

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal-S-1002-SB of 2004 (O&M)

Date of decision : July 22, 2019

Major Singh

....Petitioner

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. PPS Doabia, Advocate for the appellant

Mr. Harbir Sandhu, AAG, Punjab, for the State

Fateh Deep Singh, J. (Oral)

Initially six accused including the present appellant Major Singh were put up for trial in case bearing FIR No. 165 dated 25.9.2002, under Sections 498-A, 406, 313, 323 IPC, Police Station Qadian, District Gurdaspur. The court of learned Additional Sessions Judge (Adhoc), Fast Tract Court, Gurdaspur through impugned findings dated 31.3.2004 acquitted all the accused except Major Singh who was found guilty for commission of offences under

Sections 313, 498-A, 323 IPC and sentenced as follows:-

<i>Under Section 313 IPC</i>	<i>To undergo RI for five years and to pay a fine of Rs 1000/-. In default of the payment of fine, further RI for one month</i>
<i>Under Section 498-A IPC</i>	<i>To undergo RI for 1 year and to pay a fine of Rs 500/-. In default of the payment of fine, further RI for 15 days.</i>
<i>Under Section 323 IPC</i>	<i>To undergo RI for six months and to pay a fine of Rs 200/-. In default of the payment of fine, further RI for 7 days.</i>

All the sentences, however, were ordered to run concurrently.

Heard Mr. PPS Doabia, Advocate for the appellant; Mr. Harbir Sandhu, AAG, Punjab, for the State and perused the records.

The complainant wife Prabhjit Kaur lodged an FIR in question against the accused alleging that her marriage with the appellant took place on 29.8.2001 where sufficient dowry articles were given to the accused. However, the accused were not happy with the same and on account of which she was physically abused and mentally tortured. It is alleged by the complainant that on 18.7.2002 when her father PW2 Sawran Singh came to see her at her matrimonial home, in his presence, the accused gave her beatings as a consequence of which her father got her admitted in a

hospital at Batala and prior thereto on 15.9.2002 and 16.9.2002 she was similarly given beatings. The wife has alleged that the husband had given her kick blows on 18.7.2002 while co-accused too assaulted her and as a consequence of which her six months old pregnancy was got aborted.

It was on 17.9.2002, ASI Des Raj PW5 received intimation from Civil Hospital, Batala regarding admission of Prabhjit Kaur and when PW5 went to record her statement, the doctor opined through opinion Ex. PW5/A that the injured was unfit to make statement and it was only on 19.9.2002 statement of Prabhjit Kaur Ex. PA was got recorded and after endorsement Ex. PW5/B, FIR Ex. PW5/C was got registered leading to arrest of the appellant husband on 20.10.2002 through memo Ex. PW5/D. The police after preparing personal search memo of accused Major Singh Ex. PW5/E on 15.11.2002 recovered through memo Ex. PW5/F dowry articles of complainant and proof of marriage Ex. PW2/A and that is how the accused was put to trial in which the prosecution examined PW1 Prabhjit Kaur, complainant-wife; PW2 Sawran Singh, father of the complainant, PW3 Dr. Gurmukh Singh, Medical Officer, Civil Hospital, Batala; PW4 Dr. Kuljit Singh, Medical Officer, Civil Hospital, Batala; PW5 ASI Des Raj, Investigating Officer.

When the accused were called to explain the incriminating circumstances, all the accused except the appellant denied the same. However, the appellant took the plea that the wife because of medical complications had bled and this what led to her abortion and denied the allegations. In his defence, the accused examined DW1 Joginder Singh; DW2 Vishal Mahajan and DW3 Lakhwinder Singh Saini, Advocate.

Learned State counsel as well as counsel for the appellant have gone through the evidence in detail and have vociferously argued in favour of respective sides, prosecution contending that their case has been duly established beyond any reasonable doubt and which is refuted by counsel for the appellant.

Appreciating the submissions from the own stand of the defence at the trial especially in the cross-examination of PW1 Prabhjit Kaur complainant and her father PW2 Sarwan Singh, the factum of marriage, pregnancy of the complainant are not at all denied. Thus, what remains to be seen is the deposition of PW3 Dr. Gurmukh Singh, Medical Officer, Civil Hospital, Batala who has proved the fact that on 17.9.2002, the complainant was examined and had detailed five injuries which were duly detailed in the MLR Ex. PB, though the same were opined to be simple vide opinion Ex. PC

and it was on 23.9.2002 she was discharged from the hospital. Not much has come in his cross-examination which could be of any benefit to the stand of the defence. Mr. Doabia, learned counsel for the appellant could not refute the fact as to the admission of the complainant in the hospital and her medico legal examination and injuries observed by the doctor so testified in his statement as PW3. Thus, the same lends credence to the ocular evidence spelled out by the father Sarwan Singh PW2 and who has categorically stated that while he was present, he had seen accused Major Singh the husband giving kick blows on the stomach of the complainant and thereafter he had rushed her to the hospital and to similar effect is the deposition of the complainant as PW1 and nothing has come in her cross-examination to doubt her credential and veracity. The next most important witness of the prosecution is PW4 Dr. Kuljit Singh who in no uncertain terms has detailed that the complainant was admitted on 18.7.2002 in the hospital and at that time she was 5 to 6 months pregnant and inspite of her treatment a dead foetus was expelled out on 19.7.2002 and has proved the medical record to this effect Ex. PW4/A, PW4/B. To the specific query of this Court, the learned counsel for the appellant could not raise any doubts over the creditworthiness of these two medical witnesses who have brought

about the factum of the pregnancy, injuries and abortion of the complainant. Section 313 IPC provides for punishment of causing miscarriage without woman's consent. In the present case as has been proved by the two official witnesses of the hospital, there were injuries on the person of the complainant including the stomach area and followed by the fact that inspite of medical treatment, the unborn child was got aborted and therefore, by all means establishes that the husband having kicked the wife on the stomach as has come in the ocular evidence has voluntarily caused her to miscarriage. The medico legal report proved on the record shows simple injuries which has come about even in the testimony of PW3 Dr. Gurmukh Singh and therefore, by all means offence under Section 313 IPC is certainly made out. The ocular version given by PW1 and PW2 bear out allegations of demand of dowry and on account of which physical and mental torture of the married woman who happens to be the wife of the appellant and therefore, by all means offence under Section 498-A IPC too stands duly proved.

The testimony of defence witnesses DW1 Joginder Singh; DW2 Vishal Mahajan and DW3 Lakhwinder Singh Saini, Advocate are not of much help to the defence except that they bear out that an affidavit Ex. DW1/A was given by the complainant and which is

sought to be proved by DW1 who is one of the witnesses on this document. However, this document was never confronted to the complainant/deponent of this affidavit PW1 while she testified in the court and therefore, the very factum of exhibiting of this document as Ex. DW1/A certainly is on sticky wicket and cannot be taken to be a legitimate legally proved document as it is well settled law as held in **Sait Tarajee Khimchand and others vs Yelamarti Satyam and others, 1971 AIR SC 1865**, that mere exhibiting of a document does not dispenses with its proof. Similarly DW2 Vishal Mahajan who runs a Laboratory as a Technician had only conducted test of pregnancy of the complainant and DW3 Lakhwinder Singh Saini, Advocate has only attested the affidavit as an Oath Commissioner and his cross-examination rather topples the defence as he has failed to produce any records of attesting this affidavit and thus, a distressing feature for the defence. Further-more as has been observed by the learned trial court in the impugned findings, this affidavit carries the name of one Prabhjit Singh and thus not in any manner exonerates its criminality. The court below had rightly and corrected appreciated each and every aspect of the evidence and has come to a totally justifiably conclusion in drawing the conclusion as to the guilt of the accused and convicted him for offence under

Sections 313, 498-A IPC and there being no illegality or perversity in these findings under assail, does not calls for any interference. The appeal being hopelessly without merit, stands dismissed.

July 22, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No