

**(2016) 11 SHI CK 0024**  
**In the High Court Of Himachal Pradesh**  
**Case No : Cr. Appeal No 258 of 2013**

State of Himachal Pradesh

APPELLANT

Vs

Firoj Khan

RESPONDENT

**Date of Decision :** 29-11-2016

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 307, Section 498A

**Citation :** (2017) 1 DMC 226 : (2017) 1 HimLR 523

**Hon'ble Judges :** Sanjay Karol and Ajay Mohan Goel, JJ.

**Bench :** Division Bench

**Advocate :** V.S. Chauhan, Addl. A.G. Vikram Thakur Dy. A.G, for the Appellant;  
Manoj Thakur, Advocate, for the Respondents

**Final Decision :** Dismissed

## Judgement

Ajay Mohan Goel, J. - By way of this appeal, the appellant/State has challenged the judgment passed by the Court of learned Additional Sessions Judge, Sirmaur at Nahan, in Session Trial No. 44-N/7 of 2007, dated 22.02.2013, vide which, learned Trial Court has acquitted the respondent (hereinafter referred to as "accused") of commission of offence punishable under Section Sections 498-A and 307 of Indian Penal Code (hereinafter referred to as "IPC)).

2. The case of the prosecution was that Smt. Praveena Begum was married to accused No. 1 Firoj Khan on 25.03.2007. From the date of marriage, accused No. 2, mother in law of Praveena Begum used to harass her on the ground that she had not brought car, gold rings whereas accused No. 1 tortured her for not bringing cash, motorcycle and sufficient dowry. It was further the case of the prosecution that Praveena Begum was mentally harassed by accused and she narrated these fact facts to her mother Smt. Mukhtiyari. It was further the case of the prosecution that on 25.04.2007, when , PW1 Praveena Begum was sleeping with accused No. 1 in their house situated at village Sainwala, then at a about 12:30 a.m., accused No. 1 woke her and asked her to accompany him to place near the well on the pretext that treatment of witchcraft had to be done. As

accused No. 1 used to act as Exorcist, he took her to a place near the well of village Sainwala where he forced her to sit over the wall of the well and poured water 2-3 times on her. Thereafter, accused No. 1 pushed her (Praveena Begum), as a result, she fell down in the well and raised hue and cry. On hearing her cries, many people reached the spot and pulled her out of the well. PW1 Praveena Begum suffered injuries on her head, face, abdomen and other parts of the body. Thereafter she was taken to Vohra Hospital and first aid was given to her. On 26.04.2006, her parents were informed about the incident and thereafter, on 27.04.2007, report was lodged at police station Poanta Sahibta On the basis of said report, FIR was lodged and investigation was carried out. During the course of investigation, site plan was prepared and photographs of the on, well were also taken. Medical examination report of Praveena Begum was collected which disclosed injuries on her person. Statement of other witnesses were also recorded under Section 161 of the Code of Criminal Procedure. After the completion of investigation, challan was filed in the Court and as a prima-facie case was found against as the accused, accordingly, accused No. 1 was charged for commission of offence punishable under Sections 498-A and 307 of IPC and accused No. 2 was charged for offence. punishable under Section 498-A of IPC IPC, to which, they pleaded not guilty and claimed trial.

3. On the basis of evidence produced on record by the prosecution, learned trial Court earned concluded that in its opinion, prosecution had not been able to establish charges against the accused beyond reasonable doubt that accused No. 1 a and 2 had subjected PW1 Praveena Begum to cruelty with a view to make unlawful demand of dowry or accused No 1 had attempted to murder her. Accordingly, learned trial Court acquitted the accused.

4. Mr. V.S. Chauhan, learned Additional Advocate General argued that the judgment passed by the learned trial Court vide which it acquitted the accused was not sustainable in law as the learned trial Court erred in not appreciating that the prosecution had proved its case against the accused beyond reasonable do doubt. He argued that the reasoning of the learned trial Court was manifestly untenable and it was wrongly held by the learned trial Court that testimony of PW1, PW2 and PW4 did not inspire confidence. It was further argued by Mr. Chuahan that learned trial Court erred in coming to the conclusion that no demand of dowry was made by the accused and, in fact, statements of PW2 Gulsher Ali and PW4 Akhtar Ali were not appreciated by the learned trial Court in the correct perspective. Mr. Chauhan further argued that guilt of the accused was duly proved by PW1 and it was at duly corroborated by the statements of PW2 and PW4 and despite this, learned trial Court erred in acquitting the accused without appreciating that prosecution, on the basis of evidence led on record, had proved the guilt of the accused, beyond reasonable doubt. On these bases, it was urged by Mr. Chauhan that the findings of acquittal returned in favour of accused by the learned trial Court be quashed and set aside and they (accused) be convicted for the offence with which they have been charged.

5. Mr. Manoj Thakur, learned counsel for the accused, on the other hand, argued that there was no merit in the present appeal as learned trial Court had rightly acquitted the accused for the offences for which they were charged as the prosecution has miserably failed to prove its case against the accused. It was further argued by Mr. Thakur that from the evidence produced on record prosecution was not able to prove the guilt of the accused. He further argue argued that there were contradictions and inconsistencies in the statements of PW1, PW2 and PW4 which categorically belied the veracity of the case of the prosecution. It was further argued by Mr. Thakur that the statement of PW1 that as to how the incident too took place and how she came out of the well was totally in contradiction to the testimony of PW4. As per him, even the version of PW4 was self contradictory as well as totally contrary to the deposition of PW1. He further argued that there was no material placed on record by the prosecution from which it could be inferred that accused had either demanded dowry from the complainant (PW1) or she was subjected to any cruelty by them. On these bases, it was urged by Mr. Thakur that as the judgment of learned trial Court was based on correct appreciation of material placed on record it did not warrant any interference.

6. We have heard the learned Additional Advocate General as well as learned counsel appearing for the respondent respondentss/accused /accused. We have also gone through the records ugh of the case as well as the judgment passed by the learned trial Court.

7. Praveen Begum, who entered the witness box as PW1, stated that she was married to accused Firoj Khan on 25.03.2007. It has come in her deposition that her mother in-law started harassing her for not bringing dowry after 3-4 days of the marriage. She further deposed that accused used to demand golden ornaments as well as motorcycle from her. She also deposed that she had disclosed the factum of dowry being demanded by the accused to her parents. She also deposed that her mother had assured her that she would take up the matter with her (complainant's)in-laws. This witness further stated that on 25.04.2007, during night, when she was sleeping in her room, her husband came to her and asked her to accompany him to the well for the treatment of witchcraft. She stated that she refused to accompany him but accused No. 1 took her to the village well. She disclosed that thereafter accused No. 1 compelled her to sit over the wall of the well and thereafter poured water 2-3 times on her and pushed her, as a result of which, she fell into the well. She further stated that she made efforts to save herself and came out of the well with the help of wooden stairs. She also deposed that she had suffered injuries on various parts of body and that accused No. 1 ran away after pushing her in into to the well. She also deposed that when she came out of the well, nobody was there and she raised hue and cry and thereafter she became unconscious. Sh She further stated that when she gained her conscious, she was in her in-law's house. She also stated that accused No. 2 threatened her not to disclose this fact to anyone else. PW1 further stated that with the help of a neighbour, she got in contact

with her parents in the morning and through her parents reached her in-law's house. She stated that when her parents reached her in-law's house, both the accused had gone away. She also stated that her father also brought the Pradhan of the area who called upon the accused to enter into a compromise with her but they (accused) refused to do so. She further stated that on 26.04.2007, they reported the matter at police station Poanta Sahib and she was taken to hospital at Poanta Sahib where she was medically examined. In her cross examination, this witness deposed that as she fell unconscious immediately after coming out of the well, she could not tell as to who brought her from the well to home. She further stated that as soon as she reached the house of her husband, she gained consciousness. She also stated that on the same night, brother of her husband had taken her to Vohra Hospital at Poanta Sahib and she was brought back to her husband's house after treatment on the same night. It has further come in her cross examination that it was in the morning, at around 7:00 a.m. when she asked one of her neighbour to inform her parents about the incident. She stated that she did not remember as to when her parents came to her husband's house.

8. Gulsher Ali, father of complainant, entered the witness box as PW2 and he stated that at the time of marriage of his daughter (complainant) with accused No. 1, he had given dowry as per his capacity. He also stated that PW1 had informed him about the demand of dowry which was being raised by the accused and he had expressed his helplessness in this regard. This witness also deposed that on 26.04.2007, they came to know that in the night of 25.04.2007, accused No. 1 had attempted to kill PW1 by pushing her in the well. He also stated that he went to the house of accused and took PW1 to police station Poanta Sahib where the matter was reported. In his cross examination, he stated that on 26.04.2007, Anwar Ali had not come to him nor he had informed him about the incident. He also stated that his daughter came to his house only once after the marriage and she had disclosed the demands of dowry only once. He also stated that at time of marriage of PW1 with accused No. 1, no demand of dowry was raised. He also stated that he and his wife went to the house of accused No. 1 on 26.04.2007 at around 5:00 p.m. He also stated that after he reached the house of accused, he did not talk with anyone but he caught hold of arm of his daughter and took her to police station Poanta Sahib.

9. PW4 Akhtar Ali deposed that PW1 was his niece and was married with accused No. 1 in the year 2007. He further deposed that in the night of 25.04.2007, at around 12:30 a.m. when he was at his home, he heard cries of "bachao-bachao" from the side of well which was near to his house. He further stated that he and other villagers ran towards the spot and saw that PW1 was making efforts to come out of the well. She had caught hold of a wooden plank. He further stated that they assisted her to get out of the well and that though she was saved but she had hough sustained many injuries. He further deposed that thereafter PW1 disclosed that accused No. 1 allured her to accompany him to the well on the pretext of her treatment from witchcraft and thereafter accused No. 1 poured

water 2-3 times on her and thereafter, pushed her in the well. In the cross examination, this witness deposed that his house was at a distance of about 50 metre from the house of accused. He deposed that Praveena never came to his house after her marriage. He further stated that when they went to well, they saw that Praveena had caught hold of a wooden plank which was on the lower point of the well. He further stated that there was water in the well which was at a distance of 35 feet from the mouth of the well. He further stated that when they reached the spot on hearing the cries, accused, his parents and brother were already present there. He also stated that except his family members no other person of the village was present on the spot. He further stated that after pulling PW1 from the well, he (PW4) took her (PW1) to Vohra Hospital Poanta Sahib and thereafter he took PW1 from hospital to house of accused. This witness stated that after pulling Parveena from the well they asked Parveena as to how she fell in the well but she did not tell anything and remain silent. He further stated that he pulled PW1 out of well with the help of a rope which he had brought from his house. He deposed that he took PW1 to Vohra hospital on his motorcycle. He also stated that he did not disclose the at incident to the parent of PW1 or the fact that she was pushed in into to the well by accused No. 1 and he had saved her by pulling her out of the well. He further stated that it was around 4:00 p.m. that Parveena told him that PW1 had pushed her in the well and thereafter he informed her (complainant's) parents. He further stated that parent parentss of PW1 came to house of the accused in his absence as he had gone to the school and when he returned from the school, he found many people gathered in the house of Pradhan of Gram Panchayat and accused Firoj Khan was refuting that he had pushed PW1 in the well. Investigating Officer Gurbakash Singh entered the witness box as PW9 and corroborated the case of the prosecution. In his cross examination, he stated that there were no stairs in the well with the help of which one could get out of same.

10. These are the main witness witnesses es on whose testimony prosecution had relied upon to prove the guilt of the accused.

11. A perusal of the statements of PW1, PW2 and PW4 demonstrates that there are lot of inconsistencies and contradictions in the version. Both PW2 and PW4 are closely related to PW1 and because they are interested witnesses, their testimony is heir required to be appreciated with caution. In her statement made in the Court, it was stated by complainant that her harassment by the accused on the pretext of dowry commenced about 3-4 days after her marriage with accused No 1. It was further mentioned by the complainant in her statement that on 25.04.2007, accused No. 1 had asked her to proceed towards the well for treatment by witchcraft and she initially refused but thereafter she was taken to the said well and was forced to sit on the wall of the well and water was poured on her 2-3 times and thereafter she was pushed into the well. It has also come in her deposition that after she was pushed into the well, she saved herself by getting hold of a plank and further that she came out of well with the help of wooden stairs. She further deposed that she suffered injuries on account of this

and that accused No. 1 had in fact ran away after pushing her in the well and when she came out of the well, no one was there and she raised hue and cry and became unconscious. It has further come in her deposition that she gained consciousness in the house of her in-laws. This version as given by the complainant is totally contrary to the deposition of PW4 he Akhtar Ali. As per PW4 Akhtar Ali, on hearing the hues and cries of the complainant, he along with other villagers reached the spot and saw that the complainant was making efforts to get out of the well and as per this witness, they pulled out the complainant from the well and thereafter, complainant disclosed to him the mode and manner in which she was allured to come to well by accused No. 1 and the factum of accused No. 1 pushing her into the well.

12. Besides this, PW1 deposed in her statement in the Court that after she gained consciousness in the house of her in-laws, she was threatened not to disclose the incident to any dent one by accused No. 2 and in the morning she conveyed the occurrence of the incident to her parents with the help of one neighbour. Now, in her entire deposition, PW1 has not disclosed as to who was this neighbour neighbour, whose assistance was taken by her to inform her parents about her being pushed in to the well by her husband. In her cross examination, she stated that she informed her parents through the said neighbour at around 7:00 a.m. in the morning. However, a perusal of the statement of PW4 Akhtar Ali demonstrates that tar in his cross examination he has stated that after the occurrence of the incident, at around 4:00 p.m. Praveena i.e. complainant told him that Firoj Khan pushed her into the well and thereafter he forwarded this information to her parents. Another major contradiction in the testimony of PW1 and PW4 is that as per PW1 when she came out of the well, no one was present there and after raising hue and cry, she became unconscious and gained conscious in the house of her in-laws. However, PW4 deposed that complainant disclosed to him that she was pushed into the well by accused No. 1 and. thereafter, he took her to Vohra Hospital from where she was taken to house of her in-laws. These major contradictions and inconsistencies in the testimon testimony of PW1 and PW4 create grave suspicion over the veracity of the version of prosecution story. No cogent explanation has come forth from the prosecution as to why there were these major contradictions and inconsistencies in the statement of complainant (PW1) and 1) PW4. Incidentally, a perusal of statement of complainant made in the Court demonstrates that same is inconsistent with the contents of complaint/FIR etc. which was as initially registered with the police. Ext. PW1/A which is the copy of rapat rojnamcha demonstrates that it is recorded in the same that on 25.04.2007 when she was sleeping, her husband took her to the well and he started beating her there and thereafter under the guise of witchcraft he pushed her into the well. However, in her statement as own ever, recorded in the court, there is no mention in the same that she was given beatings by accused No. 1 after reaching at the well. Not only this, there is not even a whisper about demand of do dowry etc. in the rapat wry rojnamcha, however, in the FIR which

was the thereafter registered on 27.04.2007, copy of which is on record as Ext. PW1/B, the factum of demand of dowry from the complainant by the accused has been introduced. Strangely, in the FIR, there is no mention that when the complainant was taken to the well by the accused on the night of 25.04.2007, she was beaten near the well by accused No. 1. Though PW1 in the Court stated that after accused No. 1 took her to the well he poured water on her 2-3 times before pushing her in the well, however, these facts are not so recorded either in rojnamcha Ext. PW1/A or FIR Ext. PW1/B. Whereas it has come in the testimony of PW4 that after the complainant was rescued from the well he took her to the Vohra hospital, however, PW1, the complainant has stated that she was taken to the said hospital by the brother of the accused.

13. Now incidentally, though it has come in the statement of PW4 Akhtar Ali that on the fateful night he along with other villagers rescued the complainant from the well, however, no independent witness has been examined by the prosecution to corroborate this version of PW4. It is a matter of record that PW4 is closely related to complainant and further it is also a matter of record that there is no consistency in the statement of PW1 and PW4 so as to believe the prosecution.

14. Another relevant point to be taken into consideration is that though complainant has stated that she saved herself by holding a wooden plank after she was pushed into the well and came out of the well with the help of wooden stairs, however, it has come in the statement of PW9, the Investigating Officer that there did not exist any stair case in the well.

15. Even the statement of PW2, father of the complainant, does not inspire confidence and seems not to be reliable. He has denied that the factum of PW4 having informed him about the alleged incident of the complainant being pushed into the well by accused No. 1 whereas PW4 has deposed that this information was conveyed to the parents of the complainant by him.

16. Therefore, in our considered view, on the basis of evidence produced on record by the prosecution both documentary as well as ocular, it cannot be said that prosecution was able to prove its case against the accused beyond reasonable doubt.

17. Besides this, learned trial Court after taking into consideration all aspects of the matter has returned the findings of acquittal in favour of accused. It has been held by Hon"ble Supreme Court in Mohammed Ankoos and Others v. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad, (2010) 1 Supreme Court Cases 94

"12. This Court has, time and again, dealt with the scope of exercise of power by the Appellate Court against judgment of acquittal under Se Sections 378 and 386, Cr.P.C C. It has been repeatedly held that if two views are possible, the Appellate Court should not ordinarily interfere with the judgment of acquittal. This Court has laid down that Appellate Court shall not reverse a judgment of

acquittal because another view is possible to be taken. It is not necessary to multiply the decisions on the subject and reference to a later decision of this Court in *Ghurey Lal v. State of Uttar Pradesh* shall suffice wherein this Court considered a long line of cases and held thus : (SCC p.477, paras 69-70)

"69. The following principles emerge from the he cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is , wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when (2008) 10 SCC 450 he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice"

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the



findings consideration of the trial court.

3. If two reasonable views can be reached-one that leads to acquittal, the other to conviction the High Courts/appellate courts must rule in favour of the accused."

18. In *State of Himachal Pradesh v. Kahan Chand*, 2016 (1) Drugs Cases (Narcotics Narcotics)) 576, a Coordinate , Bench of this Court has held as under

"19. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Mohamed Ankoos and others v. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad* (2010) 1 SCC 94, it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travest travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged."

19. We have also gone through the judgment so passed by the learned trial Court and, in our considered view, the findings so returned by the learned trial Court are neither perverse nor it can be said that the findings so returned by the learned trial Court are not borne out from the records of the case and the same do not call for any interference.

20. Accordingly, while concurring with the findings of acquittal returned by the learned trial Court, we dismiss the present appeal being devoid of any merit, so also pending miscellaneous application(s), if any.