

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 310 OF 2008

HRIDYANAND SHUKLA & ANR.

APPELLANTS

VERSUS

YADUPATI CHAUHAN & ORS.

RESPONDENTS

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos.1122 of 2004, 873 of 2004, 1507 of 2004, 1502 of 2004 and 1036 of 2004 and Criminal Reference No.7 of 2004, dated 01.09.2005.

2. The said appeals were preferred by the 5 accused persons viz. Mangaroo (A-1), Yadupati Chauhan (A-2), Bhanwar Pal (A-3), Deepak alias Chanda (A-4 and Arti Devi (A-5), respectively against the judgment of conviction dated 06.07.2004 and the order imposing sentence dated 07.07.2004 passed by the Ld. Additional Sessions Judge, Fast Track Court No.4, Deoria in Sessions Trial No.210 of 2003. By the impugned judgment and

order, the high Court has allowed Criminal Appeal Nos.1122 of 2004 and 873 of 2004, acquitting A-1 and A-2 of the charges under Sections 396 and 397 of the Indian Penal Code, 1860 ("the I.P.C." for short). As a consequence of A-1's acquittal, the Criminal Reference No.7 of 2004 made by the Ld.Sessions Judge, under Section 366 of the Code of Criminal Procedure ("the Code" for short), for confirmation of death sentence of A-1 is rejected by the High Court. The Criminal Appeal Nos. 1502 and 1507 of 2004 filed by A-3 and A-4, respectively have been partly allowed by the High Court setting aside their conviction and sentences under Sections 396 and 397 of the I.P.C., but maintaining their conviction under Section 412 of the I.P.C. The High Court has dismissed Criminal Appeal 1036 of 2004 filed by A-5 and confirmed her conviction and sentence under Section 412 of the I.P.C.

3. This appeal is filed by the complainant, whereby he questions the judgment and order of the High Court on the ground that the High Court, without properly re-appreciating the evidence on record, ought not to have acquitted A-1 and A-2 of the offences under Sections 396 and 397 of the I.P.C. Assailing the impugned judgment, Ld. Amicus would submit that the High Court fell into error for convicting A-3, A-4 and A-5 under Section 412 of the I.P.C. instead of prosecuting them under Section 411 of the I.P.C. in respect of recovery of stolen

articles.

4. With the assistance of the Learned Counsel appearing for the parties to the *lis*, we have carefully perused the judgment and order passed by the High Court and also analysed the evidence that was recorded by the Trial Court. The High Court has re-appreciated the evidence on record and observed that the two accused persons, A-1 and A-2, have neither been named in the FIR nor is their involvement disclosed at the earliest opportunity by any of the witnesses. Additionally, no charge has been laid by the prosecution under Sections 396 and 397 of the I.P.C. against them. The only identification of the said accused is during the course of the trial by the witnesses whose testimony stands contradicted by the evidence of Investigating Officer. In the light of the aforesaid and there being no Test Identification Parade at the investigation stage, the High Court has concluded that the evidence against the said accused persons is not sufficient for conviction under Sections 396 and 397 of the I.P.C.

5. We have analysed the impugned judgment on the touchstone of the evidence on record and weighed the submissions made by the Learned Counsel for the parties. In our considered opinion, the High Court has not committed any error whatsoever, by acquitting A-1 and A-2 of charges under

Sections 396 and 397 of the I.P.C. and by maintaining the conviction and sentence of A-3, A-4 and A-5 under Section 412 of the I.P.C., which would call for our interference. Accordingly, while sustaining the judgment and order passed by the High Court, we dismiss this appeal.

6. The fee of learned *Amicus* is assessed at Rs.7,000/-. Mr.Balaji learned A.C. wishes to deposit the amount in the Supreme Court Employees Mutual Welfare Fund.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
NOVEMBER 29, 2012

JUDGMENT