

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.694 of 2024**

Arising Out of PS. Case No.-675 Year-2021 Thana- GOPALGANJ TOWN District-
Gopalganj

=====

Shankar Thakur @ Shankardev Narayan Thakur S/o Late Devnarayan Thakur R/o
Village-Antaur, P.O.-Antaur, P.S.-Bahera, District-Darbhanga, At Present residing at
Village- Shiv Shankar Chawi Committee, Shastri Nagar, D Mello Compound,
Dhobighat, Vakola, Santacruz(East) Mumbai, Maharashtra, 400055

... ... Appellant/s

Versus

1. The State of Bihar
2. Rajiv Ranjan Pathak S/o Shri. Vishawnath Pathak R/o Adhiwakta Nagar, Ward No.
14, District-Gopalganj

... ... Respondent/s

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Acts/Sections/Rules:

- *Sections 304B, 306 of I.P.C.*
- *Sections 3 and 4 of Dowry Prohibition Act*

*Appeal - filed by victim challenging the sentencing to the extent of imposing lesser
punishment/ sentence to accused.*

*Held - When the Trial court has imposed lesser sentence, victim cannot prefer an
appeal under Proviso of Section 372 of the Code. (Para 11.1)*

Appeal is not maintainable and is dismissed. (Para 14)

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... .. Respondent/s

Appearance :		
For the Appellant/s	:	Mr. Sanjeev Kumar, Advocate Mr. Ravi Kumar Pandey, Advocate
For the Respondent No. 2	:	Mr. Sumit Shekhar Pandey, Advocate
For the State	:	Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 20-02-2025

Heard Mr. Sanjeev Kumar, learned counsel for the
appellant assisted by Mr. Ravi Kumar Pandey, Mr. Sumit Shekhar
Pandey for the Respondent No. 2 and Mr. Dilip Kumar Sinha,
learned A.P.P. for the Respondent -State.

2. Learned counsel for the appellant has referred
the averments made in the memo of the appeal and thereafter
contended that the present appellant filed an F.I.R. against



Respondent No. 2 for committing the offence punishable under Sections 304B, 306 of I.P.C. and Sections- 3 and 4 of Dowry Prohibition Act. It is further submitted that, after investigation, the investigating agency filed the charge-sheet against the Respondent No. 2/accused before the concerned Magistrate Court. However, the case was exclusively triable by the Court of Sessions and, therefore, the concerned Magistrate committed the same to the Sessions Court.

3. It is submitted that before the Sessions Court, the prosecution examined 9 witnesses and produced documentary evidence. The defence has also examined 1 defence witness. Thereafter, statement of the Respondent No. 2/accused under Section 313 of the Code came to be recorded.

4. It has been pointed out by the learned counsel for the appellant that thereafter the Trial court convicted the Respondent No. 2/accused for committing the offences punishable under Sections- 304B, 306 of I.P.C. and Sections- 3 and 4 of Dowry Prohibition Act and he has been sentenced to undergo R.I. for 7 years for the offence punishable under Section-304B of I.P.C. He has further been sentenced to undergo R.I. for 7 years and to pay a fine of Rs. 20,000/- for the offence punishable under Section-306 of I.P.C. and, in default of payment of fine, to further



undergo additional imprisonment of six months. Further, the Trial court also sentenced him to undergo R.I. for 5 yrs. and to pay a fine of Rs. 30,000/- for committing offence punishable under Section 3 of Dowry Prohibition Act and, in default of payment of fine, to undergo additional imprisonment of six months. The Trial court has also sentenced the Respondent No. 2/accused to suffer R.I. for 1 year and a fine of Rs. 10,000/- for committing the offence punishable under Section 4 of the Dowry Prohibition Act and, in default of payment of fine, to undergo additional imprisonment of 3 months and, if the fine is realized, the same has been directed to be given to the child of the deceased.

5. The appellant/victim has preferred the present appeal under Proviso of Section 372 of the Code of Criminal Procedure, 1973 (hereinafter, referred as the 'Code') in which the appellant has challenged the order dated 08.04.2024 rendered by the learned Additional Sessions Judge-III, Gopalganj in Session Trial No. 84 of 2022 to the extent of imposing lesser punishment/ sentence to Respondent No. 2/accused.

6. Learned counsel for the appellant/victim would submit that the present appeal has been filed by the appellant with a grievance that the Trial court ought to have imposed maximum punishment/ sentence provided under Section 304B and Section



306 of I.P.C. looking to the facts and circumstances of the present case. He, therefore, urged that the present appeal be admitted and, after hearing the parties, the sentence imposed by the Trial Court be enhanced.

7. On the other hand, learned counsel appearing for the Respondent No. 2/accused has submitted that the present appeal under Proviso of Section 372 the Code is not maintainable. It is contended that for enhancement of the sentence, appeal under Proviso of Section 372 the Code cannot be filed. He, therefore, urged that this appeal be dismissed only on this ground.

8. Learned A.P.P. has also supported the submission canvassed by the learned counsel for the Respondent No. 2.

9. We have perused the material placed on record and considered the submissions canvassed by the learned counsel. From perusal of the judgment dated 08.04.2024 passed by the concerned Trial court, it transpires that the Trial court has convicted the Respondent No. 2/accused for committing offence punishable under Section 304 of I.P.C. and he has been sentenced to suffer R.I. for 7 years. Similarly, he has been convicted for committing the offence under Section 306 of I.P.C. and has been sentenced to suffer R.I. for 7 years. Now, it is the grievance of the



appellant/victim that the Trial court has imposed lesser punishment/ sentence and, therefore, punishment imposed by the Trial court be enhanced.

10. At this stage, we would like to refer the provisions contained in Section 372 of the Code which provides as under:-

“372. No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

11. From the Proviso contained in the aforesaid Section, it would reveal that the right has been given to the victim to prefer an appeal against the order passed by the Court under three circumstances: (i) when the accused has been acquitted or (ii) when the accused has been convicted for lesser offence or (iii) when the Trial court has awarded inadequate compensation.

11.1. Thus, from the aforesaid provision, it can be said that when the Trial court has imposed lesser sentence, victim cannot prefer an appeal under Proviso of Section 372 of the Code.



12. Keeping in view the aforesaid provision, if the facts of the present case and the grievance of the appellant/victim is carefully examined, it is revealed that the appellant has not preferred the present appeal against the order of acquittal nor he has preferred the present appeal with a grievance that Respondent No. 2/ accused has been convicted for lesser offence nor there is no grievance of the appellant that the Trial court has granted inadequate compensation. The only grievance of the appellant is that the Trial court has imposed lesser sentence.

13. We are of the view that for enhancement of the sentence, victim cannot prefer an appeal under Proviso of Section 372 of the Code.

13.1. In fact, under Section 377 of the Code, the State can prefer an appeal against an order of sentence imposed by the Trial court. However, such right has not been given to the victim to file an appeal for the enhancement of the sentence under Proviso of Section 372 of the Code.

14. Accordingly, we are of the view that the present appeal is not maintainable and, therefore, the same stands dismissed.

15. However, it is clarified that we have not examined the merits of the case of the appellant and, therefore, it is



always open of the appellant to file appropriate proceeding before appropriate forum including filing of Criminal Revision application before this Court for the grievances raised in the present appeal.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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