

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

**CRM-A No.2133-MA of 2016 (O&M)
Decided on: 06.03.2019**

Roop Lal

....Applicant

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Narinder Lucky, Advocate for the applicant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting-aside the judgment dated 26.09.2016 passed by the trial Court vide which respondents No.2 to 5 were acquitted of the charge under Sections 120-B, 380 and 497 of the Indian Penal Code, 1860 (in short 'IPC') (though one of the co-accused namely Ashok Kumar was convicted for the charge framed against him under Section 497 IPC and he was sentenced to undergo 02 years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo imprisonment for a period of 01 month).

Counsel for the applicant at the very outset, has stated that said Ashok Kumar had filed an appeal i.e. Criminal Appeal No.503/2016 vide Filing No.7793/2016 titled as 'Ashok Kumar vs State of Punjab and another', challenging the aforesaid judgment of conviction dated 26.09.2016 under Section 497 IPC and the same was allowed by the Additional Sessions Judge, Jalandhar vide judgment dated 12.12.2017 (which is taken on record as Mark 'X') and even,

Ashok Kumar was acquitted of the charge framed against him under Section 497 IPC.

Brief facts of the case are that the applicant – Roop Lal, who is a NRI and is residing abroad had filed the complaint that marriage between him i.e. the complainant and accused No.6 was solemnized on 23.11.2010 at village Kingran Chauwala, Jalandhar and it still subsists and out of this wedlock, 03 children namely Kajol (daughter), Jaspreet and Gurpreet (sons) were born. The complainant was residing in Italy to earn his livelihood since 2007 and he is a Green Card holder, which was issued by the Italian Government. The complainant came back to India on 28.09.2010. Due to illicit relations of Charanjit Kaur (accused No.6) and Ashok Kumar (accused No.1), the relations between the complainant and accused No.1 to 5 were strained. The day before the occurrence, there was a dispute due to illicit relations between accused No.1 and accused No.6 and a Panchayat was also convened, in which accused Nos.1, 2, 4 and 5 threatened that 'KI TU VIDESH JANA CHAUHNDI HAI KE NAHIN, ASIN TERA EHO JEHA INTEZAM KARANGE KE TU KADE V VIDESH JANN DE KABIL RAHENG, JE SADE NALL MATHA LAYEA TA JANO MAAR DENG.' At that time, Sarpanch Jaspal Ram, Balbir Ram, Mohinder Kaur, Jagat Ram and other respectables of the village were also present. On 04.11.2010, early in the morning approximately 04:00 AM, accused No.6 without informing anyone left the house of the complainant and she took passport, Green Card, Rs.20,000/- in cash, one wrist watch, one mobile Nokia and 250 Euros without the consent of the complainant. Regarding this fact, a DDR was also lodged with

P.S. Phillaur on 19.11.2010. The doubt of the complainant converts into belief, when on 22.11.2010 at about 02:00 PM, the complainant and Balbir Ram saw accused No.1 and accused No.6 going together for taking bus at the Bus Stop. The complainant and Balbir Ram tried their best to catch them, but they could not succeed. Accused No.1 and accused No.6 are still living together with accused No.3 namely Harminder Pal at some unknown place and Ashok Kumar had full knowledge that accused No.6 is the legally wedded wife of complainant. All the accused after conspiring with each other committed theft and have also eloped accused No.1 and accused No.6 by abiding each other. Thus, the present complaint has been filed.

In the preliminary evidence, the complainant Roop Lal examined himself as CW1, Balbir Ram as CW2, Jaspal as CW3, Mohinder Kaur as CW4, Jagat Ram as CW5 and thereafter, closed his preliminary evidence on 22.11.2015 and vide order dated 09.01.2013, all the accused were ordered to be summoned for the offence punishable under Sections 380/497/120-B IPC and on appearance, accused – Ashok Kumar, Kishore Kumar, Harminder Pal, Kesro, Bhagat Ram and Charanjit Kaur in the Court, they were admitted to bail and after the pre-charge evidence of the applicant was closed and finding a prima facie case under Sections 120-B, 380 and 497 IPC, the accused were charge-sheeted on 27.01.2016, to which they did not plead guilty and claimed trial.

In order to prove his case in after-charge evidence, the complainant examined Mohinder Kaur as CW1, Jagat Ram as CW2 and Balbir Ram as CW3 and thereafter, after-charge evidence of the

complainant was closed by Court vide order dated 09.02.2016.

Thereafter, the statement of the accused persons under Section 313 Cr.P.C. was recorded and the entire incriminating evidence was put to them to which they pleaded their false implication.

The trial Court, thereafter, on the basis of the evidence available on record and charge framed against the accused persons recorded a finding that the complainant has failed to prove and substantiate the allegations of the charge framed under Section 497, 380 and 120-B IPC and acquitted them, however, Ashok Kumar was found guilty of offence punishable under Section 497 IPC as noticed above.

The operative part of the judgment dated 26.09.2016, is reproduced as follows:-

“16. In view of the above evidence and version of the complainant following point of determination come out from the present complaint:-

Whether the accused committed an offence punishable under Section 380/497//120-B of Indian Penal Code?

17. In order to prove his version complainant examined Mohinder Kaur, who come into the witness box in before charge/after summoning evidence as CW-1, in which she stated that Roop Lal has gone abroad i.e. Italy 7 years ago. The Italian Government has issued him a Green card to Roop Lal. Roop Lal has come to India on 28.09.2010. Accused Charanjit Kaur and Ashok Kumar has illicit relation with each other. Due to these illicit relationship Roop Lal has strained relations with accused no.1 to 5 prior to incident raised in present case, panchayat was convened regarding the illicit relationship of Charanjit & Ashok Kumar. Respectable members of

locality were also present there. Accused Charanjit Kaur has went away from house as 7th October, 2010 again said 04.11.2010 accused Charanjit Kaur has went away from house and while she going from house she took one mobile phone, one watch, one passport of Roop Lal, Green Card and Rs.20,000/- 250 Euro with her. She was gone without informing anyone at about 4:00 AM. Thereafter, they moved a complaint to PS Phillaur. During the cross-examination this witness stated that there is no speaking terms with the accused for the last 20/25 years. Further they had filed an application with regard to the present occurrence at PS Phillaur and Lassara. Roop Lal is at abroad and not come to the court for depose. Further Ashok Kumar came to the house of complainant to make illicit relation with Charanjit Kaur accused no.6. Roop lal went abroad on new passport got issued by him.

After that Jagat Ram come into the witness box as CW-2 in after summoning/before charge evidence and stated that marriage of Roop Lal was solemnized with Charanjit Kaur on 23.11.2000. Roop Lal came to India in the house 2010. Accused Charanjit Kaur and Ashok Kumar has illicit relation with each other. Further accused threatened to Roop Lal before Panchayat. Further the accused stolen passport, green card, one wrist watch, Rs.20,000/- in cash, 250 Euro belong to the Roop Lal and Charanjit Kaur still residing with the Ashok Kumar accused. During the cross-examination this witness stated that Bhagat Ram is his real brother. Further denied that he deposed falsely on the instance of complainant. Further Roop Lal complainant is his son. Further there is no copy of passport allegedly stolen by Charanjit Kaur accused. Further this witness cross examined in length but nothing fruitful come out from his evidence.

After that Balbir Ram come into the witness box as

CW-3 in after summoning/before charge evidence and deposed on the step of CW-1 & CW-2, which need not be repeated here to avoid repetition. During the cross-examination this witness stated that Roop Lal his brother but they are residing separately. Further Roop Lal went to abroad after one year of marriage. Further he has seen Ashok Kumar and Charanjit Kaur on 04.11.2010 going together.

18. In order to prove his complaint, in after charge evidence, complainant examined Mohinder Kaur alleged power of attorney, who come into the witness box as CW-1 for cross-examination, wherein this witness stated that Roop Lal went to abroad after one year of her marriage. Relation between Roop Lal and Charanjit kaur was having illicit relation with Ashok Kumar accused. Further there is no speaking terms with the accused for a long time. A written compromise was effected between the parties. Further he has not seen the accused at the time of alleged theft. Further he has not filed an application against accused with regard to attempt of theft.

After that Jagat Ram come into the witness box as CW-2 for his cross-examination after framing of charge, wherein this witness stated that Roop Lal is in Italy. He has seen the passport of Roop Lal, but he do not know copy of the same on record or not. Further Charanjit kaur and Ashok Kumar residing together some unknown place. Further he had seen Charanjit Kaur and Ashok Kumar together but he cannot tell the date and time. Further denied that accused no.1 to 5 had not committed any offence. Further he do not know about the maintenance litigation between Charanjit Kaur and Roop Lal.

After that Balbir Ram as CW-3 come into the witness box for his cross-examination after framing of charge, wherein this witness stated that Roop Lal is his real

brother but they are residing separately. Further he has seen the green card, Euro and passport of Roop Lal. Further he had seen many times Ashok Kumar and Charanjit Kaur residing together at Dhaka Colony. Further he denied that the accused had not committed any theft. Further there is no speaking term between the accused and complainant for last many years. Further he cannot tell the date when he has seen the accused Charanjit Kaur and Ashok Kumar together.

19. Now, Ld. Counsel for the complainant stressed upon the fact that as per the above evidence led by the complainant. It is fully proved on record that accused no.1 to 6 after criminal conspiracy committed theft with regard to the articles belong to complainant. Further it is not disputed on record that marriage of complainant was solemnized with accused no.6 Charanjit Kaur. Moreover, fact regarding the marriage between complainant and Charanjit Kaur is admitted on the record. Therefore, relation between the parties are admitted and proved on record. Now, complainant alleged that Ashok Kumar accused no.1, who is also cousin brother of complainant knowingly and intentionally that Charanjit Kaur accused no.1 is a legal wedded wife of Roop Lal complainant made illicit relation with her. Further the complainant went abroad i.e. Italy after sometime of his marriage and when he came back the above relationship between Ashok Kumar and Charanjit Kaur accused came to his knowledge. As discussed above marriage between complainant and accused no.6 Charanjit Kaur is admitted. Further as per the evidence led by the complainant i.e. Mohinder Kaur CW-1, Jagat Ram CW-2 and Balbir Ram CW-3, it has been specifically stated by the above witnesses that Ashok Kumar Accused no.1 has illicit relation and committed adultery with Charanjit Kaur

accused no.6. Further the above witnesses deposed that Charanjit Kaur accused no.6 is residing with Ashok Kumar at Dhaka Basti after left the house of the complainant. The fact that Charanjit Kaur accused no.6 is residing separately from the complainant is also admitted. Moreover, Charanjit Kaur complainant has filed an application for under Domestic Violence Act and under Section 125 Cr.P.C, copy of the same placed on record by the accused himself as Ex.A-1 and Mark-B. The above document shows that the accused no.6 Charanjit Kaur residing separately from the complainant and filed an application for maintenance against him. Further the accused has also placed on record copy of petition under Section 13 of HMA 1955 for desolation of marriage by decree of divorce titled as "Charanjit Kaur Vs. Roop Lal" as Mark-A. The above document corroborate the fact of the complainant that Charanjit Kaur accused no.6 is still legal wedded wife of Roop Lal complainant. Therefore, the fact regarding the relationship between Roop Lal and Charanjit Kaur accused as husband and wife is still in existence is proved on record. Further complainant and other evidence led by the complainant deposed on similar line that accused Ashok Kumar having illicit relation with Charanjit Kaur accused no.6. Moreover, during the cross-examination counsel for the accused has not specifically denied the above fact, not even put suggestion and denied the allegation leveled against Accused no.1. Moreover, Balbir Singh CW-3 stated that he along with complainant saw accused Charanjit Kaur and Ashok Kumar going together number of times. Further remaining witnesses examined by the complainant also deposed that Charanjit Kaur accused no.6 residing with Ashok Kumar accused. Mohinder Kaur mother of the complainant also stated that number of time Ashok Kumar accused came to the house of

Charanjit Kaur to make illicit relation and on her objection left her house. No doubt Ld. Counsel for the accused argued that there is no such witnesses, who had seen the Ashok Kumar accused no.1 with Charanjit Kaur accused no.6 in objectionable situation. But, as argued by complainant that direct evidence on the said fact that Ashok Kumar accused no.1 and Charanjit Kaur accused no.6 made illicit relation is not possible. No doubt, Ld. Counsel for the accused has also argued that as per evidence on record, complainant and accused are residing separately and they have no speaking terms for the last many years, so, it cannot be possible that accused Ashok Kumar came to the house of complainant to make illicit relation with accused no.6 Charanjit Kaur. But it has also come into evidence that Roop Lal complainant along with his family residing to the adjoin house of Mohinder Kaur. So, there is waitage in the argument led by the Ld. Counsel for accused. On the contrary, evidence of Mohinder Kaur and other witnesses of the complainant and circumstances on record corroborate the version of the complainant. Further as per Section 497 of Indian Penal Code “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery. In the present complaint in hand, it is proved on record that Charanjit Kaur accused no.6 legally wedded wife of Roop Lal complainant. Further as discussed above after leading cogent evidence, the complainant has also proved on record that Ashok Kumar accused no.1 committed adultery with accused no.6 and as per the above provision of law liable to be punished.

20. *Further Ld. Counsel for the complainant argued*

that all the accused committed the theft of passport, green card, wrist watch, one mobile nokia, 250 Euro and Rs.20,000/- cash of complainant. But as argued by Ld. Counsel for the defence/accused that there is no evidence against accused no.2 to 5 that they are involved and after making criminal conspiracy and committed theft of above articles belonging to the complainant. Moreover, there is no document on record to prove the ownership of above articles. Further admittedly no one had seen when the accused committed the alleged theft. Moreover, it is version of the complainant that Charanjit Kaur accused no.6 took the above article with her when she left the house of the complainant, but there is no specific allegation against accused no.2 to 5 with regard to alleged theft and criminal conspiracy against the complainant. Further as per the document and evidence led by the complainant, accused no.6 left the house of complainant on 04.11.2010 at about 4:00 am and no one saw her at the time of committing alleged theft. No doubt, intimation regarding the said missing of accused no.6 and articles were given to the police by the complainant vide DDR no.14 dated 19.11.2014 Ex.C-6. But there is no such evidence on record that accused no.6 Charanjit Kaur committed the theft of above articles belongs to the complainant. Moreover, it has come into evidence that the complainant Roop Lal went to abroad. The complainant alleged that Roop lal went to abroad after got issue new passport but admittedly there is no copy of said passport newly got issued by the complainant or copy of passport which was allegedly theft by the accused no.6. Moreover, as discussed above there is no evidence that the accused committed theft as alleged by the complainant. Therefore, the complainant has failed to prove on record ingredients of Section 380 and 120-B of IPC against all the accused.

But as discussed above it has proved on record that Ashok Kumar accused no.1 made illicit relation with Charanjit Kaur accused no.6 knowingly that she is wife of Roop Lal complainant. Accordingly, Ashok Kumar accused no.1 is found guilty under 497 IPC. There is no cogent evidence against remaining accused to punish them under Section 497/380/120-B of IPC and they are acquitted from the charge framed against them under Section 497/380/120-B IPC.

21. The accused no.1 is ordered to be taken into custody. Let the convict be heard on the quantum of sentence.”

Counsel for the applicant has argued that it has come in the evidence of the appellant, who is residing abroad that he is settled in Italy for the last 07 years from the date of recording his statement and has acquired a Green Card and when he returned back to India on 28.09.2010, he found that the accused Ashok Kumar and Charanjit Kaur had developed illicit relations with each other and thereafter, the accused – Charanjit Kaur, who is wife of the complainant left the matrimonial house on 07.10.2010/04.11.2010 and has taken away one mobile phone, one watch, passport, Rs.20,000/- and 250 Euros and on that pretext, he complaint was filed.

Counsel for the applicant has submitted that it has also come in the evidence of CW2 – Jagat Ram that after the accused – Charanjit Kaur, had stolen the articles, a Panchayat was convened. This witness is father of the complainant – Roop Lal. It is further stated that CW3 – Balbir Ram, brother of Roop Lal has also stated hat he traveled abroad after 01 year of marriage and he had seen his wife – Charanjit Kaur with Ashok Kumar. Counsel for the applicant has, thus, submitted

that the trial Court without appreciating the evidence led by the applicant had wrongly acquitted the respondents/accused.

After hearing the counsel for the applicant, I find no ground to interfere in the finding recorded by the trial Court. The trial Court has recorded a finding that after 01 year of marriage, Roop Lal traveled abroad and never took care of his wife – Charanjit Kaur, who was residing separately from the complainant – Roop Lal and for that reason, she filed an application under the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act of 2005') as well as under Section 125 of the Criminal Procedure Code, which were relied upon by the accused himself as Ex. A1 and Mark B and even, a divorce petition was filed between the parties, therefore, it is apparent that the present complaint has been filed by the complainant with a *mala fide* intention by raising a finger towards character of his wife that she is going with co-accused Ashok Kumar. Though, he failed to prove this allegations by leading cogent evidence.

The trial Court has also recorded a categoric finding that all the CWs have admitted that the applicant/complainant – Roop Lal, left India after 01 year of marriage and Charanjit Kaur was residing alone. CW2, father of Roop Lal as well as CW3, brother of Roop Lal, nowhere stated that they were taking care of Charanjit Kaur in absence of Roop Lal and rather have levelled allegations that she was having illicit relations with Ashok Kumar, which itself show that they also were deposing on the line of Roop Lal – applicant, who never wanted to maintain his wife as nothing has come on record in the statement that after he went to Italy, he made any effort to take his wife – Charanjit

Kaur along with him as the evidence is totally silent that in the intervening period of 06 years, he had ever given any monetary support to her or tried to get her a VISA, despite the fact that he has obtained a Green Card in Italy. This also demonstrates the *mala fide* on the part of the applicant, who had abandoned his wife after his marriage.

It is own case of the applicant that Charanjit Kaur had filed a petition under Section 125 Cr.P.C., to maintain herself as well as an application under the Act of 2005, where she is asking for her right from the applicant. Thus, on the face of it, Charanjit Kaur was left at the mercy of God after Roop Lal traveled abroad and he had filed a false and frivolous complaint, pointing a finger towards her character, show that he wanted to escape his liability being husband of Charanjit Kaur, though he was required to take care of her and provide all the amenities.

It is admitted case of the applicant that even Ashok Kumar who was held guilty by the trial Court under Section 497 IPC, stands acquitted by the Lower Appellate Court in an appeal filed by him vide judgment dated 26.09.2016, therefore, I find no ground to interfere in the well-reasoned findings recorded by the trial Court in view of the judgment passed by the Additional Sessions Judge, Jalandhar on 12.12.2017, even acquitting Ashok Kumar of the charge framed against him under Section 497 IPC.

Accordingly, this appeal is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

06.03.2019

yakub

Whether speaking/reasoned

Yes/No

Whether reportable: Yes/No