

2024:PHHC:105705



213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-83-MA-2018 (O&M)
Date of decision: 05.08.2024

Sushila Devi

...Applicant

Vs.

Pardeep Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Kumar Yadav, Advocate
for the applicant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application is preferred under Section 378(3) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') against the judgment of acquittal dated 14.09.2017 passed by learned Sub Divisional Judicial Magistrate, Kanina, in a criminal complaint case bearing No.RT-135-2013, filed under Sections 323, 406, 498-A, 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC').
2. Briefly, the facts are that the marriage of the applicant-complainant was solemnized with Sandeep according to Hindu rites and rituals and out of

2024:PHHC:105705



this wedlock, one male child namely Ayush was born on 10.05.2009. On the marriage, her parents spent about Rs.12.00 lacs and gave sufficient dowry, but the accused persons harassed her for bringing less dowry. At the time of birth ceremony of the child namely Ayush, the accused persons demanded cash amount of Rs.5.00 lacs, a car, air conditioner and gold ornaments and threatened her to face dire consequences, if she failed to fulfill their demands. On 27.04.2012, husband of the complainant expired and after that, the accused started beating her and for the future of her child, she bore all these things. On 21.02.2013, at about 02.00 p.m., the accused, after beating the complainant, turned her and her child out of the matrimonial home and they did not return her istridhan. Thereafter, she went to her parental home and narrated the entire incident to her parents, upon which, on 22.02.2013, father of the complainant along with respectables of the village went to house of the accused and convened a panchayat, in which they assured not to repeat such things and also assured to take back the complainant and her child after 2-3 months. On 19.05.2013, the accused went to parental house of the complainant and abused her and her family members and accused No.1 also gave beatings to the complainant and threatened to kill her and her child, if she failed to bring dowry articles and he also threatened to implicate her in a false case, as he was working in Haryana Police. After hearing the noise, Ramnath, Satbir and

2024:PHHC:105705



Kanwar Singh rescued family of the complainant. While going, the accused threatened her to face dire consequences. On 20.05.2013, the complainant and her father visited the house of the accused along with other respectables of the village, but the accused did not pay any heed to their prayer and demanded more dowry. On 27.05.2013, the complainant moved an application to the Superintendent of Police, Narnaul, but no action was taken. Thereafter, she submitted a complaint in the Court and under orders of the Court, FIR (*supra*) was registered.

3. Having heard learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that though as per depositions of CW1 & CW2, the respondent gave beatings to the applicant-complainant on 21.02.2013 and 19.05.2013, however, she did not get herself medically examined. CW1/applicant-complainant, in her cross-examination, regarding the incident of 21.02.2013 stated that the respondent beaten her up by kicks and fist blows and regarding the incident of 19.05.2013, she stated that he, after having a fight with her father, gave beatings to her, whereas she gave a totally different version in the State case, wherein she stated that after hearing the noise, she came out of the house, there the accused persons were fighting with her father and thereafter, they gave beatings to her. Father of the complainant/CW2 though supported the claim of his daughter, but he has not

2024:PHHC:105705



stated anything about the altercation. As such, there are so many discrepancies in the testimonies of the witnesses. There is no medical report on record to prove guilt of the accused. Further, as per photocopy of attendance register Mark-B, the respondent was on duty on the dates of incident i.e. 21.02.2013 and 22.02.2013.

4. Further, the applicant-complainant concealed material facts from the Court, as in her cross-examination, she denied living with her husband, at no point of time, at Delhi, where he was working, whereas in examination-in-chief, this fact was admitted by her father. This fact is also supported by her voter-ID card Mark-D. Even her name was deleted on 21.07.2008 from the ration card of father of the respondent, which proves that after her marriage, she never lived with her in-laws. In the State case, one Kanwar Singh appeared as PW3 and he deposed that upto April, 2012, relations between the families of the complainant and the accused were cordial and after death of husband of the complainant, their relations became worse. From perusal of the record, it transpires that real controversy between the families of the accused and the complainant is that she wanted ex-gratia benefits consequent to death of her husband and share in the property for her child, whereas the accused tried their best to avoid ex-gratia benefits to the complainant in place of her husband and also for relinquishing the claim in the property in the name of her son. The respondent alleged that

2024:PHHC:105705



after solemnizing second marriage with one Avinash, the complainant was residing with him as husband and wife. In this regard, Sarpanch of Village Kalwadi appeared as DW1 and a perusal of his cross-examination clearly shows that the complainant never performed second marriage. The complainant filed the complaint (supra) just to put pressure upon the accused to hand over the possession of the property in the name of her son and the allegations with regard to demand of dowry does not inspire confidence.

5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards innocence of the accused, the view, which favours the accused, should prevail over the other pointing towards his guilt. Furthermore, learned trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (*See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram Vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others Vs. State of Karnataka, (2007) 4 SCC 415*). A Division Bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* passed in *CRM-A No.3 of 2022* decided on

2024:PHHC:105705



06.07.2023, held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant has failed to point out any perversity or illegality in findings recorded by learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and hence, leave to appeal is denied.

7. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

05.08.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No