

State Vs. Tara Chand and
Ors

*In the court of Ms.Shifa, HCS, Judicial Magistrate Ist
Class, Chandigarh.*

Police Challan No...3723 of 2013
Date of institution...19.09.2011
Date of decision:
11.05.2015

S t a t e

Versus

1- Tara Chand Sharma son of Sankar Dass, resident of
H.No.2, Plot No.1, National Avenue, Rama Mandi,
Jalandhar. 2- Suman Lata wife of Tara Chand
Sharma, resident of H.No.2, Plot No.1, National
Avenue, Rama Mandi, Jalandhar. 3- Anju Bala wife of
Amit Sharma, resident of H.No.35, Krishan Square,
Phase-II, Amritsar, Punjab.

.....Accuse
d.

FIR No.54 of 12.3.2010 U/s
406,498-A,120-B and 109 of IPC Police
Station Sector 19, Chandigarh.

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Present: Sh.Hukam Singh, APP for the State.

Accused Tara Chand, Suman Lata and Anju Bala on bail in person represented by Sh.Matwinder Singh, Advocate. FIR against accused Sushil Goel already quashed.

J u d g m e n t :

1. The above named accused have been sent up to face trial in present case by the SHO of Police Station 19, Chandigarh.
2. In brief, the facts of the prosecution case are that an application was moved by one Deepti

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Sharma against her husband and in-laws. She stated that she is being tortured on account of insufficient dowry by her husband and in laws persistently. She stated that she was forced to leave her matrimonial house and go to Chandigarh

to stay with her parents. She stated that she stayed very briefly at her matrimonial house at Jalandhar and thereafter she was made to go to Chandigarh again. She stated that subsequently her husband was disowned by the in-laws family merely to defeat the rights of complainant. She was constantly harassed by her in-laws family and whereabouts of Brijesh were not disclosed to her. She prayed that her husband be found and action be taken against her in-laws. On the basis of statement of complainant, FIR was registered. During investigation, dowry articles were recovered. Photographs of marriage were taken into police possession. Brijesh could not be arrested despite best efforts and was declared Proclaimed Absconder before presentation of challan on 13.12.2010. Statements of witnesses were recorded and after

completion of necessary formalities, the challan against accused Tara chand, Suman Lata, Anju

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Bala and Sunil Goel was presented in the court by the SHO.

3. On presentation of challan, the copies of challan were supplied to the accused u/s 207 Cr.P.C. Subsequently, the FIR qua accused Sunil Goel was quashed vide order dated 2.3.2013 passed by Hon'ble Punjab and Haryana High Court.
4. Finding a prima-facie case under section 406, 498-A of IPC, the charge sheet was served upon the accused Tara Chand, Suman Lata, Anju Bala to which they pleaded not guilty and claimed trial.
5. In order to prove its case, prosecution examined Deepti Sharma as PW-1. She reiterated the

contents of her complaint and proved the same as Ex.P1. She proved list of dowry articles as Ex.P2. She proved photographs of her marriage as Ex.P3 to Ex.P11. She identified her signatures on recovery and identification memo Ex.P12. She reiterated the factum of physical and mental torture at the hands of her husband and in-laws on account of insufficient dowry. She clearly attributed demand of money from her sister-in-law. She also gave chronological account of events when she was physically tortured by accused Brijesh and his family member for lack

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of dowry. In her cross examination, She stated that very filthy language was used by her in-laws. She also denied the suggestion regarding

withdrawal of divorce petition by her husband.

She denied the suggestion that her behaviour was aggressive and stern.

6.SI Balwant Singh was examined as PW-2. He stated

that complaint Ex.P1 was moved by Deepti Sharma

on the basis of which FIR Ex.P12 was recorded.

Suman Lata and Tara Chand were arrested vide

personal search memo Ex.P14 and Ex.P15. Accused

Anju Bala was arrested vide personal search memo

Ex.P16. In his cross examination, he admitted

that parents of Brijesh had disowned him and

this fact was disclosed by parents of Brijesh.

7. Sudarshan Kumar was examined as PW-3 (wrongly

cited as PW-2). He corroborated the complaint of

complainant and stated that he spent Rs.11.5 to

12 lacs at the time of marriage. He stated that

gold ring was given to accused Tara Chand and

his relative. Gold set was also given to Suman

Sharma. He reiterated the fact regarding torturing of his daughter by accused Brijesh. He stated that in-laws of his daughter also came to Delhi in order to torture and harass his

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daughter for lack of dowry. He also reiterated the fact that his daughter was frequently locked in the house hold premises and also physically tortured. Her daughter was not given any maintenance amount when she was pregnant. In his cross examination, he stated that he is not an eye witness to assault incident. But he did not make any complaint since he wanted to settle the matter amicably. He also denied the suggestion that his daughter used to pick up small issues and fight.

8. Rajesh Kumar was examined a PW-4 (wrongly cited as PW-3). He proved photographs Ex.P3 to Ex.P12.

9. Statements of accused under section 313 of Cr.P.C were recorded wherein all the incriminating evidence was put to them. Accused pleaded innocence and false implication in present case.

10. Accused Tara Chand specifically denied the allegations levelled against him and stated that his son was mentally tortured by Deepti and it was in-fact her callous attitude that his son Brijesh had to quit his job. He also placed on record the various complaints made by them and their son as Mark DA to Ex.DE.

11. Accused Suman Lata also endorsed the

statement of her husband.

12. Accused Anju Bala stated that she is happily married and has never interfered in matrimonial life of his brother and sister in law. She stated that Deepti used filthy language and it was infact the attitude of Deepti that she was left disheartened. Deepti also approached SHO Police Station Sadar on the day of her (Anju Bala's) wedding and complaint was made by Deepti. Since the complaints were found false, the police party left the marriage palace but incident caused much harassmt and humiliation to her.

13. I have heard the Ld.APP for the State and Ld.Counsel for the accused.

14. In the present case, it is on record that marriage in question was solemnized with the consent of parties. Deepti in her examination as

PW-1 stated that *roka* ceremony was held at her parents house and thus the question of huge expenditure is not made out. Similarly, she has not stated in her examination in chief that gifts at the time of marriage were given at the behest of her in-laws or her husband. She merely

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stated that a lot of gifts were given. In the Indian social setting, it is generally a custom to give customary gifts to the husband and his parents. She stated that \$2000 were asked by her husband Brijesh for the purpose of going to Mauritius. It is an admitted fact that this money was deposited in the account of Deepti herself and this money was spent for the purpose of honeymoon for which both Deepti and Brijesh

went. This transfer of money cannot be said to be for the purpose of dowry since it was not at the behest of Brijesh or for his private use rather it was for a common purpose.

15. Complainant Deepti Sharma also stated that she was time and again beaten and physically harassed for demand of dowry on behalf of her in laws but it is an admitted fact that though her initial stay was at her matrimonial home in Jalandhar, she subsequently shifted to Delhi and stayed along with her husband alone at Delhi. Her initial brief stay at Jalandhar could not have entailed instances of cruelty so early after marriage. The harassment at the hands of husband alone was physically possible at Delhi and the role of in-laws while at

Jalandhar cannot be believed. Also why would the in-laws and the sister in law demand a car when they would not be able to enjoy the same staying at Jalandhar.

16. All the instances that have been narrated by Deepti are about quarrels and fights. The in-laws by way of defence stated in their statement recorded under section 313 Cr.P.C that Deepti would often fight with their son Brijesh and was very short tempered. They also moved complaints against her behaviour. They were also full of apprehension that Deepti would implicate them in false trial and that is why they disowned both the children. She married Brijesh and stayed most of the time with him only. It was the bounden duty of Brijesh to ensure the happiness of his wife and her welfare in matrimonial home.

Since Brijesh has been declared a Proclaimed Absconder, no finding qua his alleged role can be given and present court is merely to see incriminating evidence against accused Tara Chand, Suman Lata and Anju Bala.

17. Deepti Sharma in her examination as PW-1 has merely stated that she was harassed for dowry at her in-laws house. She has not specifically

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narrated any incident attributing incriminating role to Tara Chand and Suman Lata at matrimonial home at Jallandhar. She stated that her mother in law came to stay with her and maltreated her. The same is a vague allegation and she has not stated about maltreatment on account of lack of dowry. She stated that on 12.12.2007 her sister

in law Anju Bala came to visit them at Delhi and she along with Brijesh locked her inside the house. Even if this fact is to be believed, no cruelty for demand of dowry is made out by this act of Anju Bala. She stated that her sister in law slept in double bed at their house at Delhi while she was made to sleep on the floor. This act too cannot be considered compelling for dowry. Even if her statement qua the fact that Anju Bala was dis-satisfied with the gold and other gifts given to her at the time of marriage but this fact alone does not make Anju Bala an accused under the provisions of 406 and 498-A of IPC since no recovery of articles of dowry have been made from her possession and no specific instance of cruelty subsequent to solemnization of marriage at her hands has been proved beyond doubt.

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18. Cruelty is a relative concept and differs from individual to individual. The version of complainant qua cruelty can be proved only by her version as the incidents affected her physically and mentally. The only allegations qua demand of dowry by the complainant is that demands for dowry were made by accused Tara Chand, Suman Lata and Anju Bala. These are mere bald statement made by complainant Deepti and her father only but the same is not supported by any documentary evidence. There is no mention in her version that the demands that were raised on her were in the nature of dowry and the subsequent cruelty on her person was on account of these dowry demands. The ambit of Section 498-A is limited to the fact that there has been

cruelty on women on account of demand of dowry.

This cruelty has to be in the nature of a willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury to the life and health of women. In the present case, though the complainant has alleged physical assault, there is no medical evidence whatsoever to corroborate her stand. Also there is narration qua injuries

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only but proportionately it has not been explained as to who was nursing her back to health and who was giving her medical aid when she did not visit any doctor whatsoever. Also there is constant improvement in her cross

examination and when she is being confronted with her initial complaint and statement before the police, the improvement is amply clear thereby proving the fact that it is not her initial version and the same is an after thought. Also when a co-joint reading is made of her complaint, statement under section 161 of Cr.P.C as well as her examination in court, her anguish from her marriage with Brijesh is apparent and the same is reflecting in her examination before the court. Even though her father Sudarshan Sharma has reiterated the version of his daughter but he is not an eye witness and all the evidence is on basis of hearsay. Also at this stage, the defence of the accused also has to be considered wherein accused Tara Chand has detailed that his wife Suman Lata is suffering from many medical

injuries and therefore, for her to physically assault and harass the complainant is not

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possible. Moreover, the fact that there was mental torture by Deepti on them is also corroborated by the fact that Tara Chand had disowned both his son and daughter in law. Also time and again, suggestions have been given to Deepti as well as her father regarding the salary of Brijesh. It does seem a case of economic dis-content wherein Deepti went to the matrimonial house under an impression of economic prosperity but was rather disillusioned on account of meagre salary of her husband. Also certain documents have been attached by the

accused wherein the authoritative attitude of Deepti comes forth. Marriage in India is a sacrament and personal ego and arrogance has to be kept aside in order to ensure the longevity of marriage. Whatever her issues appear more to be against Brijesh who ultimately was responsible for her well being. His absence does not lead to incrimination of his parents and sister. Merely because her marriage with Brijesh did not work out in the way she had planned does not lead to incrimination of in-laws family under the ambit of Sections 406 and 498-A of IPC. The complainant's tenor and demeanor while

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deposing in court was not one of tortured and

harassed lady. She did not appear like a victim. There is no doubt that infliction of cruelty by one's husband and his family members after marriage renders the life of women close to hell. Some women are strong and come forward to initiate criminal litigation and also take the same to its logical ends. But such a victim lady must give a corroborative evidence and prove her case beyond shadow of all reasonable doubt. Such is not the case when perusal is made of examination of complainant and hence, conviction of the accused Tara Chand, Suman Lata and Anju Bala under section 498-A of IPC is not made out in any way whatsoever.

19. Accused in the present case have secondly been charged under section 406 of IPC. Section 406 of IPC provides for punishment for criminal breach of trust. Criminal breach of trust has

been defined in section 405 of IPC. The essential ingredient for entrustment as an offence under criminal breach of trust is an entrustment of property by one person which is dishonestly misappropriated by the other.

20. The factum of entrustment to Tara Chand and

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Suman Lata has been argued by Deepti Sharma and also reiterated by her father Sudarshan Sharma. Recovery of gifts given at the time of marriage were effected from matrimonial house at Jalandhar. The list of these articles i.e. Ex.P12 are things which are in the nature of household articles. There is no cash or excessive gold which was recovered. Also the

gifts are 'customary' in nature and do not entail the criminality envisaged under section 406 of IPC. These house hold articles are more in the nature of gifts that must have been given by Sudarshan Sharma to his daughter in order to make her life comfortable. Even in the photographs that have been attached i.e. Ex.P3 to Ex.P11, customary gifts only are being exchanged and no cash or excessive gold is being given. Hence the factum of entrustment of property is not made out against accused Tara Chand, Suman Lata and Anju Bala. Hence, the accused Tara Chand, Suman Lata and Anu Bala are acquitted of the charges framed against them under section 406 of IPC.

21. None of the prosecution witnesses has been able to establish that cruelty was meted out to

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the complainant on account of lack of dowry.

Also, no misappropriation of dowry articles has been proved by any prosecution witness whatsoever. The evidence of other prosecution witnesses is of no material consequence whatsoever.

22. In view of discussion made above, the benefit of doubt becomes the privilege of the accused Tara Chand, Suman Lata and Anju Bala, who are hereby ordered to be acquitted. Their surety bonds stand discharged. File be consigned to the record room.

Pronounced on:- Shifa,HCS, 11.5.2015 Judicial
Magistrate Ist Class, charanjitkaur Chandigarh.

Note: This judgment consists fifteen pages and
each page has been checked and signed

by me.

Shifa,HCS, Judicial Magistrate
Ist Class,
Chandigarh.11.5.2015

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