

In the High Court of Punjab and Haryana at Chandigarh

1. Crl. Appeal No. S-4259-SB of 2013 (O&M)
Date of Decision: 07.8.2018

Ram KirtiAppellant

Versus

State of Punjab and othersRespondents

2. Criminal Revision No. 3273 of 2013

Ram KirtiPetitioner

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.S.Manaise, Advocate
for the apppellant/petitioner.

ANITA CHAUDHRY, J

The petitioner is aggrieved with the judgments dated 17.07.2013 rendered by the Additional Sessions Judge, Gurdaspur vide which the acquittal of respondents No.2 and 3 under Sections 494 and 406 IPC was upheld and conviction and sentence under Sections 498-A IPC was set aside and they were acquitted.

The facts first. Ram Kirti was married to Bachan Chand in June 1995 and a child was born to them in September 1996. A complaint was lodged with the police on the basis of which FIR No. 17 dated 18.1.2006 was registered at Police Station Dinanagar. The allegations levelled were

that sufficient dowry was given at the time of the marriage and Bachan

Chand, the husband, his family members including Sohan Devi had misappropriated her *istri dhan*. It was also alleged that Bachan had performed second marriage. It was pleaded that Bachan got a job in Amritsar and he started living in Amritsar in 1997 and whenever he came home, he used to beat the complainant and her daughter. It was also pleaded that he had filed a divorce petition which was dismissed in April 2000. The complainant had also disclosed that she was in a government job and she was living in a rented accommodation at Dinanagar while her husband permanently stayed at Amritsar. It was pleaded that the complainant went to her matrimonial home but was beaten up by her husband on the asking of his family namely Rachpal Singh, Darshna Devi, Bachni Devi and her husband Sukhbir Singh. She was also turned out of the house in three clothes thereafter.

The police filed challan only against Bachan and Sohan Devi.

Charges were framed under Section 406, 494, 498-A IPC to which they pleaded not guilty.

The prosecution examined five witnesses.

The accused abjured trial and examined three witnesses.

The trial Court held that there was no evidence to show that the husband had solemnized second marriage therefore it recorded acquittal of the accused under Section 494 IPC. The accused were also acquitted under Section 406 IPC as the complainant was unable to produce the documents to show purchase of the dowry articles and failed to prove entrustment. However, conviction was recorded under Section 498-A IPC. The accused were sentenced to one year imprisonment along with fine of Rs. 2,000/- each.

Aggrieved with the judgment of acquittal, an appeal was preferred by the complainant, which was dismissed.

The accused also preferred an appeal challenging the judgment and order of conviction and sentence under Section 498-A IPC, which was allowed.

Crl. Appeal No. S-4259-SB of 2013 has been filed challenging the acquittal of respondents No.2 and 3 for offence under Section 498-A IPC and by filing Criminal Revision No. 3273 of 2013, she has questioned the order upholding acquittal of respondents No.2 and 3 under Sections 494 and 406 IPC. Both the cases are being disposed of by passing a common judgment in Crl. Appeal No.S-4259-SB of 2013.

I have heard learned counsel for the appellant and have gone through the records carefully.

Respondents No.2 and 3 were tried for the offence under Sections 406, 494 and 498-A IPC. The marriage was solemnized in the year 1995 and the complaint was made after ten years i.e. in 2005. She took a stand that her husband started living at Amritsar and whenever he used to come to home, he used to beat the complainant. It was further her case that she started living in Dinanagar and when she used to come to her matrimonial home, she was beaten by the accused and the in-laws. The complainant failed to give any specific date or time of incidents. Her ocular version was not corroborated by medical evidence. She gave exaggerated version about the demand of Rs. 70,000/- by the accused. She admitted that matter was taken to the *Panchayat* where efforts to reconcile were made. No independent witness was examined to corroborate her testimony. The allegations were found omnibus regarding the demand of dowry and

harassment thereof and the appellate Court below rightly set aside the conviction and sentence of respondents No.2 and 3 under Section 498-A IPC.

It is apparent that except the oral assertion, no material was produced by the appellant to prove that respondent No.2 had solemnized second marriage with one Ranjana during the subsistence of their marriage. No essential ceremonies of marriage were proved by the complainant. Rather the defence had produced certificate, Ex.D1 to show that Ranjana was married to one Sarwan. The plea that three children were born out of the alliance of respondent No. 2 and Ranjana, was not supported by any document. It was rightly held that mere assertion could not take place of proof to conclude that respondent No. 2 had remarried.

No specific entrustment of the dowry articles was proved by the appellant. She was found to make contradictory statements about entrustment of the dowry articles. Initially, she took the stand that the articles were given to her in-laws and later said that ornaments were taken by her in-laws and then she changed the stand and deposed that the same were taken by her mother-in-law. She made improvements. Her statement was found to be inconsistent with what her witness had deposed. The list of dowry articles was found to be manipulated and was not considered. The articles which were stated to be handed to the accused were daily use items and it was rightly held that the gifts given in the marriage did not constitute *istridhan*. It was held that in absence of any specific entrustment of dowry articles, no offence under Section 406 IPC was made out.

Finding the essential ingredients to constitute the offence under

Sections 406, 494 and 498-A IPC missing, the Appellate Court had rightly

acquitted respondents No. 2 and 3 under Section 498-A IPC and upheld their acquittal under Sections 406 and 494 IPC. While arriving at the said conclusion, the Appellate Court had elaborately discussed the facts and evidence and had given reasons to disbelieve the prosecution case. The findings returned are based on correct appreciation of evidence.

The High Court ought not to interfere with the order of acquittal unless the judgment of acquittal is perverse or highly unreasonable as held in **Vimal Singh Vs. Khuman Singh, 1998(4) RCR(Crl.) 423**. In the instant case, the judgment of acquittal rendered by the Court below is neither perverse nor unreasonable and it cannot be said that the court based its findings on irrelevant or inadmissible evidence.

In the circumstances, the appeal as well as revision petition are dismissed.

(ANITA CHAUDHRY)
JUDGE

August 07, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No