

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

CRM-A-877-MA of 2013 (O&M)

Date of Decision: 11.12.2017.

Neetu @ Kamal

... Applicant-Appellant

Versus

Jagdish Kumar and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Sanjeev Bishnoi, Advocate for
Mr. Vikram Anand, Advocate,
for the applicant-appellant.

JITENDRA CHAUHAN.J.

This is an application under Section 378(4) of Code of Criminal Procedure seeking special leave to appeal against the judgment dated 23.07.2013, passed by Additional Chief Judicial Magistrate, Amritsar vide which respondent Nos.2 to 4 were acquitted in complaint case filed under Sections 406 and 498-A read with Section 34 IPC. However, respondent No.1/husband was convicted under Section 498-A IPC and sentenced to undergo RI for two years and to pay fine of Rs.5000/- with default stipulation. Respondent No.1 was also acquitted under Section 406 IPC.

Brief facts of the case are that a marital knot was tied between Jagdish Kumar (accused No.1) and Neetu @ Kamal (complainant) on 12.11.2002. The couple was blessed with a male child on 11.08.2003. At the time of marriage, huge dowry including jewellery valuing Rs.54950/- was given by the father of the

complainant to the accused. However, after marriage the said jewellery was not handed over by the accused to the complainant. Accused No.1 Jagdish Kumar started maltreating and beating the complainant for bringing inadequate dowry and raised a demand of refrigerator, cooler and washing machine at the instance remaining accused. The complainant showed her inability to meet the demand. Thereafter, the accused demanded more gold on the pretext that the gold ring and chain were very light in weight. Their demand was met by the father of the complainant. Still the accused were not satisfied. When the complainant became pregnant, the accused did not provide her adequate food and extra diet. On 20.07.2003 the complainant was given beatings by the accused and she was turned out from the matrimonial home. She was admitted in Darshna Hospital, Gilwali Gate, Amritsar where she gave birth to a male child on 11.08.2003. All the expenses of hospital were borne by her parents. On her approaching the accused including with panchayat members, the accused refused to rehabilitate her. On 02.09.2005 the parties were called by Smt. Reeta Jain, Assistant District Attorney for compromise but of no avail. The complainant and her father were given filthy abuses by accused Jagdish Kumar and his father Kewal Parkash. She was given a blow on her left cheek by accused No.1 while serious injury was caused to her father by accused Nos. 1 and 2. Father of the complainant was got medico-legally examined from Civil Hospital, Amritsar vide MLR dated 10.09.2004. When the police did not take any action, instant complaint

was filed in the Court.

Vide order dated 19.03.2008, the accused were summoned to face trial under Sections 498-A, 406 and 506 read with Section 34 IPC.

In pre-charge evidence, the complainant has examined herself as CW-1, Dr. Ramesh Kumar as CW-2, Rakesh Kumar as CW-3, Des Raj as CW-4, Sandeep Singh, Clerk, Record Room, Amritsar as CW-5 and closed the evidence.

Charges under Sections 406 and 498-A IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In the post charge evidence, the complainant has examined herself as CW-1, Dr. Ramesh Kumar as CW-2, Des Raj as CW-4 and closed the post charge evidence.

The statements of the accused were recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to them to which they denied and pleaded false implication.

No evidence in defence was led by the accused.

After appraisal of the evidence, the learned trial Court vide judgment dated 23.07.2013, acquitted respondent Nos. 2 to 4 of the charges framed against them. However, respondent No.1 was convicted under Section 498-A IPC and sentenced to undergo RI for two years with default stipulation..

Feeling dis-satisfied, the present application for special leave to appeal has been filed under Section 378(4) Cr.P.C by the complainant.

It is contended that impugned judgment is illegal and against the facts and evidence on record. It is further contended that while passing the impugned judgment, the trial Court has ignored the cross-examination of Des Raj who is father of the complainant. From the testimony of Des Raj, offence under Section 406 IPC is proved on record. The dowry articles were specifically entrusted to the accused which have been misappropriated by them. The demand of dowry and maltreatment for not fulfilling the demand have been proved on record by the witnesses.

Heard.

The complainant as well as her father Des Raj have admitted that they do not know the name of jeweller from where the jewellery was purchased. No bill has been proved on record. Des Raj even could not tell the name of shop from where furniture was purchased. As regards offence under Section 498-A IPC it has been alleged by the complainant that the maltreatment was given by respondent No.1 at the instance of respondent Nos. 2 to 4. That means there is no direct act attributed to respondent Nos. 2 to 4. There is no evidence of instigation. The complainant has not proved on record any entrustment of dowry articles and misappropriation thereof. The husband of the complainant has been convicted under Section 498-A

IPC. The relatives of the accused have nothing to do with the matrimonial life of the complainant and her husband.

In Preeti Gupta and another vs. State of Jharkhand and another 2010(7) SCC 677 it was observed by Hon'ble the Supreme Court as under:-

“33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

The impugned judgment is perfectly valid and calls for no interference by this Court.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there

is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In *State of Rajasthan vs Shera Ram @ Vishnu Dutta*, (2012) 1 SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon mis-appreciation of evidence or apparent

violation of settled canons of criminal jurisprudence.”
Consequently, the special leave to appeal is declined.

11.12.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No