

(2004) 07 JH CK 0055

Jharkhand High Court

Case No: Criminal Revision No. 180 of 2003

Dr. Shyam Nandan Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 9, 2004

Acts Referred:

- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 375, 406, 420

Citation: (2004) CriLJ 4394 : (2004) AIR Jhar HCR 2643 : 2004 AllIndCas 21 804 : (2004) 3 JCR 417

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Sameer Saurabh and Richa Sanchita, in Cr. Rev. 131 of 2003, S.K. Sharma, in Cr. Rev. 180 of 2003, for the Appellant; Manjusri Patra and A.K. Mehta for Opposite party Nos. 2 and 3 in Cr. Rev. 131 of 2003; S. Rahman, Om Prakash Singh No. 1 and M.L. Yadav for Opp. Party Nos. 2 to 4 in Cr. Rev. 180 of 2003 and APP, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

In both the cases, as similar prayer has been made and common question of law involved, they were heard together and being disposed of by this common order.

2. The petitioner of Criminal Revision No. 180 of 2003 has challenged the judgment and order dated 20th December, 2003 passed by the learned Judicial Magistrate, 1st Class Chatra in G.R No. 495 of 1994/ T.R No. 579 of 2002, whereby and whereunder, he acquitted the opposite party Nos. 2 to 4 for the charges under Sections 406 and 420 of IPC.

3. The case of the prosecution as per informant is that his wife namely Manju Singh entered into a written agreement dated 6th October, 1991 with the accused persons for purchase of two Kathas of land situated in the district of Chatra for valuable consideration of Rs. 42,000/-. An agreement was duly signed by the parties in presence of witnesses and Rs. 10,000/- was paid towards advance money to the accused persons on 6th October, 1991, as mentioned in the agreement. Further case of the informant is that the accused persons subsequently refused to execute the sale deed as per agreement and informed the informant that they can do so if the purchaser purchase all six Kathas of their land. The wife of informant Manju Singh thereafter entered into second agreement on 4th January, 1992 with the accused persons in presence of witnesses for a valuable consideration of Rs. 1,26,000/- for six Kathas of land. The accused persons after receiving the cash amount of Rs. 10,000/- and a cheque of Rs. 5,000/- as advance money, signed the agreement. Thus, a total sum of Rs. 25,000/- was paid as advance money to the accused persons in presence of the witnesses.

4. Further case of the informant is that the accused persons thereafter refused to execute the sale deed and refused to honour the agreement reached between them. On the basis of complaint made before the S.P., Chatra, Sadar P.S. Case No. 0142/94 was instituted on 28th September, 1994 u/s 406/420, IPC against the accused persons. After investigation, charge-sheet under the aforesaid sections were submitted against the accused persons.

5. The prosecution in order to prove its case examined altogether seven witnesses, namely, Laxman Tiwari (PW 1); Deep Narain Singh (PW 2); Tarkeshwar Pd. Arya (PW 3); Jitendra Kumar Sinha (PW 4); Munna Singh (PW 5); Shyam Nandan Singh (informant-petitioner) (PW 6) and Ram Janam Sharma (PW 7); Mrs. Manju Singh was examined by the Court as Court witness.

Out of the aforesaid witnesses, Laxman Tiwari (PW 1) was a formal witness. Deep Narain Singh (PW 2), a Court Clerk of Advocate deposed that the agreement was signed on 4th January, 1992 in presence of Md. Jamal and Md. Nissar, Tarkeshwar Prasad Arya (PW 3) identified the agreement dated 6th October, 1991 and claimed to be the eye-witness. Jitendra Kumar Sinha (PW 4) in his evidence deposed that Md. Jamal received Rs. 10,000/- vide first agreement and Rs. 10,000/- vide second agreement from Manju Singh. Munna Singh (PW 5) stated in his evidence that a sum of Rs. 10,000/- was handed over to Md. Jamal at the time of first agreement and a sum of Rs. 10,000/- in cash and Rs. 5000/- in cheque was given to accused persons during the second agreement. S.N. Singh (PW 6), the informant deposed that Rs. 10,000/- was paid to the accused persons at the time of first agreement and at the time of second agreement, a cash amount of Rs. 10,000/- and a cheque for Rs. 5,000/- was handed over to the accused. He stated that he purchased the stamp paper for the purpose of transfer of land, but could not come to know that the accused persons had made similar agreement with others for the same piece of land. After

refusal to register the land in their name, he realized that they have been cheated and so filed written statement before the S.P. Chatra.

6. From the judgment and record, it will be evident that the Court below has accepted that the accused persons have taken money from the informant which is also established from the statement of accused u/s 313 of Cr PC, but the prosecution having failed to establish that the intention of the accused was to deceive the wife of informant, held the accused not guilty of the charges u/s 406/420 of IPC. The Court below also held the evidence of many of the witnesses as not trustworthy or reliable to punish the accused.

7. Counsel for the petitioner submitted that there were evidence on record to punish the accused persons u/s 406 of IPC, but it was not discussed. Such submission, however, cannot be accepted because the Court below has discussed all the evidence on record.

8. In Criminal Revision No. 131 of 2003, the petitioner has challenged the judgment dated 13th December, 2002, passed by the learned 2nd Additional Sessions Judge, F.T.C. Jamtara in connection with S.C. No. 219 of 1995, whereby and where under the learned Court below has acquitted the opposite party Nos. 2 and 3 from the charges levelled under Sections 376, 493/34 and 3/4 of Dowry Prohibition Act.

9. The case of the prosecution as per informant is that her marriage was settled with the accused Lakhikant Khan @ Naxal Khan about eight months back. After the marriage was settled Lakhikant Khan used to visit her house and also started staying in the night with her.

10. Further case of the informant is that the accused Lakhikant Khan, on the promise of marriage, also started co-habiting with the informant due to which she became pregnant and at the time of lodging FIR, she had pregnancy of six months. The accused Lakhikant Khan after knowing the pregnancy refused to marry the informant, the other accused Ashwini Khan who is the father of Lakhikant Khan, started demanding a sum of Rs. 10,000/- as dowry from the father of the informant.

11. During the trial, the prosecution examined altogether seven witnesses. They are Noni Gopal Mondal (PW 1); Krishna Mondal (PW 2), the petitioner informant; Nadia Mondal (PW 3); Budh Deo Mondal (PW 4); Kanai Mondal (PW 5); Mukti Bharti (PW 6) and Dr. Madhubala Sinha (PW 7).

12. The trial Court on appreciation of evidence came to a conclusion that in the beginning of the year 1993, the age of victim was more than 16 years and she deposed sexual relationship with the accused with her consent. It was held that no offence of rape can be said to have been committed by the accused.

So far as the charge u/s 3/4 of Dowry Prohibition Act is concerned, the trial Court on appreciation of evidence came to a definite finding that no evidence was brought on record to prove the charge u/s 3/4 of Dowry Prohibition Act.

13. Counsel for the petitioner while relied on the evidence of the witnesses submitted that the case of the accused Lakhikant Khan is covered by 4th clause of Section 375, IPC, but such submission cannot be accepted, as there is nothing on the record to suggest that the petitioner consented as she believe that the accused Lakhikant Khan is another man to whom she believed herself to be lawfully married.

14. It is a settled law that the revisional Court cannot appreciate the evidence nor can take any contrary view against the view taken by the trial Court in acquitting the accused persons. In absence of manifest error of law or procedural defect, it is not open for this revisional Court to interfere with the judgment of acquittal or to remit back the case for retrial.

15. In the circumstances, there being no merit, both the criminal revision applications are dismissed.