

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-5049-SB of 2014.
Decided on:-July 30, 2015.

Santosh.

.....Petitioner.

Versus

Vinod and others

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Jangvir Singh Hooda, Advocate
for the petitioner.

HARI PAL VERMA, J.

The appellant-complainant, namely, Santosh has filed the present appeal challenging the judgment dated 21.10.2014 passed by learned Additional Sessions Judge, Palwal whereby the respondent-accused have been acquitted of the charges levelled under Sections 498-A, 406, 323, 328 and 506 read with Section 34 IPC.

Briefly stated, on the basis of complaint made by the complainant, a case FIR No.18 dated 8.5.2012 under Sections 323, 498-A, 406 and 506 read with Section 34 IPC was registered against the accused at Police Station Camp Palwal. As per the FIR, complainant Santosh was married with respondent-accused Vinod on 16.5.2011 as per Hindu rites and ceremonies. Sufficient dowry was given at the time of marriage, but still the accused used to tease her for bringing less dowry and they made a demand

of Alto car. However, when the demand was not fulfilled, she was thrown out of her matrimonial home. On 7.5.2012, when the complainant was going to Rajiv Nagar from Palwal court, her husband Vinod came on a motorcycle along with some unknown person and forcibly took her to her in-laws place where she was given beatings and was threatened. On 8.5.2012 at around 10.30 a.m. the accused administered her some poisonous substance forcibly while mixing in the water. She was admitted in the hospital by the neighbours. It is on the aforesaid basis, the FIR was registered and later on Section 328 IPC was added in the case.

On the basis of the statement of witnesses, the police conducted investigation and challaned the accused for the offences punishable under Sections 323, 328, 498-A, 406 and 506 read with Section 34 IPC. The accused were supplied the documents as required under Section 207 Cr.P.C. and charge was framed.

The prosecution examined as many as eight witnesses. The appellant-complainant, namely, Santosh who appeared as PW3 has deposed that her marriage was solemnised on 16.5.2011 and her parents spent a huge amount and gave Rs.1,51,000/- in cash, one Pulsor motorcycle, other household articles and jewellery to her husband and in-laws in the marriage. Immediately after one month of the marriage, her mother-in-law Ramwati i.e. accused No.2 and her husband Vinod, sister-in-law Priya, Pooja and her brother-in-law Dinesh and maternal uncle-in-law Mahesh started harassing her for bringing Alto car in dowry. They also demanded cash from her and

started beating her. After two months of the marriage, the accused left her to her parental house and told that if she brings the car, only then she will be allowed to stay in the matrimonial house. Her father accompanied some relatives, members of the Panchayat who came to her matrimonial house to make understand her in-laws and husband, but they did not agree with her father and the demand of car continued. She was even threatened that in case the demand is not met, they would re-marry accused Vinod. The complainant moved an application before the Women Cell, Palwal. It is on 7.5.2012 when she was going back from court to her house, the accused No.1 came on his motorcycle along with another person whom she did not know at that time, but later came to know his name as Bijender, they forcibly took her to the matrimonial house. There the accused as well as sister-in-law, brother-in-law and uncle-in-law gave beatings to her. The accused had even gone to the extent of forcibly administering some poisonous substance to her while mixing with water and after drinking such poisonous water, she became unconscious. She was taken to General Hospital, Palwal from where she was referred to some other hospital. She was admitted in Balaji Hospital, Palwal for treatment where her statement Ex.P2 was recorded by the police. On 9.5.2012, the police again recorded her statement when she disclosed names of all the accused.

Govinda, who is brother of the complainant (PW3), appeared in the witness box as PW6 and deposed on the similar lines as stated by the complainant.

PW5 SI Mahavir Singh (retired) has received Tehrir Ex.P4 on 8.5.2012 and recorded FIR Ex.P5 bearing endorsement Ex.P6.

SI Dharmender, Economic Cell (PW7) is the investigating officer and stated that on receipt of Ruqqa on 8.5.2012 from General Hospital, he went to the hospital and found that she had been referred to B.K. Hospital, Faridabad. On the way, it was revealed that the complainant was admitted in Balaji Nursing Home, Palwal. Then he reached there and the opinion of the doctor was taken and recorded. He also recorded statements of witnesses and accused Ramwati was arrested on 12.5.2012 whereas accused Vinod was arrested on 14.5.2012. He further deposed that on the basis of disclosure statement (Ex.P9) of accused Vinod, recovery of dowry articles was effected.

PW1 Sarwan Kumar, Draftsman and PW2 Inspector Surinder Singh are formal witnesses.

Dr. Sudeep (PW4) has stated that patient Santosh had come with alleged history of consumption of some poisonous substance and on examination, he found her with gastric lavage attempted by RT but the patient was not cooperating and, therefore, could not be done.

Dr. Rajiv Gupta, who appeared as PW8 has stated that he is the proprietor of Balaji Nursing Home, Palwal and on 9.5.2012, complainant Santosh was admitted in his hospital after taking some unknown substance.

Considering the aforesaid evidence, the trial Court vide judgment dated 21.10.2014 had acquitted the accused.

Learned counsel for the appellant-complainant states that the complainant was harassed with dowry demands after her marriage. She was even forcibly abducted and confined in her matrimonial house while giving her beatings. He has further submitted that she was also given the poisonous substance for which she was admitted in General Hospital, Palwal and subsequently at Balaji Nursing Home, Palwal followed by Guru Nanak Dev Hospital, Palwal. So, FIR Ex.P5 was prompt in time and was recorded after the first statement Ex.P2 of the complainant.

I have heard learned counsel for the appellant-complainant.

The statement of PW6 Govinda who is brother of the complainant has been found to be hearsay witness as he has deposed on the basis of information given to him by his sister and there has been no demand in his presence. In his cross-examination, he has stated that no dowry was demanded from the complainant directly. The complainant (PW3) and her brother Govinda (PW6) have miserably failed to specify date, place and time or name of the particular accused who demanded dowry. There is apparent contradictions in the statements of PW3 Santosh and PW6 Govinda as she has stated that dowry was demanded in the form of Alto car along with unspecified amount, whereas the statement of PW6 Govinda shows that demand was limited upto Alto car. There is no specific evidence regarding the demand of dowry. As such, the charge of demanding dowry articles has not been proved from the statements of PW3 complainant Santosh and PW6 Govinda.

As regard the offences under Sections 323 and 328 IPC are concerned, when accused Vinod abducted the complainant (PW3) on his motorcycle along with another person near Kithwari Chowk, it has come on record that Kithwari Chowk is a public place and there is no word in the statement of PW3 that she had made hue and cry in order to rescue herself from the clutches of accused Vinod. Even the allegations of Section 328 IPC regarding forcibly administering some poisonous substance is not proved. As per the statement of complainant Santosh (PW3), she became unconscious and her mother-in-law and brother-in-law took her to General Hospital, Palwal. Administration of poison or any such substance as mentioned in Section 328 IPC must be done or caused to be taken by the victim of the offence with an intent that hurt was caused. As there is no hurt or grievous hurt caused, no offence under Section 328 IPC is made out. The very essential element of Section 328 IPC is that the victim should be administered poison or any stupefying, intoxicating or unwholesome drug. The forensic examination of the stomach wash in order to determine the substance that administered was poison is, therefore, imperative for ascertaining the commission of offence under Section 328 IPC. Simply because the victim was rendered unconscious would not lead to the conclusion that poisonous substance was administered to her. There is no medical evidence on record which can confirm that some poisonous substance was administered to the complainant because as per the statement of Dr. Sudeep (PW4), the patient came with alleged history of consumption

of some poisonous substance and the patient was not cooperating and, therefore, “gastric lavage attempted by RT but patient was not cooperative and, therefore, could not be conducted and the patient was referred to B.K. Hospital, Faridabad”.

Similarly, the allegation of threat as defined under Section 506 IPC is also not proved when the story propounded by the complainant regarding abduction is not established.

Thus, when PW3 and PW6 have failed to prove the specific date, time and place and name of specific accused and there is no allegation of misappropriation of dowry article and the allegations having not been proved, no case under Section 498-A IPC is made out. Similarly, there are inherent contradictions between the statements of complainant Santosh (PW3) and her brother Govinda (PW6). In fact, no case for administering poisonous substance to the complainant has been proved by the prosecution and no injury was proved in the medical examination of the complainant.

In view of the above, I find no merit in the present appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

July 30, 2015
'Yag Dutt'