

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

(1)

CRA-S-1515-SB-2004

Madan Lal and others

...Appellants

Versus

State of Punjab

...Respondent

(2)

CRR-333-2005

Parveen @ Parmeshwari Bai

...Petitioner

Versus

Madan Lal etc.

...Respondents

Date of decision:-18.8.2022

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.P.S. Khurana, Advocate
for the appellants in **CRA-S-1515-SB-2004** and
for the respondents in **CRR-333-2005**.

Mr.Anmol Singh Sandhu, AAG, Punjab.

Ms.Sumati Jund, Advocate (Legal Aid counsel)
for the petitioner/complainant in **CRR-333-2005**.

H.S. MADAAN, J.

1. Vide this judgment, I propose to dispose of **CRA-S-1515-SB-2004** filed by appellants/accused Madan Lal, Bhajan Lal and Raj Krishan and **CRR-333-2005** filed by petitioner/complainant Parveen @ Parmeshwari Bai.

2. Briefly stated, the facts of the case as per prosecution story are that complainant Parveen @ Parmeshwari Bai was married with accused Madan Lal son of Roop Chand, resident of village Diwan Khera about six years prior to 4.9.1994; the father of the complainant had spent considerable amount at that time giving dowry of about Rs.1,50,000/-; accused Rajjan Bai is mother, Kailash Rani is sister, Bhajan Lal is elder brother of accused Madan Lal, whereas Raj Krishan is husband of Kailash Rani and Sumitran bai is wife of Bhajan Lal; Kailash Rani and Raj Krishan had been residing in village Diwan Khera; all the accused aforesaid had been taunting the complainant for bringing less dowry; after 5-6 months of the marriage of complainant with Madan Lal, when she was in family way, she was turned out of the matrimonial home by all the accused after giving her beatings; the complainant had to go to her parents house, where she gave birth to a daughter; accused Madan Lal on being instigated by his co-accused filed a divorce petition against the complainant and further to deprive the complainant of her right to get maintenance, accused Madan Lal transferred 20-22 acres of land belonging to him in favour of his sister Kailash Rani; the complainant challenged the said transfer by way of filing a civil suit and in addition to that she filed a petition for grant of maintenance in the Court at

Abohar; she also filed a case against all the accused for demand of dowry; subsequently due to intervention of Panchayat, the matter was compromised and the complainant along with her daughter went back to her matrimonial home; the collusive decree suffered by Madan Lal in favour of his sister Kailash Rani was also got set aside; accused Madan Lal transferred 10 acres of land in favour of the complainant; however after some days of the compromise all the accused again started passing remarks against the complainant and harassing her telling that on one hand, she had brought less dowry and on the other hand, she had got 10 acres of their land transferred in her favour; they were pressurizing the complainant to get the consent decree regarding 10 acres of land suffered by Madan Lal in her favour set aside; the accused stopped providing food to the complainant for 15-20 days prior to 3.9.1994; they were also conspiring against the complainant by sitting separately in a room; they would threaten the complainant that if she did not get the decree for 10 acres of land set aside, then they would kill the complainant and her daughter; the complainant informed Sh.Bishan Dass, Sarpanch of the village in that regard.

3. On 3.9.1994 at about 4/4:30 p.m. while accused Madan Lal, Bhajan Lal, Rajjan Bai, Raj Krishan, Kailash Rani and Sumitran Bai were present at home, accused Madan Lal asked the complainant to accompany him for making statement in the Court so as to get the decree for 10 acres of land set aside. The complainant refused to do so, at which accused Madan Lal dragged her into a room; accused Kailash Rani gave a *soti* blows to the complainant hitting her on right leg and arm; Sumitran Bai also gave a *soti* blow to the complainant hitting her

on left upper arm; Bhajan Lal put a rope around the neck of the complainant; Raj Krishan gave a *KASIA* blow from sharp side to the complainant finding the target on her left arm; Rajjan Bai gave a *soti* blow on the back as well as on backside of head of the complainant; the complainant raised alarm, hearing which, Harbans Lal of village Diwan Khera and Raj Kumar of village Khuian Sarwar came there; Raj Kumar had come to that village to meet Gurditta Sarpanch; the incident had been seen by Harbans Lal and Raj Kumar, who intervened and rescued the complainant from the clutches of the accused; they arranged a vehicle and took the complainant to the house of her brother Prem Nath at village Khuian Sarwar; then Prem Nath, Harbans Lal and Raj Kumar took the complainant to Civil Hospital Panj Khosi, where she was admitted, medically treated and medico-legally examined.

4. On 4.9.1994, on getting information with regard to the admission of complainant in Civil Hospital Panj Khosi in the injured condition, ASI Fauja Singh (hereinafter referred to as the Investigating Officer/IO) from Police Station Khuian Sarwar went there and after obtaining medical opinion of the doctor with regard to the fitness of the injured to make statement, he recorded statement Ex.P10 of the complainant. ASI Fauja Singh appended his endorsement Ex.P10/A below that statement and sent ruqa to the police station, on the basis of which formal FIR Ex.P11 was recorded under Sections 498-A, 324, 323, 506, 148 and 149 IPC. On the same day, the Investigating Officer went to the place of occurrence and prepared rough site plan of the place of incident as Ex.P12. All the accused were arrested in this case.

5. On 8.9.1994, accused Bhajan Lal during the course of his

interrogation by ASI Naseeb Chand suffered a disclosure statement and thereafter while in police custody in pursuance of that statement got the rope used by him in the incident recovered; that rope was taken into police possession by ASI Naseeb Singh vide a recovery memo. The said police officer prepared rough site plan of the place of recovery.

6. During the course of investigation, supplementary statements of complainant and Harbans Lal were recorded, on the basis of which an offence under Section 307 IPC was added in the case.

7. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Illaqa Magistrate.

8. On presentation of challan in the Court of Illaqa Magistrate, he supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 307 IPC is exclusively triable by the Court of Sessions, learned Illaqa Magistrate committed the case to the Court of learned Sessions Judge, Ferozepur from where it was entrusted to the Court of learned Additional Sessions Judge (Fast Track Court), Ferozepur.

9. On receipt of the case, learned Additional Sessions Judge (Fast Track Court), Ferozepur, observing that charge for offences under Sections 148/307/324/323/498-A/149 IPC was disclosed against all the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

10. During the course of its evidence, the prosecution examined PW1 Dr.Hans Raj, SMO Civil Hospital, Fazilka, who stated that on

3.9.1994 while posted at Civil Hospital Panj Khosi at about 10:30 p.m., he had medico legally examined complainant Parveen Kumari finding the following injuries on her person:

- (i) An incised wound measuring 2.2. cm x 0.5 cm bone deep on the postero medial aspect of left forearm running obliquely at the junction of 2/3rd with lower 1/3rd . X-ray was advised.
- (ii) An abrasion measuring 2.8 cm x 0.5 cm on the anteromedial aspect of right leg in its middle 1/3rd. Clotted blood was present.
- (iii) An abrasion measuring 6.1 cm x 0.6 cm on the right forearm running transversely at the junction of upper 1/3rd with lower 2/3rd. Clotted blood was present.
- (iv) An abrasion 6 cm x 1 cm on the left upper arm running transversely in its lower 1/3rd. Clotted blood present.
- (v) A contusion measuring 13 cm x 1.2 cm on the posterior aspect of neck extending away from midline to involve the outer aspect of the neck. Reddish blue in colour.
- (vi) A contusion measuring 13 cm x 0.7 cm on the back at the level of L2 running obliquely on either side of the midline.
- (vii) A swelling measuring 2 cm in diameter on the occipital region reddish in colour.

As deposed by this witness, injury No.1 was kept under observation, whereas remaining injuries were declared as simple in nature; the probable duration of the injuries was less than 12 hours. As regards the kind of weapon used, the witness stated that the weapon used for injury No.1 was sharp, whereas it was blunt for the remaining injuries and after x-ray examination, he did not find any bony injury and

therefore, the injury No.1 was also declared as simple in nature. The witness proved copy of MLR of the injured as Ex.P1 and pictorial diagram showing the seats of injuries as Ex.P2. He further proved his endorsement on the police application declaring the injured fit to make statement stating that on application moved on 9.9.1994, he vide his opinion Ex.P7 had opined that injury No.5 on the neck of the injured could be caused by a rope.

PW2 ASI Naseeb Singh, who had carried out the investigation in this case partly deposed in that regard further stating with regard to accused Bhajan Lal suffering disclosure statement Ex.P-3/A before him and thereafter getting the rope recovered from his possession, which was seized vide memo Ex.P4/A and site plan Ex.P5 of the place of recovery was also prepared.

PW3 Sandeep Kumar, Advocate, Sub Divisional Court, Abohar stated that he had represented complainant Parveen Kumari in Civil Suit No.672-1 of 3.8.1991 titled *Parveen Kumari Versus Madan Lal* decided on 16.8.1993. He proved copy of decree-sheet dated 16.8.1993 as Ex.P8 and order of even date as Ex.P9. He further stated that he had represented Parveen Kumari in a petition under Section 9 of the Hindu Marriage Act titled *Madan Lal Versus Parveen Kumari*, which was dismissed on 4.5.1993.

PW4 Parveen Kumari complainant and PW5 Harbans Lal eye-witness provided the ocular version of the incident deposing in consonance with the prosecution story. In addition, PW4 Parveen Kumari deposed with regard to her maltreatment at the hands of the accused and with regard to the litigation between her and her husband

Madan Lal.

PW6 ASI Fauja Singh, who had carried out the investigation in this case initially deposed in that regard proving various documents.

With that the prosecution evidence stood closed.

11. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused in the prosecution evidence, were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case. The accused however admitted marriage of the complainant with Madan Lal and their respective relationship with the complainant. The accused denied that any such incident had taken place in village Diwan Khera stating that the complainant and her relatives had fabricated injuries in order to make out a false case against the accused; the complainant Parveen Kumari was in possession of 10 acres of land, which was entered in her name; the land had been given to her by Madan Lal; thereafter Parveen Kumari along with her daughter started residing at her parental village Khuian Sarwar; Parveen Kumari wanted to sell that piece of land; accused Madan Lal asked her not to do so and for that reason she got annoyed and foisted a false case upon the accused.

12. During their defence, accused Madan Lal tendered in evidence certified copy of grounds of appeal against the decree of divorce as Ex.D3.

With that the defence evidence got concluded.

13. The trial Court had formulated the following points for

determination:

1. Whether the prosecution has been able to prove beyond reasonable doubt that the occurrence took place in the house of accused Madan Lal in the area of village Diwan Khera?
2. Whether the prosecution has been able to explain the delay of about five hours in the admission of the injured in Civil Hospital, Panj Khosi?
3. Whether PW6 Harbans Lal is an interested witness, if so, if his testimony is believable and can be used for corroborating the version of the complainant?
4. What the motive part of the occurrence suggests?
5. Whether the prosecution has been able to prove charge under Section 307 and 498-A IPC against the accused beyond reasonable doubt?

14. After hearing arguments, learned trial Court vide judgment dated 23.7.2004 convicted all the accused for the offences under Sections 323, 324, 148, 149 IPC, whereas they wee acquitted of the charge for the remaining offences i.e. Sections 307 and 498-A IPC and vide order of the even date, the trial Court granted benefit of probation to accused Kailash Rani, Rajjan Bai and Sumitran Bai, whereas remaining accused Madan Lal, Bhajan Lal and Raj Krishan were sentenced as under:

Name of convict	Under Section	RI	Fine	In default of payment of fine to further undergo RI
Madan Lal	148 IPC	One year	Rs.1,000/-	Three months
-do-	324/149 IPC	1 ½ years	Rs.1,000/-	Three months

-do-	323/149 IPC	Six months (two counts)	-	-
Bhajan Lal	148 IPC	One year	Rs.1,000/-	Three months
-do-	324 IPC	1 ½ years	Rs.1,000/-	Three months
-do-	323/149 IPC	Six months (two counts)	-	-
Raj Kishan	148 IPC	One year	Rs.1,000/-	Three months
-do-	324/149 IPC	1 ½ years	Rs.1,000/-	Three months
-do-	323/149 IPC	Six months (two counts)	-	-

All the sentences were ordered to run concurrently.

15. The judgment of conviction and order of sentence left accused Madan Lal, Bhajan Lal and Raj Kishan aggrieved and they have filed CRA-S-1515-SB-2004.

16. Whereas the complainant Parveen Kumari is also feeling aggrieved by the judgment praying that accused be convicted and sentenced for the offence under Section 307 IPC and sentence awarded to accused Madan Lal, Bhajan Lal and Ram Kishan be enhanced, whereas accused Kialash Rani, Rajjan Bai and Sumitran, who have been granted the benefit of probation be also convicted for offence under Section 307 IPC and awarded sentence of imprisonment.

17. I have heard learned counsel for the appellants-accused-convicts, learned Assistant Advocate General for the State of Punjab as well as learned counsel representing the petitioner/complainant besides going through the record.

18. I find that the impugned judgment of conviction and order of sentence passed against the appellants/accused are not sustainable and are liable to be set aside for the reasons as under:

Firstly the happening of the incident on the date, time and place is highly doubtful, which is evident from the reason that in the statement Ex.P10 made by the complainant to the police as well as in her medico legal report Ex.P1, the complainant had given her address of village Khuian Sarwar. That fact was admitted by her while getting her statement recorded in the Court stating that she had done so since she was residing at village Khuian Sarwar at that time. Furthermore, PW6 ASI Fauja Singh in his cross-examination had stated that the complainant was residing in the house of her brother Prem Nath at village Khuian Sarwar and he was aware of this fact because the brother of the complainant was known to him and he used to sit at one of the shops near house of brother of the complainant. The distance of village Khuian Sarwar, the parental village of the complainant and village Diwan Khera, where the matrimonial house of the complainant is located, is stated to be 7-8 kms. All these things make happening of incident in the matrimonial home at village Diwan Khera quite doubtful. The trial Court had noticed all these facts while recording the submissions made by learned defence counsel representing the accused during the trial but by giving unconvincing reasons rejected such submissions. In para No.9 of the judgment, the trial Court has observed that the fact cannot be lost sight of that the complainant was taken to Civil Hospital Panj Khosi from the house of her brother Prem Nath, where she immediately went after occurrence along with PW5 Harbans Lal and one Raj Kumar. It is quite strange that when the complainant had suffered injuries at the hands of accused in the matrimonial home at village Diwan Khera instead of going to hospital, she opted to go to

house of her brother Prem Nath in company of PW5 Harbans Lal and Raj Kumar and from there she went to civil Hospital, Panj Khosi. Such conduct of the complainant as well as Harbans Lal and Raj Kumar is quite unnatural and unbelievable. The trial Court for flimsy reasons has justified such action of the complainant, which is quite contrary to the natural human conduct. In para No.10, also, the trial Court by unnecessary stretching of the things and unconvincing reasons went on to reject the deposition of PW6 ASI Fauja Singh in that regard and justified the complainant giving her address of village Khuian Sarwar to the police and to the doctor at the hospital. ASI Fauja Singh has unnecessarily been labelled as a partial witness when there was no corroborative material on record to show that.

19. The defence had raised another plea and rightly so with regard to the delay in admission of complainant/injured in Civil Hospital, Panj Khosi inasmuch as the incident is said to have taken place at 4/4:30 p.m. on 3.9.1994, whereas the complainant was admitted in the hospital at 9:30 p.m. i.e. after delay of 5 hours. Such delay has not been explained satisfactorily by the prosecution and the plea raised on the part of the defence that there was every likelihood of complainant having fabricated the injuries during those five hours in order to falsely implicate the accused in this case could not be brushed aside in a light manner more particularly when there took place delay of about 10 hours in registration of the FIR. The delay in such like matters is always looked down upon with suspicion by the Courts. The delay in reporting the matter to the police leaves a wide room open where mischief of false implication after due deliberations and consultations can easily creep in.

Whereas quick and prompt reporting of the incident to the police results in giving a spontaneous and blemish free account of the incident, which carries much more weightage. Here delay of five hours in complainant/injured going to the hospital and delay of 10 hours in reporting the matter to the police has been left unexplained and no cogent and convincing reason could be explained by the prosecution in that regard. Learned trial Court in para No.12 of the judgment has tried to justify such delay but without any success. As observed in para No.12 of the judgment, the distance of hospital at village Pank Khosi is about 1 ½ kms. from village Khuian Sarwar, whereas as already observed the distance between Khuian Sarwar and Diwan Khera is 7-8 kms. The observations by the trial Court that it was quite natural for the complainant and her brother Prem Nath to take 5 hours in getting her admitted in Civil Hospital Panj Khosi and therefore, the delay stands explained does not appeal to reason. Similarly an attempt to explain the delay in reporting the matter to the police that prime anxiety for the complainant, eye witnesses and her brother was to get medical aid for the complainant, who was having as many as seven injuries is also futile considering the fact that all the injuries on the person of the injured were found to be simple in nature and it could not be said that she required immediate medical aid and treatment. Furthermore, any of the eye-witnesses could have gone to the police to lodge report regarding the incident rather than complainant, her brother and eye-witnesses going to the hospital and kept sitting there waiting arrival of PW6 ASI Fauja Singh at Civil Hospital, Panj Khosi. From the discussion in para No.13 PW5 Harbans Lal and Raj Kumar come out to be interested witnesses.

This aspect was conveniently ignored by the trial Court. Their testimonies should have been scrutinized in a very close manner, which does not appear to have been done by the trial Court.

20. The very presence at the spot of the eye-witnesses rather comes out to be doubtful. As a matter of fact, Raj Kumar belongs to village Khuian Sarwar and his presence at village Diwan Khera at the time of alleged incident does not come out to be natural and plausible. PW5 Harbans Lal comes out to be an interested witness and his deposition in favour of the complainant does not come out to be natural inspiring confidence.

21. Furthermore, the sequence of the incident and the motive suggested also comes out to be full of doubts. Madan Lal having suffered a consent decree in favour of his wife Parveen Kumari – complainant and name of Parveen Kumari having been reflected in the revenue record as owner of that 10 acres of land and admittedly the litigation between the spouses having come to an end with complainant returning to the matrimonial home, all of a sudden the accused asking the complainant to suffer a statement in favour of Madan Lal for retransferring of 10 acres of land to him does not appeal to reason. There is nothing on record to show that Madan Lal had filed a civil suit against the complainant seeking setting aside of the consent decree suffered by him in favour of the complainant or that on the fateful day any date of hearing was fixed in any such case. Even otherwise, the incident is said to have been taken place at 4/4:30 p.m. and the Courts function only up to 4:00 p.m., therefore, all the accused attacking the complainant for not going with Madan Lal to suffer a statement in his favour is quite

unnatural and unworthy of acceptance. It comes out that an attempt has been made to implicate the accused attributing one or two blows to each of the accused. If the accused were to assault the complainant and they were armed with sotis, kasia etc, then they would have beaten her black and blue causing several injuries that too of grave nature rather than each accused coming forward giving a blow or two to the complainant then withdrawing, with second accused, then repeating that act and so on. The prosecution story suggests that accused were giving blows to complainant in a sequence, that shakes the credibility of the prosecution story.

22. As regards accused Bhajan Lal putting a rope around the neck of the complainant and attempting to kill her, that allegation has been disbelieved by the trial Court and rightly so in para No.15 of the judgment observing that neither the complainant nor PW5 Harbans Lal in their statements made to the police had stated that accused Bhajan Lal in any manner had tried to strangle the complainant by way of pressing the rope statedly put by him around the neck of the complainant. Although in the supplementary statement of the complainant and PW5 Harbans Lal recorded on 8.9.1994, they had stated that accused Bhajan Lal tried to strangle the complainant by way of pressing and twisting the rope, which was put around her neck. The trial Court has noticed that both the PWs were confronted with their earlier statements, where this factum was not recorded and supplementary statements were made by them later on to make offence more heinous. The trial Court has noticed that the story of attempted strangulation of complainant by accused Bhajan Lal is also not

corroborated from any medical evidence on record inasmuch as in terms of MLR of the injured, injury No.5 is shown to be on the posterior aspect on the neck of the complainant with no ligature mark around the whole of the neck of the complainant. Under the circumstances, it could not be said that accused Bhajan Lal tried to strangle her by way of pressing or twisting the rope. PW1 Dr.Hansraj had also stated in his cross examination that if a man is strangled with a rope by giving the rope a twist from any of the sides of the neck in a tied manner the glottis would be depressed and in the instant case there was no sign of depressing glottis. Learned trial Court has rightly held that the story of the attempted strangulation given by the complainant and PW5 Harbana Lal is doubtful and those are rather afterthought version to make the offence heinous and that even otherwise injury on the neck was opined by the doctor as simple in nature and further none of the remaining injuries were any way dangerous to the life of the complainant. In view of the discussion, it was rightly concluded that the charge under Section 307 IPC was not proved against the accused beyond a reasonable doubt.

23. With regard to the charge for the offence under Section 498-A IPC, the trial Court has discussed this aspect in para No.17 of the judgment that there is solitary statement of the complainant to the effect that she was being harassed by all the accused for demands of dowry and her such statement does not find corroboration from testimony of any other witness. It has further been observed that it stood established that regarding demand of dowry said to have been raised by the accused and regarding the resulted harassment meted out to her on that account, she had filed a criminal complaint under Sections 406 and 498-A IPC

against the accused but accused were acquitted in that case, therefore, they could not be tried for the same offence for the second time on account principle of double jeopardy. It has also been noticed that although PW4 Parveen Kumari complainant had deposed that after compromise in the previous case, she started residing in the house of accused and accused again started harassing her for bringing less dowry but it has to be kept in mind that she had got 10 acres of land transferred in her name. Furthermore, there is nothing in the statement of the complainant that after compromise any of accused ever demanded any dowry from there, therefore, essential ingredients of offence under Sections 498-A are not fulfilled that the complainant was maltreated or harassed by the accused with a view to force her to bring more dowry articles from her parents and other relatives.

24. There is absolutely no evidence on record to show that the accused committed rioting while armed with deadly weapons or that they had formed any unlawful assembly having common object of causing injuries to the complainant.

25. Under the circumstances, the prosecution had failed to prove its charge against the accused beyond a shadow of reasonable doubt, rather the prosecution story comes out to be highly doubtful and unworthy of reliance. The trial Court by misappraisal of evidence and wrong interpretation of law held the accused guilty for the offences under Sections 148, 149, 323, 324 IPC. The impugned judgment cannot stand judicial scrutiny. The appeal has merit. The same is accepted and the impugned judgment of conviction and order of sentence passed against the appellants are set aside. The appellants are acquitted of the

charge for which they have been held guilty and convicted vide the impugned judgment.

26. As regards the revision i.e. CRR-333-2005 filed by the complainant Parveen Kumari praying that accused be convicted for the offence under Section 307 IPC and punished accordingly, in view of the detailed discussion above, no offence under Section 307 IPC is disclosed against any of the accused, rather the very happening of the incident in the manner and sequence as suggested by the prosecution comes out to be doubtful. A reasonable doubt arises in the mind about the guilt of the accused, giving benefit of that, accused have been acquitted for the offences for which they had been convicted and sentenced by the trial Court. There is no question of convicting them for offence under Section 307 IPC and sentencing them in the said offence.

27. The revision petition bearing CRR-333-2005 filed by the complainant stands dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

18.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No