

HIGH COURT OF MADHYA PRADESH AT JABALPUR**Cr.A. No.2336/2000**

State of Madhya Pradesh

Vs.

Narayan S/o Bhogaoram

[Single Bench : Hon'ble Smt. Anjuli Palo, Judge]-----
Shri Amit Pandey, learned PL for appellant/State.Shri Ramesh Tamrakar, learned counsel for the respondent
-----**ORDER
(24/05/2017)**

1. This appeal has been filed by the State under Section 378 (3) of Cr.P.C. being aggrieved by judgment dated 13.5.1999 passed by the learned JMFC, Begumganj District Raisen in Criminal Case No.92/95, whereby the accused person/respondent has been acquitted from the charge punishable under Section 498-A of IPC.
2. In brief, prosecution story is that the complainant Halli Bai married to respondent, 5 years ago to the incident. After some time of marriage, the respondent demanded Rs.20,000/-, television, fan, etc. and due to non-fulfillment of dowry demand, he harassed the complainant-Halli Bai and also threatened if the demand has not been fulfilled he would perform second marriage.
3. In this regard a report was lodged by complainant-Hallibai in consequence thereto FIR was registered against the respondent under Section 498-A of IPC. A charge sheet has been filed before the learned trial Court.
4. The learned trial Court found that the testimony of complainant-Hallibai (PW1), her mother-Ramkalibai (PW2),

her father-Karodi (PW3) and Jaggi (PW4) was not trustworthy. The learned trial court held that after birth of the daughter, behaviour of respondent was changed. It has not been proved that due to non-fulfillment of dowry demand, the respondent had maltreated or harassed the complainant, therefore, the charge sheet under Section 498-A has not been established against the respondent. Hence, he has been acquitted from the aforesaid charge.

5. Learned counsel for the appellant/State has stated that the learned trial Court failed to appreciate the evidence within the ambit of provisions of Section 113 (A) of the Indian Evidence Act, therefore, the findings of the learned trial Court are perverse. The prosecution has duly established that complainant-Hallibai was treated with cruelty in a manner covered by Section 498-A of IPC. He has further stated that Ramkalibai (PW2), Karodi (PW3) and Jaggi (PW4) have clearly stated about cruel behaviour of respondent, which has been corroborated by complainant-Hallibai, on this count also the respondent has to be convicted under Section 498-A of IPC, but the learned trial Court has overlooked the aforesaid grounds while acquitting the accused/respondent.

6. After hearing learned counsel for the parties and on perusal of the record, this Court finds that just soon after the marriage no report has been lodged by the complainant Hallibai against the respondent in police station or in Panchayat about his conduct, behaviour, maltreatment or demand of dowry. The learned trial Court held that complainant-Hallibai has admitted that both the parties have entered into a compromise for mutual divorce before the Sagar Court. In this regard an affidavit has been filed by the respondent and execution of the affidavit has been admitted

by the complainant-Hallibai. In Para 5 of the cross-examination of complainant, she has admitted that after mutual consent they lived separately and thereafter she filed the FIR (Ex.P1) against the respondent, therefore, the testimony of (PW1) complainant-Hallibai creates doubt with regard to dowry demand. In Para-2 of the affidavit (Ex.D1) filed by the complainant-Hallibai, she has admitted that there was some dispute between her and her husband. In the affidavit she has nowhere stated that she was tortured by her husband due to non-fulfillment of dowry demand.

7. In view of the aforesaid, this Court finds that the findings of the learned lower court are based on proper appreciation of evidence on record. No perversity or illegality has been found in the opinion of learned court below. In the case of **Gemini Bala Koteshwara Rao and Ors Vs. State of Andhra Pradesh [AIR 2010 SC 589]** wherein it is held that it is open to the High Court to reappraise the evidence and conclusion drawn by the trial Court, but only in case when the judgments of the trial Court is stated to be perverse. The Apex Court explained the word “perverse” to mean against weight of evidence. Even though two views are possible as an appellate court this Court should not reverse the judgment of acquittal mere because the other view was possible.

8. In the case of **K.Prakashan Vs. P.K. Surendran [(2008) 1 SCC 258]** and **T. Subramanian Vs. State of Tamil Nadu [(2006) 1 SCC 401]** wherein it has been held that when the judgment of trial Court was neither perverse nor suffered from legal infirmity or non-consideration or misappropriation of evidence on record. As an appellate court this Court cannot not reverse the judgment of acquittal mere because the other view was possible. The prosecution

cannot be said to have proved its case beyond reasonable doubt.

9. The Hon'ble Supreme Court in the case of **M.P. Shahul Hameed Vs. State of Kerala [2017 Cr.L.J. 732 (SCA)]** and in the case of **Harbeer Singh Vs. Sheeshpal [2017 Cr.L.J. 169 (SCA)]** has held that “Appeal against acquittal – Powers of appellate Court – Mere fact that another view could also have been taken on evidence on record is not ground for reversing order of acquittal. View favourable to accused to be adopted when two views are possible.”

10. In view of the above principles laid down by the Hon'ble Supreme Court and the material and evidence available on record, no case is made out to allow this appeal. Hence, it is dismissed.

[Smt. Anjali Palo]
Judge