

her marriage. Her parents gave dowry articles like silver and gold ornaments along with household articles. Accused lived in a joint family along with his father Jitender Singh Yadav and mother Sushila. The sister of the accused Preeti despite being married is residing with her parents from the past 10 years. The accused and his family members are greedy type of persons and they were not happy with the dowry articles entrusted to them. Since the day of marriage she was taunted and harassed for bringing insufficient dowry. The accused with his family member raised a demand for a car or Rs. 10 lacs in cash. She was tortured mentally and physically due to which she suffered mental agony. All her gold and silver ornaments were taken from her by her mother-in-law, father-in-law and sister-in-law. On the second day after the marriage her father-in-law spoke indecently with her. When her brother came to take her along with him then also the accused raised demand for dowry. After some days accused Manish came to take her from Palwal and asked her parents to arrange a house at Delhi or give Rs. 10 lacs. Her parents turned down this demand of the accused. Thereafter, accused Manish Kumar started living with her in a rented accommodation at New Delhi because both of were working at Noida and Gurgaon. The accused Manish kept on demanding one car or Rs. 10 lacs from her due to which she suffered mental stress. Accused Manish went to Vietnam on

official tour without giving his contact details to her and her mother who was temporarily residing with them. Accused Manish reached back Delhi on 11/12 November, 2012 but he straight away went to Noida and due to this she suffered mental stress and fainted whereafter she was taken to National Heart Hospital, Delhi. She got discharged and came back to Palwal. Accused Manish came to see her and stayed at Palwal for two days but during this period, he again demanded one car or Rs. 10 lac from her parents. On 24.11.2012 Manish and his father came to Palwal and took Rs. 5 lac from her parents. In the month of February 2014 she got to know that the accused Manish was admitted at Shanti Gopal Hospital Indirapuram. She along with her father and mother paid a visit to him at the hospital. She was not allowed to stay with accused Manish. After the discharge, the accused Manish went to his parental house at Kanpur. The accused refused to take her along with them. She went to Kanpur but the accused refused her to stay there. She stayed at the house of her maternal uncle (Mama) namely Suresh Singh. On 02.03.2014 she forcibly went to stay at her matrimonial house. On 08.03.2014 her father-in-law, mother-in-law and sister-in-law abused her and demanded the balance payment of Rs. 5 lacs. When she refused she was locked up in a room and was threatened for her life. She informed her maternal uncle (Mama) about this incident whereafter she was

rescued by him. Since then she is staying with her parents. Her in-laws refused to hand over her ornaments to her. On her complaint, the present FIR was registered. Investigation was carried out. Accused was arrested. Site plan was prepared. Statements of the witnesses were recorded and after completion of the necessary formalities, challan under Section 173 Cr.P.C. was presented before this Court.

3. Copies of challan was supplied to the accused as envisaged under Section 207 Cr.P.C.

4. Finding a prima facie case against the accused under Sections 498-A, 406, 506 of Indian Penal Code, the charge was framed against him accordingly to which he pleaded not guilty and claimed trial.

5. To substantiate the allegations against the accused, the prosecution examined Atithi (complainant) as PW1, Ct. Amit Kumar as PW2, Shashi (mother of the complainant) as PW3, ASI Abid Husain as PW4, Daya Shankar Yadav (Father of the complainant) as PW5, SI Virender Singh as PW6, Suresh Singh (Maternal uncle of complainant) as PW7 Thereafter, the evidence of prosecution was closed by the Ld. APP for the State on 12.06.2017.

6. Statement of accused under Section 313 Cr.P.C. recorded wherein he pleaded to be innocent and alleged his false

implication by the prosecution at the hands of the complainant. He opted to lead evidence in defence and got examined Rajudeen as DW1 and tendered the following documents :-

Ex.DW1/A	:	Reply to RTI application
Ex/D1	:	Certified copy of complaint made to DGP Kanpur City.
Ex.D2 & D3	:	Photographs
Ex.DA	:	Application for seeking information under RTI dated 23.04.2015
Ex.DB	:	Application for seeking information under RTI dated 14.06.2017
Ex.DC	:	Chats on Gmail account.
Ex.DD	:	Mobile (Audio conversation script)
Ex.DD/A	:	Pen Drive
Mark X	:	MRI screening report and discharge summery.
Mark Y	:	Application to SP Kanpur dated 31.05.2014.

7. I have heard the arguments advanced by Sh. Neeraj learned Assistant Public Prosecutor for the State assisted by Sh.

Anuj Mittal, learned Counsel for the complainant, Sh. K.D. Bhardwaj, learned defence counsel and perused the records carefully.

8. Learned Assistant Public Prosecutor for the State submitted that the allegations against the accused are proved beyond shadow of reasonable doubt. The complainant Smt. Atithi appeared in the witness box as PW1 and has categorically stated that her marriage was solemnized with accused Manish 24.04.2012, as per Hindu rites and ceremonies. The accused was not satisfied with the dowry articles entrusted to him and his family members. They raised demand of Car or Rs. 10 lacs. She was continuously harassed at her in-laws house. She gave detailed description of her sufferings in her deposition. Her statement is duly corroborated by her mother Shashi (PW3), father Daya Shankar (PW5) and uncle Suresh Singh (PW7). He prayed that the accused may be held guilty and punished accordingly.

9. To counter poise, learned defence Counsel submitted that there are inherent contradictions and improbabilities in the prosecution story. There is no medical account that the complainant was ever beaten up by the accused. The allegations against the accused are vague. The complainant failed to disclose the date as to when the illegal demand of dowry was made by the accused. Material contradictions have been culled out from the

cross-examination of the witnesses. He further prayed that benefit of doubt may be extended to the accused and he may be acquitted.

10. In order to attract the offence under Section 498A it would have to be proved that the wife was subjected to cruelty which could include mental cruelty. Whether the conduct was such as to cause grave injury or danger to the mental health of the woman are all matters to be examined only after detailed evidence lead by the prosecution.

Section 498-A reads as under:

“498-A. Husband or relative of husband or a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

The 'Explanation' appended thereto defines cruelty to mean: (i) any willful conduct which is 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 whether mental or physical of the woman or (ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Thus, the essential ingredients of the aforementioned

provisions are

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:
 - 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 the 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.

11. For constitution of an offence under Section 498-A of the IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or it any willful 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.

12. The complainant PW1 during her deposition has categorically stated that her husband demanded a Car or Rs. 10 lacs. When the demand was not fulfilled, the accused and his family members caused mental and physical harassment to her and she was locked up in a room. Further, she deposed that upon the

demand of the accused her father arranged a accommodation at Lajpat Nagar Delhi. Due to the mental stress caused to her by the accused she had to remain Hospitalized at National Heart Hospital, Delhi. In her cross-examination she stated that after one week of her marriage she started residing at Lajpat Nagar Delhi. She does not want to live with accused Manish. Her medical record is not present in the court. She does not remember as to on which dates the demand of dowry was raised. The mother of the complainant namely Shashi stepped into the witness box as PW3 and stated that her husband got Rs. 25-26 lacs upon his retirement. Her daughter stayed for three days at Kanpur after marriage and then on 02.02.2014 she again visited at Kanpur when accused Manish was ill. Her daughter was given beatings by the accused and family members on 08.02.2014. No complaint was made at police station Kanpur. They made a complaint on 21.04.2014 at police station Kanpur but no investigation was undertaken by the Kanpur Police. She stayed with Atithi and Manish at Lajpat Nagar for 10 days. Manish was used to give beatings to her daughter. Once she took her daughter for treatment. No compliant was made at Delhi. It is correct that in February 2014 accused Manish got a mental illness. To the similar effect is the testimony of father of the complainant PW5 and uncle PW7.

13. PW2 Ct. Amit Kumar stated that on 01.08.2014 the

accused Manish was joined in the investigation and his search was conducted vide memo Ex.PW2/A and his disclosure statement was recorded vide memo Ex.PW2/B. PW4 ASI Abid Hussain, stated that on 28.06.2014 he received a complainant upon which he registered a case no. 325/14 under section 498 A, 406 and 506 IPC. He conducted the investigation and arrested the accused Manish vide memo PW2/A and recorded his disclosure statement as Ex.PW2/B. On 21.07.2014 he prepared the Fard Makbujgi of dowry articles as Ex.Pw4/A and he also prepared identity memo of accused as Ex.PW4/B. In his cross-examination he stated that he did not obtain the bills to ascertain the ownership of articles recovered. PW6 SI Virender Singh stated that on 09.05.2014 while working as Incharge, Women Cell he received a complaint from Smt. Atithi in which the accused and his mother and father were found involved and his report is Ex.PW6/A.

14. On the other hand DW1 Rajudeen, accountant Horticulture department, Faridabad stated that Daya Shankar was serving the department of Horticulture as DHO. Daya Shanker took an advance of Rs. 4,39,000/- from GPF on 20.03.2015. On 29.06.2012 Daya Shankar got LTC of 47537, interest of Rs. 47166, arrear and leave encashment of Rs. 475370 and pay for June 2012 Rs. 23539 on 12.09.2012 a total of Rs. 26,504 for GIS and on 28.09.2012 a payment of 93404 from GPF fund was

obtained by Daya Shanker. He identified the signatures of HDO Suresh Chand upon the reply to RTI application placed on file as Ex. DW1/A.

15. After going through the evidence placed on record and the arguments advanced by the Ld. Counsel for the parties it is found that the whole prosecution case is based upon verbal allegations. The complainant has failed to show that the accused had been paid any cash amount nor has she succeeded in proving that any dowry article had been entrusted to them. If at all the version of the complainant is to be believed, the onus was upon her to prove that they were in possession of the huge amount of money which they claimed was spent on the marriage. The mother of the complainant Smt. Shashi while being examined as PW3 specifically admitted the fact that her husband received an amount of Rs. 25/26 lacs on his retirement whereas per the testimony of DW1 it is shown that only a limited amount of cash was given to the father of the complainant upon his retirement from the department of Horticulture. Neither the complainant nor her parents have been able to substantiate with proof their contention that they spent Rs. 25/26 lacs upon the marriage of the complainant or they gave Rs. 5 lacs to the accused.

16. The complainant while being examined as PW1 has asserted that she was mentally and physically harassed by the

accused in fact the mother of the complainant while being examined as PW3 deposed that while she was staying with the complainant and the accused at Lajpat Nagar, the accused gave beatings to the complainant after which she took the complainant for medical treatment. Further, both PW1 and PW2 deposed that the complainant suffered fainting attacks for which she was taken to National Heart Hospital, Delhi but no where either the medical report of physical assault or the report of medical condition of the complainant has been placed on record. It is highly improbable that the complainant was examined by the doctor but no medical certificate was issued to her. Merely stating that mental and physical harassment was caused is not sufficient to fulfill the ingredients of section 498A IPC.

17. The complainant also deposed that the accused demanded her father to arrange an accommodation at Delhi upon which her father arranged for a rented accommodation at Lajpat Nagar Delhi, however, no rent receipts or any other proof has been placed on file to prove that it was the father of the complainant who took the accommodation on rent. Hence, the prosecution has failed to substantiate this allegation of the complainant as well. Another point for consideration is that the complainant has mentioned in her complaint Ex.Pw1/A that two days after her marriage her brother came to her matrimonial house where the

accused and his family members demanded one Car or Rs. 10 lacs as dowry but the brother of the complainant has not been examined by the prosecution to prove that the accused and his family members demanded dowry from the complainant. The testimonies of the complainant and other witnesses are completely vague as they failed to even disclose the specific dates when the accused allegedly made demand of a car or Rs. 10 lacs.

18. Further omnibus allegations have been made against all the accused in respect of demand of dowry, harassment, torture and beating given to her during her stay in the matrimonial home. No specific date, month or year had been specified as to when these incidents had taken place. The complainant stated that the accused demanded a car or Rs. 10 lacs however there is no date given as to when the alleged demand was made. Regarding allegations of physical torture there is no medical evidence on the file.

19. In order to prove the allegations against the accused, mere mention of the sections and the language of those sections is not be all end the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by the accused and the role played by him in committing of that offence. If we see the complaint as well as the evidence, the story is sadly vague. It does not show as to which offence has been

committed and what exact role has been played by the accused and his family members who were found innocent during the investigation. Further there is no mention of the date on which the said ornaments or money if any, were entrusted to the accused or even the date when they were demanded back and were refused to be given back by the accused or his family members.

20. So, far as the allegations under Section 406 IPC are concerned :

In *State of Punjab V. Pritam Chand & Ors. 2009(3)*

RCR(Criminal) 376, it has been held that :

“Section 406 IPC deals with punishment for criminal breach of trust. In such a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or used or disposed of the property of willfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to carrying out of the trust.”

21. There is no entrustment of anything or breach of trust in this case. Hence Section 406 is not attracted. The offence under section 506 IPC is also not made out in this case.

22. Further marriages do fail for some other reasons also,

it is not always that the wives are subjected to cruelty. It is only when the marriages irretrievably broken down then the cases under Section 498-A are filed. A tendency has developed for roping all the relations in dowry cases and if it is not discouraged, it is likely to affect case of the prosecution even against the real culprits. The efforts for involving the other relations ultimately weaken the case of the prosecution even against the real accused.

23. As a sequel to my foregoing discussion, the prosecution has failed to bring home guilt of the accused beyond shadow of reasonable doubt. Consequently, extending benefit of doubt they all are acquitted of the charges leveled against them. Their bail and surety bonds shall remain intact for a period of six months. File be consigned to records after due compliance.

ANNOUNCED IN OPEN COURT:
DATED: 09.01.2018

(Aparna Choudhary)
Judicial Magistrate Ist Class
Palwal, UID No.HR-0436

Note: This judgment contains fifteen pages and all the pages have been signed.

(Aparna Choudhary)
Judicial Magistrate Ist Class
Palwal, UID No.HR-0436