

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-496-MA-2018 (O&M)

Date of decision: 11.09.2023

Rekha Devi

...Appellant(s)

Vs.

Naresh Pal & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Nonish Kumar, Advocate
for the appellant.

NIDHI GUPTA, J.

Present appeal is filed against judgment dated 16.09.2017 passed by learned Judicial Magistrate, 1st Class, Karnal, whereby accused/respondent No.1 herein, has been acquitted in criminal complaint No.75 of 2013 titled as "Rekha Devi Vs. Naresh Pal and Others" registered under Sections 406, 498-A, 506 and 34 IPC.

2. Learned counsel for the appellant submits that the appellant was married to respondent No.1 on 07.06.2001. Out of this wedlock, two children were born. Unfortunately, they expired after some time. Learned counsel submits that barely 10-11 months after the marriage, the appellant had been grossly ill-treated and subjected to cruelty and demands of dowry by respondent No.1 and his family, who are co-accused i.e. mother-in-law and sister-in-law of the appellant. It is stated that mother-in-law and sister-in-law of the appellant and respondent No.1 harassed the appellant for bringing Rs.50,000/- from her parents for purchase of motorcycle, and when their demand was not fulfilled, they quarrelled and beat the appellant. In the year 2002, respondent No.1 had

also sprinkled kerosene oil on the appellant and tried to set her ablaze. However, she had saved herself by running into the street and made a telephonic call to her parents. Thereafter, respondent No.1 had apologised and had assured the appellant that such incident would not be repeated. However, after some days, again a demand was raised for Rs.50,000/-. However, a Panchayat was convened on 10.02.2009 in which respondent No.1 had begged for forgiveness. Again, the matter was reconciled. However, after passage of some time, the respondent had again demanded Rs.75,000/- for construction of his house.

3. It is submitted that it is in these circumstances that the appellant was constrained to file the present complaint against respondent No.1 and his mother and sister/co-accused. It is submitted that though the appellant had led comprehensive and cogent evidence in support of her case, however, learned trial Court has failed to consider the same and has therefore, wrongly acquitted respondent No.1. It is submitted that learned trial Court has not considered the oral as well as documentary evidence placed on record by the appellant. The findings of the learned trial Court are perverse which has resulted in grave miscarriage of justice to the appellant.

4. I have heard learned counsel for the appellant.

5. Perusal of record of the case reveals that the appellant was married to respondent No.1 on 07.06.2001. They are living separately since 2010 and criminal complaint was instituted against respondent No.1 on 22.11.2012. It is therefore, clear that the appellant had registered the

present complaint against respondent No.1 after two years of leaving the matrimonial home. Needless to say, when the parties are living separately, there is no occasion or question of the respondent No.1 committing cruelty against the appellant. It is also pertinent to note that from the period 2001 to 2010, admittedly, no complaint of any kind was made by the appellant against the respondent No.1.

6. Even otherwise, following findings of the learned trial Court in respect of the allegations of demands of dowry, cruelty and harassment made by the appellant against respondent No.1 and his family, are relevant and reproduced hereinbelow:-

“18. It is settled principle of law that the prosecution has to prove its case beyond reasonable doubts. The fact of five marriages solemnized in exchange customary rituals has been denied by complainant as CW1 and her father Rajbir Singh as CW2. However, this fact has been admitted by another witness of the complainant Nanha Ram as CW3. He admitted that marriage of Rekha and niece of Naresh Pal had been solemnized in exchange customary rituals. Accused has examined Malkhan Singh as DW1 who deposed that five marriages have been solemnized on same day.

19. From perusal of cross-examination of complainant witnesses in pre-charge evidence and after-charge evidence, it is evident that all marriages have been solemnized at same time which proves that marriage of Rekha was solemnized in exchange customary rituals. It is case of the complainant that Rs.3,50,000/- was spent on the marriage of Rekha but at that time only marriage of Rekha has not been solemnized. Complainant stated that parents of complainant gave sufficient

dowry to the accused but no bills have been placed on file. The complainant has failed to prove that Rs.3,50,000/- was spent in marriage of complainant and dowry articles was given in this marriage. It is a fact that huge amount is not spent in the marriages which are solemnized in exchange customary rituals. It is the case of the complainant that accused demanded three times of Rs.50,000/- from the complainant and her parents and they paid Rs. 50,000/- in year 2004 to the accused persons. Complainant deposed that father of complainant mortgaged his property and that amount was paid to the accused. She deposed that she was beaten several times even one day kerosene oil was sprinkled over her by her mother-in-law and husband. This fact has also not been proved by the complainant because regarding this neither any complaint nor any medical record has placed on file. It is averred by the complainant that she rescued herself to run in the gali from the house of accused but no person has examined by the complainant who were present at that time.

20. Further, murder of nephew of Naresh Pal has committed in year 2010 and all the stories of dispute came into the picture after 2010. Till 2010 there was no complaint regarding demanding of dowry and beatings by the accused persons. This fact has been admitted by Nanha Ram as he deposed that before murder of nephew of Naresh Pal there was no complaint demanding dowry and there was no dispute. He further deposed that dispute was started after murder of nephew of Naresh Pal. This fact proves that everything was good till 2010 but after murder of nephew of Naresh Pal when name of brother came in his murder then all the disputes have started. It is also come in evidence that all the three sisters living in their parental home. The complainant herself filed a

divorce petition but she herself withdrawn same without any specific reasons. The complainant is also failed to prove that on which date and month the alleged amount of Rs.50,000/- was paid to the accused persons.

21. Therefore, when there are certain infirmities in the complainant's case, then, she was bound to prove its case against the accused persons beyond reasonable doubt. The civil cases are decided upon preponderances of probabilities but the criminal case are decided only on absolute proof i.e. complainant must prove its case beyond reasonable doubt and in view of the above discussion, it is hereby held that the complainant has failed to prove its case against the accused person beyond reasonable doubt and therefore, by extending benefit of doubt, the accused is hereby acquitted of the charges framed against him. His bail bonds and surety bonds stand released. File be consigned to record room after due compliance."

7. On a specific Court query, learned counsel for the appellant is unable to dispute the above said facts. Learned counsel has also not placed or produced anything before this Court to controvert the above said findings. Accordingly, in view of the above said uncontroverted factual position, I find no ground is made out to interfere in the impugned order.

8. **Dismissed.**

9. Pending application(s) if any also stand(s) disposed of.

11.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No