

(2017) 07 UK CK 0019

Uttarakhand High Court

Case No: 198 of 2012

Ranjeet Singh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision: July 10, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
- Indian Penal Code, 1860, Section 406, Section 498-A, Section 364-A - Punishment for Criminal breach of trust
- Dowry Prohibition Act, 1961, Section 3, Section 4, Section 178, Section 179, Section 498-A - Penalty for giving or taking dowry - Penalty for demanding dowry

Hon'ble Judges: Rajiv Sharma, Sharad Kumar Sharma

Bench: Division Bench

Advocate: R.S. Sammal, D.K. Sharma, Mamta Joshi

Final Decision: Allowed

Judgement

1. This appeal is instituted against the judgment and order dated 25.06.2012, rendered by learned District & Sessions Judge, Tehri Garhwal in Sessions Trial No.05 of 2011, whereby the appellant-accused was charged with and tried, for the offences under Section 364-A, 498-A of IPC and 3/4 of Dowry Prohibition Act, 1961. The accused was convicted and sentenced to undergo life imprisonment under Section 364-A of IPC and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo rigorous imprisonment for two years. He was further convicted and sentenced to undergo rigorous imprisonment for a period of two years under Section 498-A of IPC and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of six months. The accused was further convicted and sentenced to undergo rigorous imprisonment for the period of six months under Section 3/4 of Dowry Prohibition Act and to pay a fine of

Rs.500/- and in default of payment of fine to undergo rigorous imprisonment for the period of one month. All the sentences imposed under the aforesaid sections were directed to run concurrently.

2. The case of the prosecution, in a nutshell, is that that Kishan Singh complainant moved an application before the District Magistrate, New Tehri with the allegation that he was the employee of Bhagat Singh College, Delhi. His family is residing at the village. Three years ago his daughter was married to Ranjeet Singh @ Ranveer Singh. However, the husband, mother-in-law, father-in-law and younger brother-in-law used to torture and harass his daughter for bringing insufficient dowry. This fact was brought to his notice by his daughter in the year 2008. Thereafter, he alongwith pradhan Abbal Singh Rana and the pradhan of the village of the accused no.2 Daleep Singh went to the house of accused Ranveer Singh @ Ranjeet Singh. Ranjeet Singh has undertaken not to harass the daughter of the Kishan Singh. He received a telephonic message on 05.09.2009 that Ranveer Singh @ Ranjeet Singh was beating his daughter. He went to Amritsar and came to know that his daughter was missing. He made inquiries from Ranveer Singh. Thereafter, he reported the matter to P.S. Vijay Nagar on 09.09.2009. The FIR was registered. The matter was investigated and the challan was put up against the accused after completing all the codal formalities. The prosecution has examined as many as ten witnesses in its support. The statements of the accused were recorded under Section 313 of Cr.P.C. They have denied the case of the prosecution. The appellant-accused Ranjeet Singh was convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

3. Learned counsel for the appellant has vehemently argued that the prosecution has failed to prove its case. Learned counsel on behalf of the State has supported the judgment and order dated 25.06.2012.

4. We have heard learned counsel for both the parties and perused the judgment and record carefully.

5. PW1 Abbal Singh testified that he was pradhan of parental village of Reena. When she used to come from her in-laws house, she used to meet him. She came to her parents house 1 ? years back, she told him that her father-in-law, mother-in-law and husband were harassing her and they were demanding dowry. He accompanied Reena's father and went to the house of Ranjeet Singh. The local pradhan also came. The husband was summoned. They had undertaken not to harass her. After 2-3 days, Reena went to Amritsar. He came to know that Reena Devi was missing.

6. PW2 Kishan Singh is the father of Reena. He has deposed that the marriage was solemnized between Reena and Ranjeet Singh in April, 2006. He came to know that relations were not good in the year 2008. The accused used to demand a fridge and

a motorcycle. He along with PW1 Abbai Singh went to the house of in-laws of Reena. Pradhan of accused village Gyan Singh also came. He told Ranjeet Singh to mend his ways. She was taken to Amritsar. She remained there for 5-6 months. He used to quarrel with her. There was miscarriage. Reena told him that the accused was beating her. He knew Devi Nita, who was neighbour of Reena. Her daughter called him to Amritsar. On 04.09.2009, Reena called him and told that her husband would kill her. He went to Amritsar but Reena was missing. He lodged the missing report. Ranjeet Singh never helped to search Reena. Thereafter, he wrote the application to District Magistrate.

7. PW3 Bharat Singh Pundir has deposed that on 24.09.2009, he was Naib Tehsildar, Devprayag. He on the basis of complainant of Kishan Singh lodged the report against the accused.

8. PW4 Sarjeet Kaur has deposed that she knew Ranjeet Singh and his wife. They used to reside near her residence. Ranjeet Singh used to beat Reena. One Garhwali Parwati was her tenant. Reena used to tell that her husband used to harass her and gave beatings to her. Ranjeet Singh was unemployed.

9. PW5 Parwati Devi has deposed that she knew Reena and Ranjeet Singh. They were residing at a distance of 20 minutes from her house. Reena used to come to meet her. Ranveer Singh used to give beatings to Reena. The father of Reena had given money to Reena in her presence. The accused has broken her arm.

10. PW6 Surat Singh Rana has deposed that Kishan Singh is his uncle. Reena is his daughter. She was married with Ranjeet Singh 3-4 years back. Her father-in-law and mother-in-law were harassing her for bringing insufficient dowry. He along with Kishan Singh and PW1 Abbai Singh went to the village of accused. Local pradhan was also called. The family members of the accused had undertaken not to harass Reena.

11. PW7 Naresh Singh is the brother of deceased- Reena. According to him, the marriage was solemnized on 18/19.04.2006. Her husband, mother-in-law, father-in-law and brother-in-law used to harass her for bringing insufficient dowry. His father along with PW1 Abbai Singh and his sister went to in-laws house of his sister. The matter was compromised. The accused has taken his sister to Amritsar. In the month of September, 2009 his sister called him and told that the accused wanted to talk to him. The accused wanted to open a shop and demanded Rs.1.00 lakh.

12. PW9 S.I. Girish Chandra has deposed that he had recorded the statement of S.I. Shiv Nath, Parwati Devi, Smt. Sarjeet Kaur, Neeta Devi.

13. PW10 S.I. Kamal Singh Rawat has submitted the charge-sheet against the accused.

14. The case of the prosecution, in a nutshell, is that marriage was solemnized between the appellant-accused and Reena on 18-19.04.2006. The accused and his family members used to harass and torture Reena for bringing insufficient dowry. The accused took Reena to Amritsar. She disappeared from Amritsar.

15. PW1 Abbal Singh has specifically deposed that he along with the father of Reena went to the house of her in-laws. Local pradhan was also called. The family members of the accused-husband had undertaken not to harass Reena.

16. PW2 Kishan Singh has deposed that his daughter used to complain about the harassment being meted to her for bringing insufficient dowry. He along with PW1 Abbal Singh went to his daughter's matrimonial house. Local pradhan was also called. The family members had undertaken not to harass Reena. He was informed that the accused was maltreating and beating her. He went to Amritsar. His daughter was missing. No satisfactory explanation about the whereabouts of his daughter was given by the accused. In these circumstances, the missing report was filed and thereafter, FIR was lodged.

17. PW4 Sarjeet Kaur has also deposed that the accused used to give beatings to Reena.

18. PW5 Parwati Devi was also residing near the matrimonial house of Reena. She was residing at a distance of 20 minutes from the house of the accused. According to her also, the accused used to give beatings to Reena. He used to demand money.

19. PW6 Surat Singh, PW7 Naresh Singh have corroborated the statement of PW2 Kishan Singh. They have also deposed that the accused used to torture Reena physically and mentally. The accused and his family members have also raised demand of dowry. Thus, the prosecution has proved its case beyond the charges framed against the accused under Section 498A as well as 3/4 of Dowry Prohibition Act.

20. Now, the Court will advert to Section 364-A. The prosecution has not led any evidence to prove that the accused had kidnapped Reena for ransom. It was necessary for the prosecution to prove that the accused has kidnapped or abducted Reena and she was kept by him in detention after such kidnapping or abduction and threatened to cause death or hurt Reena. Reena was the legally wedded wife of the accused. She has gone to Amritsar with her husband. Thus, it cannot be said she was kidnapped or abducted by the accused for ransom.

21. Their Lordships of the Hon"ble Supreme Court in 2004 (8) SCC 95, in the case of "Malleshi vs. State of Karnataka", have held that the prosecution must prove following ingredients before attracting the provisions of Section 364-A. Their Lordships have held as under: -

"12. To attract the provisions of Section 364-A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in Netra Pal v. State (NCT of Delhi)¹ to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled."

22. Learned counsel appearing on behalf of the appellant has vehemently argued that the cause of action has arisen at Amritsar. Thus, the trial court had no jurisdiction in the matter.

23. The accused had started demanding dowry from the deceased Reena within the territorial jurisdiction of the trial court. She was harassed and treated cruelly by the accused-husband for bringing insufficient dowry. The father of the deceased along with the pradhan of the area had visited ancestral village of the accused-husband at village Dhungli. Thus, the cause of action has also arisen within the territorial jurisdiction of the trial court.

24. In AIR 1997 SC 2465, in the case of "Smt. Sujata Mukherjee vs. Prashant Kumar Mukherjee", their Lordships of the Hon"ble Supreme Court have held that complaint revealed continuing offence wherein on some occasions all accused had taken part in one local area and on other occasion, only husband had taken part in another local where complaint was lodged. In view of this Clause (c) of Section 178 was attracted. Their Lordships have held as under: -

"7. Despite service being effected on the private respondents, no one has appeared for any of the accused respondents. We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, clause (c) of Section 178 of the Code of Criminal Procedure is

clearly attracted. We, therefore, set aside the impugned order of the High Court and direct the learned Chief Judicial Magistrate, Raipur to proceed with the criminal case. Since the matter is pending for long, steps should be taken to expedite the hearing. The appeals are accordingly allowed."

25. In AIR 2011 SC 1674, in the case of "Sunita Kumari Kashyap vs. State of Bihar & another", their Lordships of the Hon"ble Supreme Court have held when the specific assertion by wife was made about ill-treatment and cruelty at hands of husband and his relatives at Ranchi, because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry. Thus, in view of Sections 178 and 179, offence was a continuing one having been committed in more local areas than one and in such continuing offence, on some occasion all had taken part and on other occasion one of accused, namely, husband had taken part. Their Lordships have held as under: -

"9. Mr S.B. Sanyal, learned Senior Counsel appearing for the respondents fairly stated that there is no dispute about the jurisdiction of the Court at Gaya insofar as against the husband, however, in respect of other relatives of the husband in the absence of any act at Gaya, the said court has no jurisdiction and if at all, the wife has to pursue her remedy only at Ranchi. In support of his contention, he relied on a decision of this Court in Y. Abraham Ajith v. Inspector of Police³ in particular, SCC para 12 of the said decision which reads as under:

"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused."

It is true that Section 177 of the Code refers to the local jurisdiction where the offence is committed. Though the expression "cause of action" is not a stranger to criminal cases, in view of Sections 178 and 179 of the Code and in the light of the specific averment in the complaint of the appellant herein, we are of the view that the said decision is not applicable to the case on hand.

10. Mr Sanyal also relied on a decision of this Court in *Bhura Ram v. State of Rajasthan*⁴ wherein following the decision in *Y. Abraham Ajith*³ this Court held that "cause of action" having arisen within the jurisdiction of the court where the offence was committed, could not be tried by the court where no part of offence was committed. For the same reasons, as mentioned in the earlier paragraph, while there is no dispute as to the proposition in view of the fact that in the case on hand, the offence was a continuing one and the episode at Gaya was only a consequence of the continuing offence of harassment and ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. In view of the above reason, both the decisions are not applicable to the facts of this case and we are unable to accept the stand taken by Mr Sanyal.

11. We have already adverted to the details made by the appellant in the complaint. In view of the specific assertion by the appellant wife about the ill-treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In other words, as the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of harassment and ill-treatment meted out to the complainant, clause (c) of Section 178 is attracted. Further, from the allegations in the complaint, it appears to us that it is a continuing offence of ill-treatment and humiliation meted out to the appellant at the hands of all the accused persons and in such continuing offence, on some occasions all had taken part and on other occasions one of the accused, namely, the husband had taken part, therefore, undoubtedly clause (c) of Section 178 of the Code is clearly attracted."

26. In 2011 CRI. L.J. 4864, in the case of "*Gulshan Kapoor & others vs. State of Rajasthan & another*", learned Single Judge of Rajasthan High Court has held that wife was left at her father's place and Stridhan also was not returned on demand when made. As per Section 179, anything that happened as a consequence of offence may be inquired or tried by Court in whose jurisdiction such thing happened, the offence of continuing nature. Learned Single Judge has held as under: -

"11. In the present case, in my view at this stage of the proceedings prima facie it appears that after compromise between the parties before the Hon"ble Delhi High Court, the non-petitioner-complainant again started living with her husband and in-laws, but only few days after that, she was again treated with cruelty in connection with demand of dowry and she was compelled to leave her matrimonial home on 15.11.2003 and she came to her parental home at Bharatpur. In the light of the specific assertion of the non-petitioner about illtreatment and cruelty at the hands of the petitioners at Delhi and of the fact that because of their action she was compelled to leave her matrimonial home for not fulfilling their demand of dowry and in such circumstances she is now residing with her father at Bharatpur, I am of the considered view that in the light of Section 178 & 179 Cr.P.C., offence in this case was continuing one having committed in more local areas and one of the local area being Bharatpur, the Court below at Bharatpur has jurisdiction to proceed with the criminal case institute therein."

27. In 1999 CRI. L.J. 4657, in the case of "Smt. Suman Upadhyay & others vs. State of U.P. & others", learned Single Judge of Allahabad High Court has held that the complaint could be legally filed at the place where a part of the cause of action arises. It may be that the cause of action arose at a different place where ill treatment etc. was done to the complainant, as per the allegations in the complaint but then the whole transaction is to be seen qua territorial jurisdiction under Sections 498-A and 406 of IPC. Learned Single Judge has held as under: -

"6. The next contention of the learned counsel for the accused-revisionists is that the learned Magistrate at Bareilly had no territorial jurisdiction to try the case as in the complaint except the marriage, the entire occurrence is said to have taken place at Gorakhpur. I have gone through the contents of the complaint. The contention of the learned counsel for the accused revisionists is obviously not correct. As per the complaint the entrustment, such as the draft, ornaments and other items, had been done at Barielly itself at the time of marriage and so even if any breach of trust has been committed subsequently at another place, the complaint could be filed at Bareilly also where a part of the cause of action arose. The complaint could be legally filed at the place where a part of the cause of action arises. It may be that the cause of action in respect of another offence arose only at Gorakhpur where ill treatment etc. was done to the complainant as per the complaint but then whole transaction is to be seen and if a part of the cause of action as per the allegations in the complaint arose in his territorial jurisdiction, the Magistrate

has jurisdiction to take the cognizance of all the different offences committed in the course of transaction even though some of them had been committed beyond his territorial jurisdiction. So this plea of the learned counsel for the accused-revisionists also fails."

28. Accordingly, the appeal is partly allowed. Accused is acquitted for the offence under Section 364-A. His conviction for the offence punishable under Sections 498-A and 3/4 of Dowry Prohibition Act is upheld. He shall serve out the sentences, so awarded to him, by the trial court under Sections 498-A of IPC and 3/4 of Dowry Prohibition Act, 1961.

29. Let a copy of this judgment along with record be sent back to the court concerned for compliance of the order.