

(2017) 04 SHI CK 0035
In the High Court Of Himachal Pradesh
Case No : 622 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Sanjiv Kumar and others

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#) - Acts done by several persons in furtherance of common intention - Husband or relative of husband of a woman subjecting her to cruelty

Citation : (2017) 04 SHI CK 0035

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Vivek Singh Attri, J.L.Bhardwaj

Final Decision : Dismissed

Judgement

1. The instant appeal stands directed against the judgement recorded by the learned Sessions Judge, Hamirpur, whereby he reversed the findings of conviction pronounced upon the accused by the learned Judicial Magistrate 1st Class, Nadaun, District Hamirpur.

2. The brief facts of the case are that prosecutrix submitted application against the accused persons in Police Station, Nadaun, making the allegations that she was married to accused Sanjeev Kumar and since then all the accused persons had been torturing her for not bringing dowry. She was married about eight months back. It is written by her that after three months of marriage, one dressing table, sewing machine and a refrigerator, etc. were given by her father, who is a labourer, to the accused persons on their demand. But still they were not satisfied. All of them continued torturing her and made her to write on a paper that the accused persons were not demanding any dowry and that her father was giving some articles of his own to her. Her mother-in-law started telling her that her father is an army retired personnel and that she should bring

Rs.2,00,000/- from him so that her husband Sanjeev Kumar settled in a business, otherwise, she should not return to the matrimonial home. Then, she states that she tried to talk to her in-laws on telephone, but they would not talk to her. She reports that in case she goes to her house she would be killed because her father could not give them Rs.2,00,000/-. So a request was made to take action and after completing all codal formalities and on conclusion of the investigation into the offences, allegedly committed by the accused, challan was prepared and filed in the Court.

3. A charge stood put to the accused by the learned trial Court for their committing offences punishable under Sections 498-A read with Section 34 IPC to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 8 witnesses. On closure of prosecution evidence, the statements of the accused under Section 313 of the C.P.C., were recorded in which they pleaded innocence and claimed false implication. They chose to lead evidence in defence.

5. On an appraisal of the evidence on record, the learned trial Court returned findings of acquittal upon the accused.

6. The learned Deputy Advocate General has concertedly and vigorously contended qua the findings of acquittal recorded by the learned Sessions Judge, standing not based on a proper appreciation of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation by it of the material on record. Hence, he contends qua the findings of acquittal warranting reversal by this Court, in the exercise of its appellate jurisdiction and theirs standing replaced by findings of conviction.

7. The learned counsel appearing for the respondents has with considerable force and vigour contended qua the findings of acquittal recorded by the Sessions Court standing based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side has with studied care and incision, evaluated the entire evidence on record.

9. The complainant, stayed at her matrimonial home from 28th November, 2002 uptill March, 2003. However, she, with respect to the purported penal misdemeanor(s), misdemeanor(s) whereof stood perpetrated upon her at her matrimonial home, during the period aforesaid, belatedly in August, 2003 lodged a report with the Police Station, concerned. The aforesaid belated lodging of the apposite F.I.R. by the complainant, with respect to the offences detailed therein, without any explanation being afforded by her, for the delay in the aforesaid lodging of the F.I.R, constrains this Court, to, conclude that prima facie the allegations constituted in the apposite F.I.R., hence spurring from proactive concoction besides premeditation. Consequently, the allegations constituted by

the complainant, in the apposite F.I.R., cannot acquire any virtue of credibility.

10. Be that as it may, a perusal of the apposite F.I.R., makes a disclosure that the complainant, had initially satisfied the demands of the respondents/accused with respect to a refrigerator, sewing machine and a dressing table. However, subsequently, the accused/respondents herein made a demand upon her, for bringing to her matrimonial home, a sum of Rs.2 lacs, as financial assistance, for enabling the accused/respondent, to establish his business. Adduction of direct evidence, qua the aforesaid demand, cannot be insisted upon, as it is made within the precincts of the matrimonial home wherein the complainant resided, thereupon with secrecy gripping the making of the aforesaid demand besides its standing known only to the complainant, would also constrain this Court, to not insist qua the prosecution, projecting direct evidence in respect thereof. Nonetheless, the veracity of the aforesaid demand, has to be adjudged from the following aspects (a) the stay of the complainant at her matrimonial home being short lived. (b) there occurring no recital with specificity qua the time when the aforesaid demand was made by the accused upon the complainant. Since the complainant, has not in the aforesaid F.I.R., spelt with specificity the exact time of the making of the aforesaid demand by the accused upon her, despite her stay at her matrimonial home being short lived, limited stay whereof of the complainant, at her matrimonial home, though hence enjoined upon her, to with precision specify the timing of the making of the aforesaid demand upon her by the accused, yet when she omits to with specificity make any recital in the apposite F.I.R qua the aforesaid fact, does constrain this Court to make a conclusion qua the aforesaid allegation being construable to be a mere invention also an after thought. Consequently, imputation of credence thereon, is unwarranted.

11. No potent evidence, in display of the accused subjecting the complainant, to any incident of physical assault, is adduced by the prosecution. PW-1 in her cross-examination, has made a disclosure qua the accused never physically assaulting her yet she has qualified the aforesaid disclosure, by stating that the accused had once attempted to assault her. However, the statement of the complainant, that the accused once attempted to assault her, though does also constitute evidence, of the accused/respondents hence by attempting to assault her, his hence besetting her with a mental trauma, nonetheless even the aforesaid evidence is rendered incredible, on account of hers, throughout her short stay at her matrimonial home, hers not rearing the aforesaid allegations against the accused, rather hers belatedly in August, 2003 rearing them. In aftermath, the belated rearing, of the aforesaid allegations by the complainant upon the accused respondents, renders it to acquire a stain of concoction or premeditation. In sequel thereof, it is not amenable to imputation of credence thereon.

12. For the reasons which have been recorded hereinabove, this Court holds that the learned Sessions Judge, has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material

on record by the learned Sessions Judge does not suffer from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather it has aptly appreciated the material available on record.

13. In view of the above, I find no merit in this appeal, which is accordingly dismissed. In sequel, the impugned judgement is affirmed and maintained. Record of the learned trial Court be sent back forthwith.