
(2014) 04 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : Cr. A. No. 421/2007

State of Himachal Pradesh

APPELLANT

Vs

Milkhi Ram and Others

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 34, 498-A

Citation : (2014) 04 SHI CK 0064

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : M.A. Khan, Addl. A.G, Advocates for the Appellant; N.K. Thakur, Sr. Advocate and Rohit Bharoll, Advocates for the Respondent

Judgement

Rajiv Sharma, J.—This appeal is instituted against the judgment dated 28.4.2006 rendered by Judicial Magistrate 1st Class, Nadaun, District Hamirpur in Criminal Case No. 96-II/2002 RBT No. 7-II/2003 whereby respondents-accused (hereinafter referred to as the "accused" for convenience sake), who were charged with and tried for offences under section 498-A read with section 34 of the Indian Penal Code, have been acquitted.

2. Case of the prosecution, in a nutshell, is that on 19.4.2002, complainant Punam Kaundal moved an application before the Deputy Superintendent of Police, Barsar with the allegations that accused are mal-treating her and are committing cruelty on her on account of dowry. She had also moved an application before the Superintendent of Police, Hamirpur vide mark "M". On the basis of complaint, FIR Ex. PW-17/A was registered. Investigation was carried out by the police and after completing all the codal formalities, challan was put up against the accused in the Court.

3. Prosecution examined as many as 18 witnesses in all to prove the case against accused. Their statements were recorded under section 313 of the Code of Criminal Procedure. They have denied the case of prosecution. According to

them, they have been falsely implicated in the case.

4. Mr. M.A. Khan, learned Additional Advocate General has vehemently argued that the prosecution has proved its case against the accused.

5. Mr. N.K. Thakur has supported the judgment rendered by the Judicial Magistrate 1st Class.

6. I have heard the learned counsel for the parties and have perused the pleadings carefully.

7. PW-1 Surjit Kumar has testified that he was posted as Panchayat Secretary at village Bela. According, to him, police had not taken into possession certificates marks "A" and "B". This witness was declared hostile. His statement was deferred, however, the witness was not examined by the prosecution despite opportunity.

8. PW-2 Ram Chand has deposed that he was engaged as Painter in the house of Majalsi Ram. His daughter Punam was also residing there. Mother of the complainant asked him to accompany Punam Kaundal as she had to take some articles from her matrimonial house. He went alongwith Punam Kaundal. In his presence, accused misbehaved with the complainant. He did not know the name of all the accused. He did not remember where else he has worked in the year 2002. According to him, brother of complainant Pankaj was not at home on that day.

9. PW-3 Majalsi is father of the complainant Punam Kaundal. According to him, marriage between complainant and accused Kuldip Kaundal was solemnized in the month of October, 1996. At the time of marriage Milkhi Ram had told him that they do not want to take any dowry. According to him, mother of accused Kuldip Kaundal was demanding Rs. 20,000/- from Kuldip Kumar and he asked Punam to bring Rs. 20,000/-. He paid this amount to the accused. Kuldip Kumar also demanded Rs. 5,000/-. He sent the same to Kuldip Kumar by way of bank draft. Thereafter, accused demanded Rs. 10,000/- for admission of the complainant in M.Sc. A child was born in the month of August, 1998. He was referred to Chandigarh for treatment. His brother-in-law Roshan Lal disclosed to him that in-laws of the complainant have demanded Rs. 60,000/- from the complainant.

10. PW Rup Lal was given up by the prosecution.

11. PW-4 Roshan Lal has deposed that complainant Punam is his niece. When the child of complainant was referred to hospital, he received a telephonic message from his sister Pushpa that she is alone in the hospital. He went to Chandigarh. He stayed there for 15 days. He also accompanied Punam when she got first appointment as T.G.T. He also arranged accommodation for her.

12. PW-5 Babu Ram testified that he is Goldsmith. Punam had come to him and stated that she wanted to purchase a chain. This witness was declared hostile.

Though this witness has admitted that receipt Ex. PW-5/A was issued by him, however, he has stated that Ex. PW-5/A was prepared by him a few days prior to his stepping into witness box. According to him, complainant had told him that she required this receipt to be produced before the Tax Officer.

13. PW-8 Rukman Din has testified that about 3-4 years back Milkhi Ram used to take milk from him. Milkhi Ram was to pay Rs. 5,000/- to him. Milkhi Ram used to take 2 Kgs. Milk every day. No quarrel ever took place in his presence. According to prosecution case, Rs. 5,000/- was paid to PW-8 by Punam Kaundal, but while appearing in the witness box, he has categorically denied that accused Swarna Devi asked him that this money will be paid from the salary of the complainant. He was also declared hostile.

14. PW-9 Parkash Chand has testified that he had arranged Rs. 45,000/- as the complainant had disclosed to him in the month of October, 2002 that accused have demanded Rs. 45,000/- for "Mundan Sanskar". In the year 1999, she had taken loan from Chillian, Cooperative Agriculture Society and the same was to be returned to the said society. He has also deposed that Punam has never told him that her in-laws used to commit cruelty on her.

15. PW-10 Pawan Kumar has deposed that he was Secretary in Chillian Cooperative Agriculture Society. Punam had come to him and desired to take loan. He told her that loan could not be released to her in view of the rules of the society. He took loan from some people and handed over Rs. 45,000/- to Punam Kaundal. The amount was returned by Punam Kaundal on 16.10.2000.

16. PW-11 Bhim Singh has deposed that Ex. PW-10/A and Ex. PW-10/B were taken into possession vide memo Ex. PW-10/C. He has appended his signatures on the same. According to him, contents of Ex. PW-10/C and Ex. PW-11/A were not read over and explained to him. He has also admitted that on Ex. PW-10/A, society did not provide loan to any one.

17. Mother of the complainant Pushpa Devi has appeared as PW-12. According to her also, at the time of marriage, accused had not demanded any dowry. She has paid a sum of Rs. 20,000/- to accused Kuldeep Kaundal and Rs. 5,000/- was also sent to accused Kuldeep Kaundal through bank draft.

18. PW-13 Ram Kishan has deposed that he knew the accused. According to him, Majalsi Ram had met him and disclosed that though accused had refused to accept the dowry articles at the time of marriage, however, now they were demanding dowry.

19. Brother of the complainant Pankaj Kaundal has appeared as PW-14. He had gone to attend "Mundan Ceremony" of the son of complainant. Complainant Punam Kaundal gave him a gold chain and some clothes. When Poonam came to her parental house, she disclosed to them that chain was purchased from Babu Ram, Goldsmith for Rs. 10,000/-.

20. Complainant Punam Kaundal has appeared as PW-15. She had moved an

application before the Superintendent of Police on 14.1.2002. Her mother-in-law was demanding Rs. 20,000/-. Money was paid to the parents of accused Kuldeep Kaundal. Complainant went to Jodhpur with her husband. Her mother-in-law and sister-in-law used to harass her. Her husband demanded Rs. 20,000/- from complainant's father for her admission in M. Sc. However, her father refused to send Rs. 20,000/- to the accused. Milkman Rukman Din was demanding Rs. 5,000/- from her mother-in-law. Her mother-in-law forced her to pay this amount to Rukman Din. She had gone to the matrimonial house alongwith Ram Chand, Painter on 15.9.2001. She has also admitted that at the time of marriage accused had stated that they will not accept any dowry articles. She never lodged any complaint either to the Police or Panchayat that accused used to commit cruelty on her. She had not produced any bank draft or postal receipt to show that money was paid to the accused.

21. PW-16 Desh Raj has conducted the investigation. In his cross-examination he has deposed that the houses of Prem Chand, Rup Lal and Vipin Kumar are adjacent to the house of accused. He has made inquiry from these persons. However, their statements were not recorded.

22. It can not be believed that a mother would send her daughter with a painter, PW-2 Ram Chand. PW-2 Ram Chand could not disclose where else he has worked in the year 2002. He did not know even the names of the accused. According to the prosecution, the complainant was made to pay a sum of Rs. 5,000/- to milkman Rukman Din. Rukman Din has deposed that a sum of Rs. 5,000/- was paid to him by mother of the accused.

23. Case of the prosecution is also that complainant was forced to buy a gold chain. PW-5 Babu Ram has deposed that the complainant has told him that she wanted receipt to be produced before the tax officer. He has issued receipt few days earlier before he was examined in the court.

24. Now, as far as payment of Rs. 45,000/- is concerned, PW-4 Roshan Lal has not supported the case of prosecution. He has specifically denied that complainant has ever disclosed to him about harassment being caused to her and money being demanded from her. It is also not believable why a stranger, PW-9 Parkash Chand will arrange for money for the complainant. PW-9 Parkash Chand has not supported the case of prosecution. He has not even seen the account of Chillian Cooperative Agriculture Society. PW-10 Pawan Kumar has categorically deposed that complainant could not get loan from the Society since she was not a member of the society. PW-10 Pawan Kumar is also a stranger. There was no occasion for him to arrange loan for the complainant. There are houses adjoining to the house of accused, however, no independent witness has been produced from the locality. Prosecution has also not produced copy of bank draft or receipt that a sum of Rs. 5,000/- was paid to accused Kuldeep Kaundal. PW-4 Roshan Lal has stated that when child of complainant was referred to hospital he received a telephonic message from his sister that she is alone in the hospital. It can not be believed. It has come on record that husband of

complainant and her in-laws had accompanied the child to PGI Chandigarh. PW-2 Ram Chand has stated that he visited the matrimonial house of complainant in the year 2002, however, complainant Poonam Kaundal deposed before the Court that she had gone to her matrimonial house alongwith Ram Chand, Painter on 15.9.2001. According to PW-2 Ram Chand, accused Anju and Manju have abused the complainant. However, in his cross-examination, he has deposed that he did not know the names of the accused. The complainant, as noticed above, neither lodged any complaint to the police nor to the Panchayat about the beatings. She was never medically examined. The police have taken into possession the letters written by the accused Kuldeep Kaundal to the complainant. His specimen handwriting was taken. But these letters were neither produced in the court nor his specimen handwriting was obtained. The prosecution has miserably failed to prove the case against accused. The marriage of complainant with accused Kuldeep Kaundal was solemnized in the month of October, 1996. It has come in the statements of father of complainant, mother of the complainant and the complainant herself that accused have never demanded any dowry. The complaint has been filed by the complainant only after the divorce petition was filed by the husband of the complainant. She has never lodged any complaint before the Police or Panchayat. Learned Trial Court has rightly acquitted the accused after correctly appreciating oral as well as documentary evidence available on the record.

25. Accordingly, in view of the discussion and analysis made herein above, there is no merit in the appeal and same is dismissed.