



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-370-2019(O&M)
Date of order: 14.11.2024

Varinder Kumar

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sidharth Chawla, Advocate
for the petitioner.

Ms. Rishu Madan, AAG Punjab.

Nidhi Gupta, J.

Challenge in the present petition is to the judgment and order dated 10.04.2017 passed by the learned Sub-Divisional Judicial Magistrate, Baghapurana, convicting and sentencing the petitioner under Sections 498-A and awarding 3 years rigorous imprisonment and Rs.5,000/-; and convicting under section 323 IPC for 1 year rigorous imprisonment and Rs.1,000/- as fine; and in default further rigorous imprisonment for one month and 15 days respectively; AND judgment of learned Appellate Court where by conviction of the petitioner has been upheld, however, the sentence has been reduced to two years under Section 498-A IPC and one year under Section 323 IPC.

2. Learned counsel for the petitioner inter alia submits that the impugned orders of the Courts below are liable to be set aside as they have been passed while taking into consideration that the prosecution has led no evidence to prove the alleged incident of causing injuries to the

complainant by the petitioner. It is submitted that learned Courts below have erred in gravely ignoring that no medical whatsoever was conducted of the complainant. The learned Courts below have also erred gravely in believing the statement of Rupali PW4/daughter of the petitioner and complainant, as she is a tutored witness as, at the time of recording of the statement, she was residing with her mother. Learned Courts below have also ignored the fact that after registration of the present case, the matter was compromised whereafter the complainant and the petitioner lived together for a period of eight months. However, after that, father of the complainant took the complainant with him and moved an application to the police. Father of the complainant is interfering in the matrimonial ties of the petitioner. Learned Courts below have erred gravely by ignoring the statement of PW6/Dr. Jasdeep Singh, who examined Rupali Goyal i.e. PW4 and had opined that the injuries caused on Rupali Goyal as well as Twincy Goyal can be self-suffered by rubbing an uneven brick on the skin. It is accordingly prayed that the present petition be allowed, and the impugned judgments be set aside.

3. Learned State Counsel vehemently opposes the prayer made on behalf of the petitioner and submits that the petitioner stands convicted by the concurrent findings returned by the learned Courts below. Attention is drawn to the said findings of the learned Courts below. It is accordingly, prayed that the present petition deserves to be dismissed.

4. Learned State Counsel files custody certificate dated 13.11.2024 which is taken on record, as per which out of total awarded

sentence of two years, the petitioner has undergone actual period of 1 month and 13 days and sentence including remission of 1 month and 17 days.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. Perusal of record of the case shows that the petitioner was married to the complainant/respondent No.2 on 14.06.1997. Two daughters were born out of this wedlock who have been in the care and custody of the complainant. The present FIR No.135 dated 06.12.2011 was registered by the respondent no.2/complainant under Sections 498-A, 323 and 34 IPC at Police Station Baghapurana. Five persons were named as accused in the FIR being the petitioner, his parents, and his brother. In the FIR, it has been alleged that since the day of marriage the above accused persons were not happy with the dowry brought by the complainant and they were mal-treating her on one pretext or the other. The accused persons were also continually raising dowry demands in the shape of cash or kind. The complainant tried her best to continue with the marriage. Being a Hindu religious lady, she suffered all the torture and mental tension and beating inflicted by the accused only to make her marriage work. The accused were also unhappy with the complainant as she had given birth to 2 daughters, and they wanted a male child. It has been alleged that in the month of August 2010, the accused persons gave severe beatings to the complainant regarding which she informed the local police; whereupon the

accused gave in writing that in future they will not maltreat her or torture her for dowry or raise any demand of dowry. Yet, in spite of the undertaking, the accused again gave severe beatings to the complainant upon which she lodged a complaint dated 10.12.2010 to the Senior Superintendent of Police, Moga. In the said complaint, the accused were duly called by the investigating agency and during investigation, they gave an undertaking that in future, it will not be repeated. Even a compromise was executed in the said complaint. As such the complainant withdrew her said application against the accused. However, despite this again on the night of 10.07.2011, the accused persons being the present petitioner, his parents, and his brother, in connivance with each other gave severe beatings to the complainant and dragged her by pulling her from hair and gave beating to her with the intention to kill her and they openly raised alarm that she is unable to give birth to a male child for their family. The accused are also alleged to have made a demand for Rs.5 lakh for the purchase of goods for the shop/business of the petitioner as he had already disposed of the shop goods in fulfillment of his bad habits of drinking and intoxication etc. The accused further said that the death of the complainant is necessary as then they will get the petitioner remarried and will fetch huge amount as dowry from second marriage. Last such incident is of 20.11.2011 when the petitioner beat not just the complainant but also their daughters. As such, the complainant was constrained to file the present complaint on the basis of which the present FIR No.135 dated 06.12.2011 came to be registered under Sections 498-A, 323 and 34 IPC at Police Station Baghapurana, against the aforementioned, four accused persons.

8. After facing trial, vide the impugned judgment dated 10.04.2017 passed by the learned Sub-Divisional Judicial Magistrate, Baghapurana, three of the four accused persons were convicted as follows:-

Name of accused	Offence	Punishment	Fine	In default of payment of fine
Om Parkash	U/s 498-A IPC	Two years RI	Rs.2000/-	Fifteen days RI
Kamla Devi	U/s 498-A IPC	Two years RI	Rs.2000/-	Fifteen days RI
Varinder Kumar	U/s 498-A IPC U/s 323 IPC	Three years RI One year RI	Rs.5000/- Rs.1000/-	One month RI Fifteen days RI

9. Brother-in-law of the complainant was acquitted.

10. In convicting the petitioner, the learned trial Court took note of the fact that it has been deposed by the complainant that the accused had demanded Rs.5 lakh as dowry when she gave birth to girl child in the year 2003 and started saying that she had spoiled their ‘Vansh’. Notably, the said testimony of the complainant was duly corroborated by her daughter Rupali Goyal/PW4 who also deposed that since the age of discretion, she had noticed that her mother was harassed and maltreated by the petitioner who was addicted to alcohol and used to harass her mother for bringing more dowry and she used to remain upset over the fact that the complainant has not given birth to male child. PW4 has categorically deposed that after returning from work, the petitioner would consume liquor and oppress the complainant and tortured her to bring more dowry and when her mother would express her inability to do so then

the petitioner would beat her. Needless to say, such testimony of the daughter in respect of her father is incriminating. PW4 further deposed that on 20.11.2011, the petitioner beat her and her sister whereupon they were medically examined. Admittedly, MLR of PW4 is on record as Ex.PW6/A; and MLR of second daughter is on record as Ex.PW6/C. Clearly, therefore, the contention of the petitioner that there was no medical evidence to implicate the petitioner, is factually incorrect and contrary to the record. The argument of the petitioner that PW4 was a tutored witness is also liable to be rejected in view of the fact that at the time of her deposition, she would be about 13-14 years old, and was therefore capable of thinking and observing for herself.

11. The petitioner and his parents filed appeal against the said judgment of conviction before the learned Additional Sessions Judge, Moga. Vide judgment dated 22.01.2019, the parents of the petitioner stood acquitted, whereas the conviction of the petitioner was upheld. However, his sentence was reduced as follows: -

Appellant Varinder Kumar	Section	R.I.	Fine	In default
	498-A IPC	2 Years	Rs.5000/-	One month RI
	323 IPC	1 Year	Rs.1000/-	15 days RI

12. While upholding the conviction of the petitioner, the learned Appellate Court gave the following findings/reasoning: -

“20. PW-4 Rupali Goyal has categorically deposed that since the age of her discretion, she noticed that her mother Monika Goyal was being harassed and maltreated by her father Varinder Kumar. Her

father was addicted to drinking alcohol and used to harass her mother so as to bring more dowry. She further deposed that she had been watching these continuously since she was 10/11 years of age. Her father would return from his work, consume liquor and then start oppressing her mother, asking her to bring more money and dowry and when her mother would express her inability to do so, her father would beat her. She also deposed in her cross examination that her grand father is aged about 72 years. They shifted their residence to the shop in Subash Mandi from the last about three years. Volunteered, her grand mother had asked them to shift on the pretext that the house was under repair.

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25. As far as the allegations of causing simple hurt is concerned, the same is clearly made out against the accused Varinder Kumar as PW-3 complainant Monika Goyal and PW-4 Rupali Goyal. PW-3 Monika Goyal has made specific allegations against the accused Varinder Kumar by deposing that on 20.11.2011, her daughter Rupali, who was living with her husband gave her a telephonic call and told that accused Varinder Kumar was mercilessly beating her and she further prayed to her for bringing her from her in-laws house. PW-4 Rupali Goyal, daughter of complainant has also deposed that her father being inebriated badly battered her and her sister. Even, PW-6 Dr. Jasdeep Singh, Medical Officer, who has conducted the MLR's of Rupali Goyal and Twincy Goyal, has also proved copy of MR as Ex.PW6/A and Ex.PW6/C and pictorial diagram showing the seats of injuries as Ex.PW6/B and Ex.PW6/D. Thus, the ocular version of complainant PW-3 Monika Goyal and PW-4 Rupali Goyal is duly corroborated with the medical evidence. Therefore, there are cogent and convincing evidence on record to show that accused Varinder Kumar had voluntarily caused simple hurt on the person of PW-4 Rupali Goyal and her sister Twincy Goyal. Hence, after taking into consideration the submissions made by both the sides, I am of the

considered view that learned trial court has rightly convicted the accused Varinder Kumar u/s 498-A, 323 IPC.”

13. Ld. Counsel for the petitioner has miserably failed to explain, counter, controvert, or dispute the above said highly incriminating findings. In view of the above, the present petition is **dismissed**.

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

14.11.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No