

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

Criminal Appeal No. S. 394 SB of 2004
Date of decision : 04.02.2015.

Vakil Singh

..... Appellant.

versus

State of Punjab

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. Narinder Singh, Advocate for the appellant.
Mr. Yogesh Gupta, AAG, Punjab.

K.C.PURI, J.

Challenge in this appeal is the judgment dated 03.02.2004 and order dated 04.02.2004 passed by Shri Jora Singh, learned Additional Sessions Judge, Barnala vide which the accused-appellant was convicted under Sections 306 and 498-A of the Indian Penal Code (in short – the IPC) and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.4000/- and in default thereof to further undergo rigorous imprisonment for a period of four months under Section 306 read with Section 116 of the IPC and to further undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- and in default thereof

to further undergo rigorous imprisonment for a period of two months under Section 498-A of the IPC. Both the sentences, were however, ordered to run concurrently.

2. Briefly stated, the prosecution story is that Sukhdev Kaur, complainant was married to Vakil Singh about two years back and from this wedlock she has one son aged about 5 months. After the marriage, there was dispute between the complainant and her husband Vakil Singh. Kaka Singh brother of the complainant was married some times back and in the marriage car was given. At the time of marriage of the brother of the complainant Vakil Singh had quarreled with the complainant in the presence of her entire family. After that Vakil Singh started giving beatings to the complainant and demanding a car. On 27.02.2001 at about 3-4p.m., Vakil Singh was saying to the complainant to leave the house. Complainant replied that her parents be summoned and then she would leave the house. Then Vakil Singh said that complainant should die. Vakil Singh also started abusing the complainant and her parents and had gone to the roof of the house. Being fed up from the daily dispute, she had poured kerosene oil on her and attempted to commit suicide by setting herself on fire. Except Vakil Singh, husband of the complainant, no other family member ever harassed her. On the basis of aforesaid statement FIR was got recorded. Accused was arrested. He also prepared rough site plan of the spot with correct marginal notes and further recorded statements of the witnesses. After receipt of report of FSL, and completion of formal investigation, challan against the accused was presented in court.

3. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. Charge under Sections 306 read with Section 116 and 498-A of the IPC was framed against the accused. Accused pleaded not guilty and claimed trial.

4. In support of its case prosecution examined PW1 Sukhdev Kaur, PW2 Gurmel Singh, PW-3 Shri HCS Tiwana, JMIC, PW-4 Inspector Amarjit Singh, PW-5 Manoj Kumar, Record Keeper, PW-6 Dr. Seekha Aggarwal, PW-7 Dr. Gagandeep and thereafter learned Additional Public Prosecutor for the State closed the prosecution evidence.

5. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to accused in his statement recorded under section 313 Cr.P.C., he denied the prosecution allegations and pleaded his innocence. He further stated that Sukhdev Kaur used to say in the presence of his father and uncle Malkiat Singh that her marriage was performed against her will and forcibly. Accused is not her liking. Sukhdev Kaur also used to say that she wanted to get divorce, but he was not divorcing her because there is a child from the wedlock who is in his custody. Sukhdev Kaur is residing with her parents after the incident and she also used to say that she would commit suicide and he should be ready to undergo imprisonment for life. His father used to request Sukhdev Kaur not to commit suicide because she was married. He did not demand any car or any other article from Sukhdev Kaur or her parents. Sukhdev Kaur was never maltreated. On 27.02.2001 at about 3/4p.m., Sukhdev Kaur had quarrelled with him on the ground that she wanted to get divorce from

him, but he had flatly refused to give divorce. His father and uncle had prevented Sukhdev Kaur but she poured kerosene oil upon her and attempted to commit suicide by setting herself on fire. He alongwith his father Amarjit Singh and uncle Malkiat Singh and other family members had extinguished the fire. Sukhdev Kaur was shifted to DMC, Ludhiana, where she remained under treatment for about 1½ months. Entire expenditure was incurred by them. Bills are in the name of his father (father of accused). After release on bail he had told Sukhdev Kaur that he is to file complaint against her but she and her parents had already instituted criminal case against him. She did not agree for rehabilitation then he had approached Police Station Sehna to lodge report but his report was not written by the police. Private complaint under Section 309 of the IPC was filed which is pending. Message was sent to the parents of Sukhdev Kaur, who came to DMC Ludhiana and then prompted Sukhdev Kaur made a false statement before the JMJC, Ludhiana. However, accused examined Vijay Kumar as DW-1, Jatinder Kumar Advocate as DW-2, Ravi Arpan as DW-3 and P.K.Sharma as DW-4 in his defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment dated 03.02.2004 and order dated 04.02.2004, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment dated 03.02.2004 and order dated 04.02.2004, accused-appellant has directed the present appeal.

8. Learned counsel for the appellant has submitted that

complainant Sukhdev Kaur remains alive after the occurrence and on that account the offence under Section 306 of the IPC is not made out. Learned trial court has convicted the accused/appellant in respect of offence under Section 306 read with Section 116 of the IPC. Section 116 of the IPC deals with offences in which cases offence is not committed and no express provisions has been made in the Code regarding such abatement. Section 306 of the IPC relates to abatement of commission of suicide. Since offence under Section 306 of the IPC is itself an offence regarding abatement of suicide, therefore, the same cannot be said to be punishable with offence under Section 306 read with Section 116 of the IPC.

9. Counsel for the appellant has further submitted that in fact Sukhdev Kaur was aggrieved on account of the fact that her marriage was forcibly organized and against her will with the accused-appellant. Sukhdev Kaur is not liking the appellant. On 27.02.2001 she had a quarrel with the appellant and she wanted to get the marriage dissolved by a decree of divorce to which the appellant did not agree. Sukhdev Kaur tried to commit suicide and appellant along with his father Amar Singh and Malkiat Singh brother have extinguished the fire. Sukhdev Kaur was shifted to DMC, Ludhiana by the appellant and he has incurred whole the expenses. The trial court has not admitted the said fact on the ground that the bills are in the name of Sukhdev Kaur. However, the trial court has lost sight of the fact that bills remains in possession of the person, who made the payment. The said bills have been produced by the appellant. In fact, Sukhdev Kaur is the guilty of offence under Section 309 of the IPC and private complaint was

filed against her, which is pending.

10. The learned counsel for the appellant has further submitted that in case the court is not inclined to accept the prayer of the accused/.appellant, in that case, the occurrence took place about fourteen years back and since then he is facing agony of protracted trial. This Court in authority **Dharam Pal vs. State of Punjab reported in 2010(4) R.C.R. (Criminal) page 920** reduced the sentence under Section 306 of the IPC from seven years to two months.

11. Again this Court in authority **Satto and others vs. State of Punjab reported in 2003(4) R.C.R. (Criminal) page 878** reduced the sentence to the period already undergone from seven years, which was for five months in case of mother-in-law and one year in case of husband under Section 306 of the IPC. The present offence is much lessor than offence under Section 306 of the IPC as only 1/4th part of the sentence can be awarded in respect of the main offence by invoking the provisions of Section 116 of the IPC.

12. The State counsel has supported the judgment of the trial court. It is submitted that marriage was only two years old. Sukhdev Singh was subjected to cruelty in connection with demand of car. Appellant has been rightly convicted under Sections 306 read with Section 116 of the IPC and 498-A of the IPC.

13. I have given my thoughtful consideration to the rival submissions made by both the sides and have gone through the records of the case.

14. Section 306 of the IPC deals with abatement of suicide. If any person commits suicide and whosoever abated the commission of suicide shall be punishable with imprisonment mentioned in the Section.

15. Section 116 of the IPC deals with abatement of offence punishable with imprisonment if offence is not committed, this section envisaged that whosoever abet an offence punishable with imprisonment and if the offence is not committed in consonance of abatement he shall be punished which may be 1/4th part of the longest term provided for that offence. So, the argument advanced by the counsel for the appellant that appellant cannot be convicted under Section 306 of the IPC read with Section 116 of the IPC carries weight and has to be accepted. There cannot be abatement of abatement of an offence. Since section 306 of the IPC is itself abatement so its further abatement is not possible. It is not disputed that complainant has not died and has deposed in the Court. So, the offence under Section 306 of the IPC is not made out. So, in these circumstances, the conviction recorded by the trial Court in respect of offence under Section 306 of the IPC read with Section 116 of the IPC does not sustain the test of legal scrutiny and consequently the conviction recorded under Section 306 of the IPC read with Section 116 of the IPC stands set aside.

16. The other offence for which the appellant has been convicted is in respect of offence under Section 498-A of the IPC. There is sufficient evidence on the file for the conviction of the appellant under Section 498-A of the IPC, the appellant made demand of car and there are other allegations of harassment made by the appellant to his wife who happened to be the

complainant in the present case. So, the conviction recorded by the trial Court in respect of offence under section 498-A of the IPC does not call for any interference.

17. The stand of the appellant is that his father has spent amount on the treatment of Sukhdev Kaur while she was in hospital. The learned trial Court has not accepted the said contention. Even for the sake of argument, if it is assumed that his father has spent amount on the treatment of complainant, in that case, the appellant is not absolved of his liability in respect of offence under section 498-A of the IPC. Counsel for the appellant has failed to give the status of complaint under Section 309 of the IPC preferred by him. So, no benefit can be derived by the appellant from that contention.

18. Now reverting to the quantum of sentence.

19. As per custody certificate appellant has undergone incarceration for a period of one month and twelve days.

20. This Court in authority **Satto and others' case (supra)** reduced the sentence to the period already undergone from seven years, which was for five months in case of mother-in-law and one year in case of husband, which was already undergone by them under Section 306 of the IPC.

21. In authority **Dharam Pal's case (supra)** the sentence was reduced to two months in respect of conviction of the accused under Section 306 of the IPC against the substantive sentence of seven years rigorous imprisonment, the occurrence took place about eleven years back

in that case. In the present case, the occurrence relates to about fourteen years back. So, keeping in view the period of custody of one month and twelve days, the sentence of the appellant under Section 498-A of the IPC stands reduced to the period already undergone. However, his sentence of fine imposed under Section 498-A of the IPC stands affirmed.

22. A copy of this order be conveyed to the trial Court for strict compliance.

February 04, 2015

SV

**(K. C. PURI)
JUDGE**

