

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.17 of 2013**

Arising Out of PS. Case No.-272 Year-2000 Thana- KOTWALI District- Munger

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Brajesh Kumar @ Birjesh Kumar Singh S/O Sri Narayan Resident Of Village-
Pairia Tola, P.S.- Katra Kotwali, District- Mirzapur Uttar Pradesh

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv

Ms. Meena Singh,. Adv

For the Respondent/s : Mr. Z. Hoda, APP

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT**

Date: 04-07-2025

Heard Mr. Krishna Prasad Singh, learned Senior
counsel for the appellant assisted by Ms. Meena Singh,
Advocate and Mr. Z. Hooda, APP for the State.

2. The present appeal arising out of the judgment
and order dated 19.12.2012 passed by learned Adhoc Additional
Session Judge-III, Munger whereby and where under the
appellant has been sentenced to undergo rigorous imprisonment
of 10 years for the offence punishable under Section 304 B of
the Indian Penal Code (hereinafter referred as “IPC”) and
rigorous imprisonment for 2 years and fine of Rs. 1,000, in
default of payment of fine, rigorous imprisonment for 30 days
for the offence punishable under Section 498A of the IPC.

3. Learned counsel for the appellant submits that



the impugned judgement of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgement of conviction and order of sentence. Learned counsel for the appellant submitted that order dated 21.01.2009 of case record shows that after recording the statement of accused under Section 313 of the Cr.P.C. in both Session Trial, the defence filed an application for seeking permission to examine DWs in S. Tr. No. 504 of 2006 and on 12.02.2009 prosecution prayed to amalgamate both Session Trials. So, on 05.03.2009 the learned Trial Court ordered to amalgamate both Session Trials bearing S. Tr. No. 504 of 2006 and S. Tr. No. 592 of 2001 (arising from Kotwali P.S. Case No. 272 of 2000) which was not in accordance with law.

4. Learned counsel further submitted that an order of amalgamation was passed at belated stage which was not according to law as in both cases many witnesses were already examined and it is also clear from para-6/page-4 of judgment that during course of argument, the learned Trial Court found that amalgamation of both cases was not in accordance with law. Therefore by the order dated 12.09.2012 both the cases were separated with this order that "the evidence



recorded against accused persons of both the cases in S. Tr. No. 592 of 2001 shall be considered while deciding the instant case i.e. S. Tr. No. 504 of 2006 and both the cases shall be disposed off simultaneously but separately.

5. Learned counsel further submitted that section 465 (1) Cr.P.C. clearly states that no finding sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation of revision on account of any error, omission or irregularity in the complain summons, warrant, proclamation, order, judgment or other proceedings under this code, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. Therefor these record can be considered for the ends of justice so that appellant may not be prejudiced.

6. On deeply studied and scrutinized the facts of the present case and the materials available on record, it has come to my notice that on 20.09.2007, charges against 15 accused persons were framed under Section 498A, 304B read with 34 of the IPC and Section 3 and 4 of the Dowry Prohibition Act. Further, charges were read over and explained to the accused persons in hindi to which they pleaded not guilty and claimed to be tried. On 05.03.2009, the learned Sessions Judge



has ordered to amalgamate the S.T. No. 504 of 2006 with S.T. No. 592 of 2001 which was the original Sessions trial in which two accused persons were facing trial and conducted the trial as S.T. No. 592 of 2001. This record was received to learned Sessions Court file at the stage of defence evidence. One defence witness (DW-5) was examined by learned Sessions Court. During course of argument learned Sessions court finds that the amalgamation of both cases was not in accordance with law, therefore, by the order dated 12.09.2012 both the cases were separated with this order that and the evidence recorded against accused persons of both the cases in S.T No.592 of 2001 shall be considered while deciding the instant case i.e S.T. No. 504 of 2006 and both the cases shall be disposed of simultaneously but separately. On 19.3.2010 statements of the accused persons were recorded in S.T. No. 504 of 2006 along with statements of accused persons in S.T. No.592 of 2001 by the then Sessions Judge as both the cases were amalgamated at that time. In S.T. No. 504 of 2006 the defence has also produced evidence and documents in support of its contention.

7. In S.T. No. 504 of 2006 when the record was being tried separately six witnesses were examined. Thereafter, the record was ordered to be amalgamated with S.T. No. 592 of



2001 vide order dated 05.03.2001 by the then Sessions Judge and evidence of remaining prosecution witnesses as well as defence evidence was recorded during the period of amalgamation. Therefore, the evidence of those witnesses who were examined before the accused persons of the instant case has to be evaluated for coming to the just decision of the case. Trial of S.T. No. 504 of 2006 was ordered to be amalgamated with S.T No. 592 of 2001 when six witnesses in this case were examined and twelve witnesses in S.T No. 592 of 2001 has been examined. The additional witness has been examined in S.T No. 592 of 2001 where opted by the prosecution as well as defence. This order was not in accordance with law, therefore, this court again ordered to separate both the trial vide order dated 12.09.2012 and the witnesses of both the cases which were examined during a period of the said amalgamation shall be taken into account in both the cases. The evidences were recorded after amalgamation shall be evaluated in the S.T. No. 504 of 2006 case. Therefore the court has to look into the remaining witnesses i.e., PWs 13, 14 and 15 and defence witnesses.

8. It is settled law that all the evidence would be recorded in the presence of accused so, the proper legal



procedure has not been adopted by the trial Court. After, the testimony of PW-6 has been recorded, testimony of PW-13, 14 and 15 directly recorded. This is erroneously wrong and illegal which will result in the miscarriage of justice as this caused prejudice to the accused. The amalgamation on the face of it is illegal and after amalgamation, testimony of PW- 13, 14 and 15 has been considered in both the cases as the stages of both the cases are different so amalgamation from this stage is absolutely illegal. It is evident that learned Trial Court had to some extent tried to identify the status of the witnesses under two different sessions trial independently properly but all the proceedings took place after 05.03.2009 is against the law and procedure provided under Cr.P.C. Legally, both the cases cannot be disposed together so separate trial is required to be concluded.

9. Testimony recorded in one case cannot be taken as evidence in another case as examination of witness and recording of witness should be taken in the presence of accused as provided under Section 273 of the Cr.P.C. It is established law that there must be separate trial for distinct offence which has been provided under Section 218 of Cr.P.C. which ensure a fair trial by requiring that each distinct offense, an accused person is charged with, be tried separately, Section 218 read as



follows;

“For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately: Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person. (2) Nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.”

10. It is settled principle of law that all evidence taken in a trial or other proceedings is recorded in the presence of the accused. This principle is fundamental to fair trial as it allows that accused to hear the evidence, observe the demeanor of witnesses, and instruct their legal counsel accordingly. Essentially it guarantee accused's right to cross-examine witnesses and to ensure transparency and to allow the accused to understand the case against him and present their defence effectively. Legally, both the cases cannot be disposed off together, so, separate trial is required to be concluded after examining the remaining witnesses within six months in accordance with law.

11. The learned trial court, before clubbing both



the sessions trial vide order dated 05.03.2009, should have considered the aforesaid exigency and that being so, the amalgamation happens to be contrary to the spirit of law. Consequent thereupon, the judgment impugned has been passed on the basis of illegal procedure so followed by the learned Trial court and ultimately, leading to illegality which is being found incurable and consequently, it leads to a failure of justice. Hence, the same happens to be against the spirit of law, whereupon, is set aside judgment accordingly conviction and sentence is set aside.

12. The matter is remitted back to the learned Trial Court to proceed with the trial independently right from the stage after examination of PW-6. Learned trial court is directed to complete the trial within six months but, with a caution that there should be proper presence of the witnesses. The appellant is on bail, hence he is directed to surrender before the Trial Court within ten days of the receipt of copy of this judgment by the Trial Court and their bail bonds stand cancelled. Further, Superintendent of Police, Munger is directed to procure attendance of all the witnesses so that, the trial be concluded at an earliest. Learned Trial Court is directed to grant bail to the current appellant after surrendering before the Trial



Court within stipulated time. If the appellant did not surrender within stipulated time then the Trial Court is directed to take coercive steps against him.

13. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	NAFR
CAV DATE	N/A
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