the informant was being subjected to cruelty and torture due to non-fulfillment of the demand of a land in the State of U.P. and a four-wheeler. It is submitted that in course of evidence, the prosecution miserably failed to place on record any reliable piece of evidence. The victim is the sole eye-witness and she is not a trustworthy and inspiring witness. Therefore, it would not be safe to convict the accused on the solitary testimony of the victim (PW-5).

16. According to learned Additional Public Prosecutor, there are ample evidences available on the record which were brought on behalf of the defence to demonstrate that only after



filing of the divorce case at Allahabad being MC No. 325 of 2018 which was listed on 09.03.2018, the present case was lodged by PW-5. It is submitted that the victim alleged that she was assaulted by her husband on 15.03.2018 but Dr. Shri Bhagwan Singh who examined her on 16.03.2018 in O.P.D. had deposed as PW-6 and has stated in his examination-in-chief that tenderness was found over front of neck but in cross-examination, he outrightly rejected the possibility of occurring that type of injury by pulling '*gamcha*' from both sides of her neck. He has further stated in his cross-examination that he did not find any injury mark on her neck caused by throttling. It is submitted that in such kind of material, the opinion of the Doctor in his examination-in-chief that tenderness over neck may be caused by throttling gets no significance.

17. Learned Additional Public Prosecutor has further submitted that the I.O. of this case has been examined as PW-7. He has stated that he did not conduct investigation anywhere except at the residence of the victim's father at Sasaram and going to arrest at Allahabad. Thus, it is evident from his deposition that he did not visit even the place of occurrence. It is submitted that learned trial court has meticulously examined the evidences on the record and has rightly come to a conclusion that the prosecution could not



establish the guilt of the accused beyond all reasonable doubts. Learned Additional Public Prosecutor has submitted that the findings of the learned trial court cannot be said to be perverted. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in (2023) 9 SCC 581 to submit that the principles governing a case of appeal against acquittal would not permit any interference with the impugned judgment.

Consideration

18. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the materials available on the trial court records, we find that the entire prosecution case rests upon the evidence of the informant who is the victim of this case and has been examined as PW-5. She is the star witness of this case. So far as other witnesses are concerned, they are her family members and have deposed on the point of cruelty and torture meted out to the informant, as informed to them by the informant herself.

19. In her written application (Exhibit '1'), the informant states that she was married on 12.06.2010 in accordance with Hindu rites and customs with Binod Kumar Pandey (respondent no. 2). She claims that her father had given a sum of



Rs. 10 lakhs in cash and other articles together by way of gift. Thus, she has not alleged any demand of dowry or payment of dowry to the accused at the time of marriage.

20. The informant, in course of evidence, supported her case in her examination-in-chief but once again, in her examination-in-chief, she has not alleged that at the time of marriage, either there was any demand of dowry or there was any payment of dowry. All that she has stated is that her father had spent about Rs 10 lakhs, apart from other articles. In her examination-in-chief, she has stated that her father had given money for purchase of land and from that money, land was purchased in the joint name of her and her husband. She has not stated that her father had given Rs. 12 lakhs and the price of the land was Rs 12 lakhs. This seems to be a change of stand on the part of PW-5 after she came to know that the land purchased in the joint name was of only Rs. 7,35,000/-.

21. In her written application, while narrating the occurrence which took place on 15.03.2018 at 10:00 PM, she has not stated that her husband and his elder brother both had assaulted her but in her examination-in-chief, she has stated that Ashok Kumar Pandey started pulling her by his *gamchha* on her neck and



thereafter Binod Kumar Pandey was pressing her neck by his both hands.

22. The evidence of the Doctor (PW-6) shows that the informant was first examined by Civil Assistant Surgeon at Sadar Hospital, Sasaram on 16.03.2018. There is, however, no formal injury report of the injuries noticed by PW-6 on 16.03.2018. PW-6 has only stated that the patient was seen, treated and referred to P.S. Sasaram (Model) to produce the police requisition. Thus, it is evident that on 16.03.2018, PW-5 had gone to Sadar Hospital, Sasaram but she had not lodged any complaint with the police station either at Mughalsarai or at Sasaram. She submitted her written application giving rise to the present case on 21.03.2018 which would also be evident from the formal FIR (Exhibit '1/2'). On 22.03.2018, on the request of the S.I. In-charge, Mahila Police Station, Dehri, injury report has been prepared but according to PW-6, he had treated PW-5 on 18.03.2018 but due to writing mistake, the date has been inscribed as 08.03.2018. PW-6 has stated that he had noticed tenderness over front of neck, defused tenderness over head, tenderness over lower abdomen, diffuse tenderness on chest and both shoulders, tenderness over low back and buttock and tenderness below left eye. No apparent evidence of any struggle injury i.e. bruise, abrasion etc. was found anywhere



over the injury side. Injury No. 3 has been written twice and the age of injuries cannot be ascertained. The weapon used is hard and blunt substance. At his instance, the injury report has been marked Exhibit '2'. Thus, the evidence of PW-6 is completely vague and does not corroborate the manner of occurrence as alleged. PW-6 also prepared a supplementary injury report on the basis of the X-ray done on 16.03.2018 at Prabhat X-ray Centre, Rauja Road, Sasaram which was presented before him on 24.03.2018. PW-6 prepared the supplementary report which has been marked Exhibit '2/1'. X-ray did not show any sign of bony lesion on pelvis lumbar spine. Skull A.P. and lateral view shows no sign of bony lesion. Chest and both shoulders A.P. view shows no sign of bony lesion. He opined the tenderness over neck may be caused by throttling. In his cross-examination, PW-6 has clearly stated that the above injuries cannot be possibly caused by pulling the victim by putting a towel (*gamchha*) on her neck. He has stated in paragraph '3' of his cross-examination that he had not found any swelling at the place of injury. He had also not found any injury/mark present on neck. In paragraph '5', he has stated that he had not found any injury on the body of the victim and he had mentioned 'tenderness' in his injury report on the basis of the information furnished by the victim that on those parts of the body, she was feeling pain. PW-6



has stated that he had wrongly mentioned the date as 08.03.2018 with regard to the request letter of the police. He has also stated that X-ray report is not present before him presently.

23. If the evidence of PW-6 is closely perused, it would not inspire confidence of the Court. Save and except a slip (Exhibit '3'), there is no injury report of the diagnosis and treatment of the victim, if any which took place at Sadar Hospital on 16.03.2018. She lodged the FIR after five days and before that she went for treatment on 18.03.2018 but again, there is no injury report dated 18.03.2018. The injury report (Exhibit '2') available on the record has been prepared on 22.03.2018 in which it is mentioned that the informant was examined on 16.03.2018. It is difficult to understand and appreciate the conduct of PW-6, who though examines the victim on 16.03.2018, prepares the injury report on 22.03.2018 (Exhibit '2') only after the FIR is registered on 21.03.2018. Similarly, PW-6 prepares a supplementary injury report on 24.03.2018 on the basis of the X-ray done on 16.03.2018 at a private X-ray centre namely, Prabhat X-ray centre, Rauja Road, Sasaram which was presented before him on 24.03.2018. Neither X-ray plate nor the X-ray report of the concerned Doctor of Prabhat X-ray Centre has been brought on record by way of evidence.



24. To this Court, it appears that the evidence of the Doctor (PW-6) only demonstrates that he had prepared the injury report showing tenderness on the various parts of the body of the victim on the basis of her complaint that she was feeling pain.

25. On perusal of the evidence of the victim (PW-5), it appears that in paragraph '12' of her deposition, she has stated that she was regularly living at Bijpur with her husband for two years and thereafter, she had gone to Sasaram where she stayed for ten days and from there, she had gone to her *sasural* and thereafter returned to Bijpur. She has admitted to have gone to Sasaram with her husband, stayed there for two days and during this period, her husband had received proper treatment and nobody had taunted him. She has stated that she had no child from her marriage and for this purpose, she was getting treatment in NTPC Hospital at Bijpur whereafter she was also treated at Kolkata. She had gone to Kolkata 3-4 times for treatment. She has admitted in paragraph '17' of her cross-examination that her treatment was done through IVF Method and last time she had gone to Kolkata on 23.06.2016. During the treatment, her husband was transferred from Bijpur to Allahabad. She had come Allahabad after her treatment. She was suggested that the Doctor had opined that she was unable to give birth to a child. She has stated that during the period she was



staying at Allahabad, her brother used to come to meet her and during this visit, he was also meeting her *sasural* people. She has admitted in paragraph '37' of her cross-examination that she was aware that her husband had filed a divorce case and she had come to know about the divorce case after coming to her *Maiyke* at Sasaram. She had got the information from her brother Shashi Bhushan Kumar Chaubey. Notice was received at her *Maiyke* house and she had appeared in the divorce case after one month of occurrence. In paragraph '42' of her cross-examination, she has stated that she was at Allahabad lastly on 15.03.2018. She had reached Mughalsarai on 15.03.2018 at 07:00 PM but she cannot say that for how long, she stayed at the place of occurrence. She cannot say that what was the time when she started from the place of occurrence in Mughalsarai. She reached Mughalsarai Railway Station from the place of occurrence alone. She had reached Mughalsarai Railway Station at about 05:30 and she had gone by her foot. On way, she had not stated about the occurrence to anyone. She has admitted that on way to railway station, there is police station but she had not gone to the police station as she wanted to save herself. At Mughalsarai railway station also, she had not gone to police station. In paragraph '48' she has stated that on way to Mughalsarai railway station, she had not gone to any



hospital, medicine shop or to a doctor. The distance between the place of occurrence and the Mughalsarai Railway Station is two kilometers. In paragraph '58' of her deposition, she has stated that she has come to Sasaram Sadar hospital during treatment, doctor advised her to lodge a police case. The Doctor had advised her to go to Sasaram Model Police Station and on the treatment slip, the doctor had written it that she should go to Sasaram Model Police Station but despite the advice of the doctor, she had not gone to Sasaram Police Station because she was not in a position to go to police station. She has stated in paragraph '59' that she went to the Mahila Police Station, Dehri (Rohtas) on 21.03.2018. Between 16.03.2018 and 21.03.2018, she had not gone to any police officer to lodge the complaint. She has stated that she was not admitted in Sadar Hospital, Sasaram and after 16.03.2018, she had not visited Sadar Hospital, Sasaram. She had received treatment from another Doctor, namely, Dr. Bageshwari Mishra (not examined) but she had not shown the treatment slip of Dr. Bageshwar Mishra to police because she had received treatment from him after lodging the case. She disclosed that she had visited Dr. Mishra on 23.03.2018 and she can produce the prescription. This witness was suggested by the defence that no such occurrence had taken place with her. She was never tortured for dowry and at the place of



occurrence in Mughalsarai, none of the accused have committed any crime and on the date of occurrence, neither the informant nor any of the accused had gone to the place of occurrence at Mughalsarai. She was further suggested that in order to put pressure upon her husband in divorce case and with an intention to realise money inappropriately, at the instance of her father and brother, she had lodged the present case. The informant denied the suggestion.

26. While examining the evidence of PW-5, it is noticed that her evidence would not inspire confidence of this Court. She has stated that on 17.06.2010, she had gone to her *sasural* village and she stayed there well for 2-3 days, but thereafter her ornaments were snatched from her and her father-in-law, *bhaisur*, *nanad* and *nandoi* were taunting upon her that she had not brought sufficient dowry. She has nowhere stated in her examination-in-chief that any dowry was paid to the bridegroom. All that she has stated in her written application is that her father had given a gift worth Rs. 10 lakhs in her marriage. Again, in her examination-in-chief, she has stated that her father had spent Rs. 10 lakhs and some articles in marriage. There is no whisper that at the time of marriage, her husband or in-laws were demanding dowry. This Court would, therefore, not believe her assertion that her



ornaments were snatched from her and she was being taunted by her in-laws for not bringing sufficient dowry. With regard to her claim that her father was pressurised through her to provide a piece of land in any town in the state of Uttar Pradesh, again it is not believable.

27. Father of the informant came to depose in this case as PW-1. In his examination-in-chief, he has stated that he had taken a loan of Rs. 12 lakhs and provided the same to Shambhu Chaube and Binod Kumar Pandey. In his cross-examination, he has stated that her daughter stayed in her *sasural* village for three months with her husband and all was well for these three months whereafter the demand started. He has stated that on 23.07.2012, the land was registered but he was paying the money in installments for six months prior to registry. He had paid the entire amount in cash and had not taken any acknowledgment of receipt. He did not disclose the name of the persons from whom he had taken money as according to him, if he would disclose the name then they would not provide loan again as and when required. PW-1 was suggested that he had never taken loan of Rs. 12 lakhs from anyone and had not given any money to the accused for purchase of land which he denied. The defence further suggested that accused Binod Kumar Pandey had purchased the land from his



own earning. He has stated that the sale deed has been taken in the joint name of Binod and his daughter Sunita Pandey. He did not remember that in which month and year he had given the first installment. He did not remember whether he had given money in four installments, eight installments or in ten installments. In paragraph '54' of his deposition, the defence invited his attention towards his previous statements made before police in which he had not stated that the accused had asked him to purchase a piece of land for him in any town of the State of Uttar Pradesh for construction of a house and under compulsion he had taken a loan of Rs. 12 lakhs which he gave to Binod Kumar Pandey and Sambhu Chaubey. PW-1 denied this suggestion but the I.O. (PW-7) has contradicted PW-1 on this point. The I.O. (PW-7) has stated in paragraph '19' of his deposition that Chandradeep Chaubey (PW-1) had not told him in his statement that the accused persons demanded a piece of land in any town of Uttar Pradesh and under compulsion he had taken a loan of Rs. 12 lakhs and paid the same to Binod Kumar Pandey and Shambhu Chaubey. It is, therefore, evident from the deposition of the I.O. (PW-7) that during investigation, PW-1 had not stated these facts which he has brought in his examination-in-chief for the first time.



28. This Court further finds that PW-1 has stated in paragraph '33' that he is not an eyewitness to any of the occurrence. He has admitted that his daughter had no child from the marriage and his son-in-law was getting treated his daughter for this purpose. Her treatment was done at Bijpur, Sonbhadra and at Kolkata. He had seen the documents relating to the treatment. Her treatment was also done through IVF method but that failed. PW-1 has admitted that his son-in-law has filed divorce petition and one month after lodging of the police case, his daughter has appeared in court in the divorce case.

29. As regards the occurrence of 15.03.2018 at 10:00 PM in the under constructed house of the accused at Mughalsarai, PW-5 has stated that the occurrence took place in the night at 10:00 PM and thereafter she was left unconscious in the house and the accused persons left the place. She has stated that after some time, when she regained consciousness she left the house and reached Mughalsarai Railway Station by foot at around 5:30 AM. The boundary of the place of occurrence at Mughalsarai has been given by PW-5 and it would appear that in the east side there is a *kaccha* road, in west side is land of the vendor Babu Ram Yadav, in the north there is land of Krishna Singh and in the south side is land of Babu Ram Yadav. She has specifically stated that on way



to Mughalsarai Station she did not inform the occurrence to anyone. She admits that on way there is a police station. On way to Mughalsarai Station she did not go to any hospital, medicine shop or Doctor. The distance between place of occurrence and Mughalsarai Station is two kilometers and according to her statement, she had moved on her own and covered this distance of two kilometers by foot and reached Mughalsarai Station at 5:30 AM where also she did not inform this occurrence to the Rail Police. It is evident from her own statement that the victim was physically fit and while covering two kilometers distance from the place of occurrence to Mughalsarai Railway Station she did not require any help. She did not require even first aid in any hospital. She is a post-graduate and even though police station fell in between place of occurrence and Mughalsarai Railway Station, she did not think it fit to go to the police station to report the occurrence and to request police to help her in reaching her Maik. Contrary to this situation, when she was confronted by the defence for not lodging the FIR on 16.03.2018 despite advice of the Doctor of the Sadar Hospital to go to Model Police Station at Sasaram, in order to explain the delay of five days and lodging of the FIR in another police station i.e. Mahila Thana Dehri which is at a distance of twenty kilometers from her residence, PW-5 has stated



that she did not go to the police station because she was not in a position to go to the police station. This statement of PW-5 that she was not in a position to go to the police station is completely vague and cannot be believed. It is evident from her evidence that she got knowledge of the divorce case from her brother whereafter the present case had been lodged.

30. In the light of the discussions, made hereinabove when this Court goes through the judgment of the learned trial court, it is found that the learned trial court had meticulously examined the entire evidences on the record and rightly concluded that the prosecution had failed to prove the charge of not only Section 307 IPC but also of Section 498A IPC beyond all reasonable doubts.

31. We are also conscious of the legal position which has emerged by virtue of the judgment of the Hon'ble Supreme Court in catena of decisions, one of which is the case of **H. D. Sundara** (*supra*) wherein the Hon'ble Supreme Court has reiterated the principles governing consideration of an appeal against acquittal. Paragraph '8' of the judgment in the case of **H. D. Sundara** (*supra*) reads as under:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of

1. State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591



Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarised as follows:

“**8.1.** The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

32. Keeping in view the entire materials on the record and the judgments of the Hon’ble Supreme Court as quoted hereinabove, we are of the considered opinion that no case for interference with the judgment of the learned trial court is made out by the appellant.



33. This appeal is dismissed.

34. The trial court records be sent back to the learned
trial court.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

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