

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA No.S-1286-SB-2004 (O&M)
Date of decision:04.11.2015**

Milkha Singh and others

...Petitioners

Versus

State of Punjab

... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Harshit Sethi, Advocate for the appellants.

Mr. Yogesh Gupta, AAG, Punjab.

P.B. Bajanthri, J.

Accused Milkha Singh (father-in-law), Dilbagh Singh (husband) and Raj Kaur (mother-in-law) of victim Kiranbir Kaur, challenged the conviction and sentence passed by the trial Court under Sections 498-A, 323, 34 IPC vide which they were sentenced to undergo rigorous imprisonment for 3 years and fine of Rs.1000/- each and in default, to undergo one month rigorous imprisonment under Section 498-A vide which the accused were sentenced to undergo rigorous imprisonment for one year under Section 323/34 IPC. Both the sentences were ordered to run concurrently. Accused No.4-Manpreet Kaur (sister-in-law) of victim-

Kiranbir Kaur has been acquitted.

2. It is the brief case of the prosecution that accused Milkha Singh, Dilbagh Singh, Raj Kaur and Manpreet Kaur demanded dowry, maltreated and harassed Kiranbir Kaur, who got married to accused Dilbagh Singh son of Milkha Singh on 17.04.2000. On 24.08.2001, when Kiranbir Kaur was staying in her in-laws house, all the 4 accused verbally abused and physically assaulted her. Victim Kiranbir Kaur informed her sister namely Bikramjit Kaur. Due to various injuries on Kiranbir Kaur she was taken to the hospital at Ajnala. The Doctors examined her and found 7 injuries were caused on her. PW4 Dr. Raju Chauhan narrated the following injuries which is reflected in MLR report:-

1. *Crustered abrasion 16 cm x 1 cm on the back of neck standing on the right and left side just near the base of neck.*
 2. *Reddish blue contusion 10 cm x 8 cm on the left deltoid region.*
 3. *Area of multiple reddish blue contusion 20 x 10 cm on the left scapular region and left side of back of chest for which x.ray advised of left scapular region.*
 4. *Lacerated wound 3 cm x 1 cm bone deep on the palmer aspect of left little finger. The wound is horizontally placed advised x-ray left little finger.*
 5. *Reddish blue contusion of palmer aspect of left forearm lower 1/3rd.*
 6. *Reddish blue contusion 6 cm x 2 cm on right buttock.*
 7. *Patient feels pain in lower abdomen history of amenorrhoea 3½ month advised opinion of Gynecologist.*
- Nature of injury. Injury No. 1,2,5, & 6 declared simple in nature. Injury No. 3,4 &7 kept under observation. The probable duration of injuries are within 48 hours. Kind of weapon used*

is blunt”.

3. The complaint was made on 28.08.2001, the date on which Kiranbir Kaur was able to give her statement as she was not in a position to give statement on 24.08.2001 on account of unconsciousness. On 30.08.2001, she was complaining pain in lower abdomen. She was advised treatment for threatened abortion. Thus, PW5 did DNC on 30.08.2001 as it was inevitable abortion. Pursuant to complaint of Kiranbir Kaur an FIR was registered at Police Station Rajasansi under Sections 313, 498-A, 323/34 IPC in FIR No.119. 11 witnesses were examined by the prosecution.

4. PW1 complainant (Kiranbir Kaur) made a statement that she has been harassed from time to time for insufficient dowry and have started taunting her that she had not brought car in the marriage. The accused were insisting for dowry i.e. Zen Car and Rs. 1 lac in cash or in the alternative insisting her to claim her share in the agricultural land from her parents. She has also stated that accused were beating her and they used to send her to her parents house. In this regard, Panchayats were convened which were ended in compromise on every occasion. During pregnancy of Kiranbir Kaur the accused were harassing her. On 24.08.2001, accused verbally and physically assaulted her which compelled Kiranbir Kaur to gave a complaint. Statement of PW3-Balraj Singh (brother of victim) has supported what has been stated by PW1 Kiranbir Kaur. Statements of Doctors PW4 and PW5 have been taken into consideration to support the prosecution case.

5. Accused in their statement under Section 313 Cr.P.C. contended that they were innocent, but were falsely implicated in this case.

6. The trial court having adverted to the evidence on record came

to the conclusion that the prosecution has failed to establish offence under Section 313 Cr.P.C. However, prosecution has established beyond reasonable doubt the offences under Section 498-A, 323/34 IPC.

7. PW1 Kiranbir Kaur and PW3-Balraj Singh have categorically deposed that sufficient dowry was given at the time of marriage. But dissatisfied with the dowry, the accused have maltreated PW1-Kiranbir Kaur and harassed her by demanding more dowry like cash/car/share in agricultural property.

8. Learned counsel for the appellants submitted that the alleged incident of assault took place on 24.08.2001 whereas the complaint/FIR filed in PS Rajasansi on 28.08.2001 therefore, there is an inordinate delay in filing the complaint/FIR results in vitiating the entire proceedings. Learned counsel appearing for the appellants would submit that PW1 was not happy with the marriage as is evident that she was frequently going to her parents house for one or the other reason. There is no material or corroborated evidence in respect of demand of dowry as stated by PW1 and PW3 therefore, their evidence are to be discarded. Learned counsel for the accused further submitted that injuries might have caused due to fall and there was no corroborated evidence to show that accused have physically assaulted and verbally abused PW1-Kiranbir Kaur. In totality, it was contended that accused never demanded for dowry and there are no materials to establish that there was a demand for dowry. So also, accused have not caused any injury on PW1-Kiranbir Kaur since no eye-witness deposed that accused have assaulted PW1. It was further contended that injuries are simple as opined by the doctors PW4 and PW5. Therefore,

convicting the appellants both under Sections 498-A and 323/34 IPC is highly arbitrary in the absence of necessary corroborative evidence. Learned counsel for the accused contended that accused have been convicted and maximum sentence has been imposed both under Section 498-A and 323/34 IPC which is not fair on the part of the trial Court having regard to the available material evidence. It was also contended that accused are entitled to release on probation. The appellants' counsel relied on Supreme Courts decision which is reported in (2007) 12 SCC 641 titled as ***Dilawar Singh versus State of Delhi***. Relevant extract of the judgment is as follows:-

“9. In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case”.

9. Learned counsel for the accused contended that one of the injury caused on Kiranbir Kaur was with blunt weapon. There is no recovery of weapon. Consequently, the accused caused injuries cannot be substantiated. Bikramjit Kaur-sister of PW1-Kiranbir Kaur was not examined in the matter. In view of these defects, the appellants are entitled for acquittal in the matter.

10. On the other hand, learned State counsel vehemently contended

that the delay in lodging complaint with reference to the date of incident and date of complaint is due to inability of PW1 who was injured and admitted in hospital and she was unconscious. Therefore, delay in lodging complaint is a genuine one and supported by reasons. Moreover, if the appellants have not caused injuries on Kiranbir Kaur-PW1 then any of the accused could have reported to the police station stating that Kiranbir Kaur got injuries and got admitted in the hospital. Therefore, delay is not fatal to the proceedings. It was further contended that 11 witnesses were examined in support of the prosecution case. Statement of PW1-Kiranbir Kaur has been supported by PW3-Balraj Singh. So also evidence adduced by PW5 and PW9 relating to injuries for the purpose of demand of dowry, statement of PW1 cannot be doubted and it is sufficient. The Supreme Court held that women statement in the case of dowry harassment is to be accepted in the absence of corroborative evidence unless her statement is disputed by contrary evidence. In the present case, accused have not adduced any evidence except oral evidence. In her evidence she has narrated what are the articles given in the marriage and subsequent demand of dowry like cash of Rs.1 lac and Zen car or in the alternative demand of her share in the parents property. Therefore, prosecution has made out a case under 498A and 323/34 of IPC. Trial Court rightly convicted the appellants. There is no infirmity in the judgment of the trial court. Thus, he has prayed for upholding the judgment of the trial Court.

11. It is relevant to read Section 498A of Cr.P.C. Extract of Section 498-A of Code of Criminal Procedure:-

“ [498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the

relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

12. Having regard to the factual aspects that at the time of marriage between the appellant No.2-Dilbagh Singh with Kiranbir Kaur members of the family of Kiranbir Kaur have completed the formalities by giving certain articles. The appellants were not satisfied and they were insisting for further dowry like cash of Rs. 1 lac or Zen car or in the alternative to bring share in the family property of Kiranbir Kaur. For non-compliance of the further dowry demand, the appellants have harassed Kiranbir Kaur both mentally as well as physically on 24.08.2001. It is interestingly to take note that Section 498-A was inserted as per Act 46 of 1983 to “suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by her husband and in-laws”. Therefore, 498-A(b) is attracted in the present case. It was noticed that PW1 Kiranbir Kaur-wife Dilbagh Singh (appellant No.2) married on 17.04.2000 and as on 24.08.2001 Kiranbir Kaur was pregnant for about 8 to 10 weeks. When Kiranbir Kaur was pregnant, it was duty of her husband Dilbagh Singh-appellant No.2 to protect her. On the

contrary, conduct of Dilbagh Singh-appellant No. 2 and other appellants on 24.08.2001, i.e. beating Kiranbir Kaur and causing injury amounts to both mental and physical agony to her. PW1-Kiranbir Kaur has categorically made a statement that the appellants were demanding dowry of a car, cash or to get share in the family property of PW1 read with causing injuries on 24.08.2001.

13. Learned counsel for the appellants contended that there is no material evidence or corroborated evidence insofar as demand of dowry and the trial Court wholly dependent on version of PW1 and her brother-PW3. Since PW1-Kiranbir Kaur was not happy with the marriage which is evident from the statement of PW1 itself that PW1 Kiranbir Kaur was visiting her parents house frequently and the same was settled in compromise in a Panchayat therefore, there is no corroborated evidence to indicate that the appellants have demanded dowry. Statement of PW1 cannot be discarded because she is the one who suffered mental and physical agony in the hands of the appellants. At this stage, it is relevant to note that a female member would not initiate false proceedings against her husband and in-laws in the absence of severe harassment meted out to her by them. Therefore, statement of PW1-Kiranbir Kaur against the appellants are rightly accepted by the trial Court.

14. Counsel for the appellant contended that they have not assaulted PW1 on 24.08.2001 since there is no corroborative evidence except the evidence adduced by PW1. If the appellants have not caused injuries on PW1-Kiranbir Kaur, if the presumption is that PW1 got injuries on her own then the appellants could have taken PW1 to the hospital. On 24.08.2001 to

28.08.2001 when the appellants are silent despite PW1 was admitted in the hospital it is evident that the appellants have caused injuries on PW1. In other words, presumption can be drawn having regard to the fact that between 24.08.2001 to 28.08.2001 i.e., the date of assault occurred and lodging of the complaint the appellants did not assist PW1 to take treatment in the hospital. Counsel for the appellants contended that there is inordinate delay in lodging complaint. There is a material reason on record, delay in lodging complaint. It was noticed that on 24.08.2001 PW1 was injured and admitted to hospital in the night and she was taking treatment and so also she was not in a position to give statement. Therefore, there is a delay in lodging a complaint. The delay in lodging complaint cannot wipe out the fact that the appellants have harassed PW1 both physically and mentally for bringing further dowry. Therefore, delay will not come in the way of absolving the charges against the appellants. The decision cited by the appellants' counsel will not assist having regard to the factual aspects of the present case that PW1 was unable to give complaint. The appellants contention is that there is no recovery of blunt weapon by the investigation agency. Even in the absence of recovery of blunt weapon the doctors evidence and opinion are sufficient to establish that one of the injury was with blunt weapon. Therefore, for non-recovery of weapon the proceedings will not vitiate. Non-examination of sister of PW1 is one of the contention of the appellant. Even in the absence of her examination the proceedings would not vitiate. There are other evidences. Therefore, the appellants have not made out a case so as to interfere with the order of the trial court.

15. Learned counsel for the appellants contended that the appellants

are to be released on probation. No case has been made out for releasing them on probation for the reasons that the complainant and appellant No.2 are not living together. Insofar as the contention of sentencing the appellants was too harsh as maximum penalty under both the Sections have been imposed is concerned, having regard to the fact that the alleged incident relates back to 2001 and the appellants have been convicted on 02.06.2004 and the appellants were on bail from 2004 to this date. Moreover, it is stated that both appellant No.2-Dilbagh Singh and PW1-Kiranbir Kaur are living separately and they entered into 2nd marriage after judicial separation. Therefore, it is appropriate to modify the sentence from 3 years to 1 year rigorous imprisonment under 498A IPC and fine of Rs.1000/- and in default one month rigorous imprisonment and 6 months rigorous imprisonment under Section 323/34 IPC. Both the sentences shall run concurrently.

16. The accused-appellants were on bail, therefore, bail bonds stands cancelled. They shall surrender within 15 days from the date of this judgment before the CJM, Amritsar. If they fails to surrender, the learned CJM, Amritsar shall take coercive steps to secure their presence and send them to jail to undergo the sentence.

17. PW1 Kiranbir Kaur suffered both mentally as well as physically, she has lost dignified life after marrying appellant No.2-Dilbagh Singh therefore, she be paid compensation of Rs.1 lac. The same shall be paid by the appellant No.2-Dilbagh Singh, within a period of six months from today.

18. In terms of the above, order/findings of the trial court is upheld and sentence is modified. Appeal is dismissed.

4th November 2015
pooja saini

(P.B.BAJANTHRI)
JUDGE