

(State Vs. Munish Kumar)

**In the Court of Kapil Dev Singla, PCS(J),
Chief Judicial Magistrate, Faridkot.
(UID-PB0238)**

Police Report No.51

Date of Institution: 14.03.2013

CIS No.CHI-166-2014

CNR No. PBFD03-002152-2013

Date of Decision: 24.07.2018

State

Versus

Munish Kumar son of Kundan

Lal, resident of House No.4010,

Durgapuri, Waddi Haibowal,

Ludhiana.

.....Accused.

FIR No.204 dated 04.08.2012.

Under Section 498-A I.P.C.

Police Station City, Faridkot.

Present: Sh. Pankaj Taneja, A.P.P. for the State.

Accused on bail, with counsel, Sh. Jatinder Marria.

J U D G M E N T

The above named accused has been sent up to this Court by

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the officer in charge of Police Station City, Faridkot, to face trial for the alleged commission of an offence punishable under Section 498-A I.P.C.

2. The prosecution case is that some time after dated 07.07.2003, in the area of Ludhiana City, the accused being the husband of the complainant- Monika, subjected her to cruelty in connection with demand of dowry.

3. The instant case was originally registered against Kundan Lal son of Late Bhagat Sita Ram and Munish Kumar son of Kundan Lal on the force of an application moved by Monika wife of Munish Kumar. In the course of the ensuing investigation, the Investigating Officer recorded the witnesses' statements under Section 161 Cr. P. C. and arrested the accused. In the course of the investigation, the accused- Kundan Lal was declared innocent. The completion of the investigation was followed by submission of police report U/s 173 Cr.P.C against the accused-Munish Kumar in the Court.

4. Upon the accused's appearance in the Court, requisite copies of the police report and the documents sent with it relied upon by the prosecution were supplied free of cost to him, in compliance of Section 207 Cr. P. C.

5. Upon considering the police report under Section 173 Cr. P. C. and the documents sent with it and hearing the prosecution and the accused, charge under Section 498-A I.P.C. was framed against the accused, to which he pleaded not guilty and opted trial. Following this, the prosecution was called to lead evidence.

6. In order to bring home the charge against the accused, the prosecution examined Monika - the first informant as PW1, Naresh Kumar - the photographer as PW2, Ramesh Kumar as PW3, Ranjit Singh SI (Retired) as PW4, Hira Singh SI (Retired) as PW5, Ashok Kumar- the Ex. Municipal Councilor as PW6, Vinod Kumar as PW7, and Sanjeev Kumar as PW8. After giving up PWs Desa Singh and Yogesh Kumar as won over by the accused, the A.P.P. for the State closed the prosecution evidence.

7. After the prosecution evidence was closed, the accused's statutory statement under Section 313 Cr. P. C. was recorded, putting to him the entire incriminating evidence on record. The accused took the plea that he is innocent. The complainant-Monika's parental family interfered in his matrimonial life. Vinod Kumar Bajaj, Desa Singh Monga, complainant's paternal uncle and the brother - Sanjeev Kumar interfered in his matrimonial life which he opposed, and hence, they threatened him to face dire consequences. He filed an application against them, upon which Sanjeev Kumar suffered a declaration and tendered him apology and assured that he won't interfere in his matrimonial life again. His wife - Monika also suffered a declaration that her parental family insisted her to file false complaint against him. The present case has been falsely filed by Monika and her parental family against him. He filed an application against Sanjeev Kumar and his relatives who forcibly entered into his house and caused injuries to his father. In this regard, his father filed a private complaint before the CJM, Ludhiana. He

never harassed, maltreated, or demanded anything from Monika. He spent thousands of rupees in the marriage of the sister of Monika, Ruchika. Desa Singh Monga and Vinod Kumar Bajaj are influential persons. They managed to lodge the present false FIR against him. He is ready to keep his wife with him.

8. On his turn, the accused opted to examine no witness in his defence.

9. While opening the arguments, the A.P.P. for the State submitted that the prosecution has successfully established the charge against the accused. To buttress his submissions, the A.P.P. invited the Court's attention to the prosecution witnesses' depositions available on record. Lastly, the A.P.P. prayed for returning home the conviction to the accused for the offences committed by them.

10. To tide over these submissions, the counsel appearing on behalf of the accused canvassed with immense vehemence that the accused are innocent and have been falsely implicated in the present case. More so, the prosecution has miserably failed to prove the case against the accused, beyond all shadows of reasonable doubts. Before parting with the arguments, the counsel prayed for acquittal of the accused.

11. Having given a deep and thoughtful consideration to the rival contentions advanced by the A.P.P. for the State, the defence counsel, and examined the material available on record and the relevant law with due care and circumspection, I come to the conclusion that the

prosecution has utterly failed to prove the charge against the accused beyond all shadows of reasonable doubts, for the reasons to follow.

12. As noted hereinbefore, the accused has been charged for the commission of offence punishable under Section 498-A I. P. C. For constitution of an offence under Section 498-A I.P.C., the ingredients thereof must be proved to be existing. For proving the offence under Section 498-A I.P.C., the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. In **Bhaskar Lal Sharma Vs Monika, 2009(3) R.C.R. (CrI.) 867**, the Hon'ble Apex Court was pleased to hold the essential ingredients of offence under Section 498A IPC, as follows:-

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:
 - (i) Any wilful conduct as was likely to drive such woman:
 - (a) To commit suicide:
 - (b) Cause grave injury or danger to her life, limb, either mental or physical;
 - (ii) Harassment of such woman, (1) With a view to coerce her to meet unlawful demand for property or valuable security, (2) or on account of failure of such woman or by any of her relation to meet

the unlawful demand,

(iii) Woman was subjected to such cruelty by : (1) husband of that woman, or (2) any relative of the husband.

13. For the purpose of Section 498-A Indian Penal Code which is peculiar to Indian families victim spouse is always the 'wife' and guilty is the husband and his relatives- near or distant, living together or separately. Ingredients of cruelty as contemplated under Section 498-A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purpose of dissolution of marriage i.e., Divorce.

14. Adverting to the facts of the present case, the complainant -Monika appearing as PW1 stated at trial that she was married to the accused- Munish Kumar on dated 07.07.2003 in the solemnization of Anand Karaj Ceremonies. On demand, her parents delivered gold ornaments, weighing 21 tolas, household furniture, clothes, and one lac rupees in cash in dowry. Besides, her 'Stridhan' - one refrigerator, television, washing machine, utensils, silver utensils was handed over to the accused. The accused had promised that they would return her the 'Stridhan' on being asked to do so. Thus, her parents spent a sum of 6-7 Lac rupees on the marriage. The accused was a greedy kind of person. The accused- Munish and his father used to drink liquor. Some time after the marriage, the accused started taunting her for her not bringing dowry to his expectations. The accused started harassing her. To ensure a peaceful marital life for her, her parents made cash payments to the

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accused at regular intervals. But, the accused's greed knew no limit. Out of their wedlock, one female child was born. At the time of birth of the child, her family gifted many articles to the accused and his father. But, the accused and his family were not satisfied with these gifts and demanded a sum of Rs.50,000/- in cash from them. When her mother and the brother expressed inability to meet their demand, the accused and his parents harassed her and gave her beatings. Following this, her family made a payment of 50,000/- rupees to the family of the accused. Thereafter, the accused changed his behavior for some time but soon again started harassing and beating her. She was not provided food for a number of times. So also, she was confined in a room for a number of days. After the second female child's birth, her in-laws got more furious and started harassing and maltreating her and demanding cash amount from her. The accused used to taunt her that as she has not given birth to a male child, hence, he won't keep her in his house. She was expelled from her marital home twice.

On dated 03.07.2011, her husband and the in-laws beat her and dropped her at her parental home forcibly. At this, her parents approached her in-laws and requested them to keep her in her marital home. But, the accused refused to rehabilitate her in her marital home. Thereafter, she filed a complaint with the Women Cell. Later on, a compromise was effected and the accused assured to keep her and the children in a good manner. But, the accused never changed his behavior and kept on beating and harassing her for not giving birth to a male child

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and for more dowry. On dated 27.03.2012, Ashok Sachar, Vinod Bajaj, Des Raj Monga, and her brother- Sanjeev Bajaj came at her marital home, at her instance. The accused assaulted her brother Sanjeev Kumar with a knife. Following this, she was brought back to her parental home. Since then, she is residing at her parental home, along with her children. Her dowry articles are still lying with the accused and none of these was given to her by the accused. She moved an application- Exh.PA against the accused to the police for providing her justice. Her statement was recorded. She identifies the accused.

She during her cross-examination stated inter alia that it is correct she in her application to the police, Exh.PA has not mentioned the date, month, or year with regard to the alleged harassment, maltreatment, beating or demand of dowry by the accused. She identifies her signature on the affidavit dated 12.10.2011, Exh.DD.

15. The complainant's brother- Sanjeev Kumar – PW8 testified to the effect that he is a photographer by profession. His sister - Monika was married to the accused- Munish Kumar on dated 07.07.2003 at Faridkot. They gave sufficient dowry articles, i.e., 21 tolas of gold, furniture, utensils, and clothes to the accused in the marriage. Some time after the marriage, the accused started harassing his sister- Monika in connection with demand of dowry. Due to non-fulfillment of his demand, the accused used to give beatings to his sister. They used to give money to the accused at regular intervals as per his demand. But, the accused kept on harassing his sister. They moved an application

against the accused to the Women Cell. At the Women Cell, the matter was compromised and his sister was taken to her marital home. But, the accused didn't change his attitude and kept on harassing his sister. Finally, they were left with no other option but to bring his sister back to her parental home on dated 27.03.2012. The police recorded his statement. He identifies the accused.

He during his cross-examination stated that it is correct that he in his statement to the police has not mentioned date, month, and year with regard to the alleged harassment of his sister by the accused.

16. Thus, both PW1 and PW8 stated at trial that the accused harassed, maltreated, and beat the complainant-Monika (PW1) in connection with demand of dowry in cash. To my mind, these allegations are not of such a nature which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical. The complainant's evidence even if given face value and taken to be correct in its entirety, does not disclose commission of the offence punishable under Section 498A IPC.

17. Moreover, the allegations against the accused are vague, unspecific, and indefinite. No time or date of the occurrence is given. Monika – PW1 has not stated what was the exact act of the accused by which she felt harassed or maltreated. In the absence of definite date, time and place at which the alleged act of cruelty was performed, it cannot be said that the ingredients of the offence are spelled out. The evidence on record lacks regarding the specifications of the time when

the complainant was allegedly harassed/ maltreated by the accused.

18. The complainant- Monika- PW1 has inter alia deposed that after she gave birth to the second female child, her husband and the in-laws got more furious and started harassing and maltreating her and demanding cash amount from her. The accused used to taunt her that as she has not given birth to a male child, hence, he won't keep her in his house. On dated 03.07.2011, her husband and the in-laws gave her beatings and dropped her at her parental home forcibly. Even after a compromise was effected at the Women Cell, the accused didn't mend his ways and kept on beating and harassing her for not giving birth to a male child and also in connection with demand of dowry.

19. To me, the complainant- PW1 in regard to the incident dated 03.07.2011 has not specifically stated that the accused beat her in connection with demand of dowry. Rather, it is the complainant's own version that the accused used to harass and maltreat her on account of her failure to give birth to a male child. In the given facts and circumstances, this Court is of the firm opinion that the offence under Section 498-A I. P. C. is not made out against the accused.

20. It is worth mentioning here that the complainant- Monika- PW1 in her affidavit dated 12.10.2011, Exh.DD has inter alia solemnly affirmed that she made the allegations against her husband and the in-laws at the instance of Vinod Kumar, Ramesh Kumar @ Meshi and her paternal aunt (Bhua). These allegations were completely false and baseless. The aforesaid persons wanted to create a rift in her family. All

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the altercations between her and her in-laws took place on account of Vinod Kumar son of Hari Ram's undue interference in her marital life. Her brother- Sanjeev Kumar is also under their influence. Sanjeev Kumar has misbehaved and criminally intimidated her husband many a times. Today, Sanjeev Kumar has sought a written apology from her husband. None from her in-laws has either ever assaulted her or demanded dowry from her. She seeks apology for the mistakes committed by her. She won't be repeat the mistakes in future.

21. Notably, the complainant's above said affidavit is duly attested by the then Executive Magistrate, Ludhiana. There is nothing available on record to doubt or disprove the authenticity of it. So also, it is not the complainant's case that she didn't execute the affidavit with her free consent. In the circumstances, this Court sees no reason not to rely upon it. To my mind, the complainant's own affidavit - Exh.DD makes a deep dent in her case against the accused and makes her version shaky.

22. In **Amar Singh Vs State of Rajasthan, reported as 2010 (4) R.C.R. (Criminal) 53**, the Hon'ble Supreme Court of India held *inter alia* that a prosecution witness who merely uses the word 'harassed' or 'tortured' and does not describe the exact conduct of the accused, which according to him amounted to harassment or torture, may not be believed by the Court in cases under Section 498 A and 304B IPC.

23. In **Neelu Chopra & Anr. Vs. Bharti, 2010(1) Criminal Court Cases 005 (S.C.)**, the Hon'ble Apex Court was pleased to observe

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that in order to lodge a proper complaint, mere mention of the Sections and the language of those Sections is not be all and end of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

24. In **Kulwinder and others Vs. Asha Rani, 2002(2) R.C.R. (Criminal) 358**, it was held that in a case where omnibus allegations have been levelled against all the accused in respect of demand of dowry, harassment, torture and no specific date or month has been specified as to when the incident took place, then the complaint is vague in nature and the same deserves to be quashed.

25. In **Anil Kumar Vs. Rita Kumari, 1999(1) R.C.R. (Criminal) 813 (P&H)**, it was held as follows:-

“Indian Penal Code, Sections 406 and 498A – Dowry articles – Misappropriation of – Complaint quashed on the following grounds:-

- i. Not shown that any demand for return of dowry articles was made and it was declined.
- ii. No dates given with regard to demand of the articles which are stated to have been entrusted to the accused persons.
- iii. There was no specific allegation against any of the five accused persons to show that what article was entrusted to which accused persons.
- iv. Allegations of general and vague nature – It was necessary for the complainant to make specific and distinct allegations against

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each accused showing the entrustment of any article to him and its misappropriation with dishonest intention.”

26. In **Preeti Gupta & Another Vs. State of Jharkhand & Anr., 2010(4) R.C.R.(Criminal) 45**, the Hon’ble Apex Court observed as under:

“30. It is a matter of common experience that most of these complaints under section [498-A](#) Indian Penal Code are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even *bona fide* and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at

an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The

allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the

existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.”

27. In **Appasaheb & Anr. Vs. State of Maharashtra, 2007(1) R.C.R. (Criminal) 747**, the Hon'ble Apex Court was pleased to observe as follows:

“In view of the aforesaid definition of the word “dowry” any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words

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are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See *Union of India v. Garware Nylons Ltd.*, AIR 1996 SC 3509 and *Chemicals and Fibres of India Vs. Union of India*, AIR 1997 SC 558).”

28. It is cardinal principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution is under a legal obligation to prove each and every ingredient of the offence beyond any doubt, unless otherwise so provided by any statute. This general burden never shifts and it always rests on the prosecution. In **State of Haryana Vs. Shamsher Singh, reported as 2006(3) R.C.R. (Criminal) 346 (P&H) (D.B.)**, the Hon'ble Punjab & Haryana High Court held that in a criminal trial, prosecution is cast with very serious duty to bring on record quality evidence in order to substantiate its allegation against an accused person. It cannot seek conviction of any person without bringing substantial evidence on record as it become extremely difficult for the Court to pronounce a person guilty in the absence of fool-proof evidence nailing guilt by the accused person.

29. In view of the discussion made hereinabove, I giving the accused benefit of doubt, acquit him of the charge against him. The personal bond and the surety bond stand discharged. The case property,

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if any, be disposed of under rules after awaiting the result of appeal/
revision, if any.

Pronounced in open court on
dated: 24.07.2018

(Kapil Dev Singla), PCS(J),
Chief Judicial Magistrate,
Faridkot.

UID No.PB0238

Inderjeet Singh

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CNR No. PBFD03-002152-2013

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Present: Sh. Pankaj Taneja, A.P.P. for the State.

Accused on bail, with counsel, Sh. Jatinder Marria.

No DW is present today. The accused closed the defence evidence.

Arguments are heard and concluded. Vide my separate judgment of even date, the accused has been acquitted of the charge against him.

File be consigned to the Judicial Record Room, Faridkot, after due compliance.

Pronounced in open court on
dated: 24.07.2018

(Kapil Dev Singla), PCS(J),
Chief Judicial Magistrate,
Faridkot.
UID No.PB0238

Inderjeet Singh