

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

CRM-A-1140-MA-2014 (O&M)

Date of Decision: 18.10.2016

Sunita

...Appellant(s)

Versus

Kulbhushan

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr.M.D. Khan , Advocate
for the appellant.

ANITA CHAUDHRY, J.

CRM-22276-2014

For the reasons set out in the application, same is allowed
as prayed for and delay of 50 days in filing the appeal is condoned.

CRM-A-1140-MA-2014

This is an appeal against acquittal in a complaint case filed
by the appellant.

The basic facts are necessary. Sunita was married to
Kulbhushan in November, 1991. She had three children out of this
wedlock. A complaint was filed by her in January, 2001, which was
sent to the police under Section 156(3) Cr.P.C. FIR No.39 was
registered on the same day. The matter was investigated and a
cancellation report was submitted as during investigation, it had

appeared that she had earlier lodged a complaint at Bhiwani in 1997. She had given an affidavit that the case was registered on account of some mis-understanding and she did not want to proceed with the complaint and the marriage was dowry-less. The complainant was not satisfied with the report. The complaint given by her was treated as a protest petition. Preliminary evidence was recorded and only the husband was summoned in February, 2013, noticing the fact that the couple was living separately and some of the accused who had been named were not even part of the immediate family.

The allegations levelled by the complainant were that after her marriage they started living in village Burail and her parents had given sufficient dowry but the in-laws were not satisfied and there was a demand of Rs.14,000/- on two occasions and she was beaten up at the instance of accused nos.6 & 7. It was alleged that accused no.6 was a Head Constable in Police Department and he used to proclaim that nobody could harm them and that he would face the consequences. The complainant had further averred that her father persuaded accused no.1 to live separately in Sector – 2, Panchkula, which was an accommodation provided by his employer. The complainant had given a list of articles given in the marriage. Allegations were made that accused nos.2 to 7 used to come and live in their house and used to torture her and treated her with cruelty and had not returned her articles. The complainant had examined herself, her sister and her father. The trial Court examined the evidence and acquitted the accused. Para no.15 of the judgment which summarized the evidence reads as under:-

“15. CW1 Babita Walia, CW2 Sunita and CW3 Bhim Singh have stated different versions of the occurrence when they appeared in the witness box and have neither corroborated each other on all material points nor have supported the allegations made in the complaint. Not only this, CW1 Babita Walia has stated in her cross-examination that the matter was compromised in the year 2008-2009 and thereafter, the accused and the complainant lived together for 3-4 years. CW2 Sunita has stated that they lived together from 2006 to 2009 and CW3 Bhim Singh has stated that they shifted in the year 2004 and thereafter, lived together for 6-7 years. Again all the aforesaid witnesses have stated different versions with regard to the time, when the accused and the complainant lived together. Though the witnesses produced by the complainant have alleged that the dowry was given at the time of marriage but there is nothing in the complaint to show that those articles were demanded by the accused nor any specific allegations are made as to which of the accused demanded, which article. Furthermore, there are discrepancies about the amount given by father of the complainant to the accused. All the three witnesses have given different versions about the same and have also stated three different occasions, when such amount was given by Bhim Singh to the accused. CW2 Sunita and CW3 Bhim Singh have not even mentioned as to whom the alleged amount was handed over nor the same is mentioned in the complaint and all the allegations levelled by the complainant are vague and nothing has been disclosed specifically as to what and on how many occasions, the accused persons demanded money nor any specific detail or instance of beating has been mentioned by the complainant either in her complaint or at the time of recording of her testimony. CW2 Sunita and CW3 Bhim

Singh have admitted previous litigation between the parties and even in the police report, wherein cancellation report was filed as no truth was found in the allegations of the complainant, it was found that the complainant was residing with her husband at that time and other relatives were not residing with her at Panchkula. Though the complainant alleged that the dowry articles were handed over to the accused but there is nothing in her testimony or her complaint that any such article, which was handed over to the accused, was demanded by the complainant and the accused refused to return the same to the complainant and converted it to his own use. In view of the aforesaid discrepancies, vagueness of the allegations and previous litigations between the parties, false implication of the accused cannot be ruled out in the present case and the testimony of all the aforesaid witnesses fails to inspire the confidence of the court with regard to its veracity and genuineness beyond doubt.”

I have heard the counsel for the appellant at great length.

It is also necessary to notice that after the dismissal of the complaint an appeal had been preferred before the Sessions Court, which was dismissed in view of the judgment rendered by the Full Bench in ***M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. and others, 2013 (2) RCR (Crl.) 1005*** and that was the reason for the delay in filing the appeal.

The submissions on behalf of the appellant were that the complainant had been beaten and turned out of the house and she had also produced MLR Mark C-1 but the Court had failed to consider the evidence or the statements given by the witnesses.

A complaint was given to the Magistrate on 30.01.2001. The complaint was forwarded to the police on the next day and the police had registered and FIR and had investigated the matter and had filed the cancellation report some time in May, 2001. The MLR produced on the record pertains to September, 2011. At that point of time the complainant was not living with the husband. Another complaint was given by Sunita and an FIR had been registered which is available on record. The fate of that case is not known. The complainant had filed another complaint in 2004 against the husband, his relatives and the police officials regarding an incident of January, 2004 which ended in acquittal. The copy of the judgment is Ex. R-2. It has appeared from the record that after filing of the complaint in 2001, the complainant had lived with the husband from 2006 to 2009.

The complainant had failed to produce any medical record regarding the incident prior to 2001. The trial Court had found discrepancies in the statement of the witnesses and rightly so. The evidence was not sufficient to record a conviction. There is no reason to take a different view. There is no merit in the appeal and is dismissed.

(ANITA CHAUDHRY)
JUDGE

18.10.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No