

Before Harbans Lal, J.

RAJESH KUMAR AND ANOTHER,—Appellants

versus

STATE OF PUNJAB,—Respondent

Crl. A. No. 488/SB of 1993

14th May, 2008

Indian Penal Code, 1860—S.306 and 498-A—Dowry Prohibition Act,—S.2—Demand at the time of birth of male child in “Chhuchhak” ceremony—Whether such demand falls within the purview of “Dowry”—Held, no—Demand made at time of “Sandhara” which is generally given on festive occasions from girl’s side to boy’s side does not fall within definition of dowry—Cruelty and harassment not afflicted by accused to deceased in connection with demand of dowry—Accused acquitted of charge u/s 306 IPC being not established—Appeal partly allowed.

Held, that a bare reading of language of Section 2 of the Dowry Prohibition Act, it can be culled out that any demand of money, property or valuable security made from the bride or her parents by the bridegroom or his parents would fall within the mischief of dowry under the Dowry Prohibition Act where such demand is made at or before or any time after the marriage in connection with the marriage of the parties.

(Para 17)

Further held, that the demand of Rs. 10,000 was allegedly made in Chhuchhak. This is a ceremony which is too often performed in the northern India at the time of birth of a child and the amounts/gifts are paid by the brother/parents of the wife to the husband and his family members. Sequently, such kind of payment or demand of such payment by the husband or his family members can be hardly described as dowry or a demand made in connection with a marriage. The demand made at the time of “Sandhara” which is generally given on the festive occasions like “Lohri, Karva Chauth, Holi” from the girl’s side to the boy’s side does not fall within the definition of dowry. Thus, it is

discernible and deducible that the alleged cruelty and harassment herein was not afflicted by the accused to the deceased in connection with demand of dowry. The alleged demand of Rs. 10,000/- at the time of birth of the male child in “Chhuchhak” ceremony has no proximate and live link with the death of the deceased as the same is so remote in time and has become so stale enough by the time that it was not to disturb the mental equilibrium of the deceased.

(Para 18)

Further held, that it stands demonstrated that the deceased was being harassed by the accused-appellants with a view to meet their demand of Rs. 10,000/- which was not satisfied at the time of “Chhuchhak”. This demand in view of the rule laid down in the authorities does not fall within the purview of “Dowry”.

(Para 19)

Sanjeev Manrai, Advocate *for the appellants*.

K. D. S. Sidhu, Deputy Advocate General, Punjab *for the respondent-State*.

JUDGMENT

HARBANS LAL, J.

(1) This appeal is directed against the judgment/order of sentence dated 10th December, 1993 passed by the Court of learned Sessions Judge, Faridkot, whereby he convicted and sentenced the accused Rajesh Kumar as well as his monther Satya Devi as under with a direction that the substantive sentences shall run concurrently :—

Sr. No.	Name of the accused	Sentence	Under Section
1	Rajesh Kumar	RI for 5 years and to pay a fine of Rs. 4,000 and in default of payment of fine, to further undergo RI for six months.	306 IPC

	-Do-	RI for 2 years and to pay a fine of Rs. 1,000 and in default of payment of fine, to further undergo RI for 3 months.	498-A IPC
2	Satya Devi	RI for 3 years and to pay a fine of Rs. 500 and in default of payment of fine, to further undergo RI for three months.	306 IPC
	-Do-	RI for 2 years and to pay a fine of Rs. 500 and in default of payment of fine, to further undergo RI for 3 months.	498-A IPC

(2) The factual matrix is that Vanita daughter of Comrade Lal Chand of village Nangal Khurd, District Mansa was married to the accused Rajesh Kumar about 1-1/2 years prior to May, 1992. Rajesh and his mother Satya Devi were dissatisfied with the dowry brought by Vanita in marriage. Soon after the marriage, they started harassing her for her having brought inadequate dowry. Her father Lal Chand being a poor person was unable to fulfill their demand. He had already given dowry according to his financial capacity. Both the accused asked Vanita to fetch Rs. 10,000 from her father, who could not fulfill this demand. Nearly 1-1/4 years later, Vanita gave birth to a male child. The accused asked for cash amount of Rs. 10,000 in "Chhuchhak."

(3) A few days before 8th May, 1992 (referring to the date of occurrence), the marriage of Lal Chand's son Hans Raj was to be solemnized. Lal Chand went to the house of the accused at Malout with the invitation card pertaining to the marriage of Hans Raj along with a pack of sweets. The wedding card was retained but the pack of sweets was returned by the accused. Rajesh Kumar accused and his wife Vanita did not attend the marriage. The accused continued putting Vanita to harassment for her having failed to fetch the above mentioned cash

amount from her father. On 8th May, 1992, Vanita set herself as well as her son Vanish ablaze by pouring kerosene oil on their bodies. On receipt of such information, Lal Chand reached Civil Hospital, Malout whence he learnt about the death of Vanita as well as her child. On the basis of his statement, Exh. PK, formal FIR, Exh. PK/1 was registered under Section 304-B/34 of IPC. The inquest reports were prepared *qua* their dead bodies. The accused were put under arrest. After completion of investigation, the charge sheet was laid in the Court of learned Judicial Magistrate, Gidderbaha. *Vide* his order dated 10th October, 1992, he committed the case to the Court of Sessions for trial. The accused Rajesh Kumar as well as Satya Devi were charged under Section 498-A, 304-B of IPC to which they did not plead guilty and claimed trial.

(4) To bring home guilt against the accused, the prosecution examined Dr. Balkar Singh, SMO, Civil Hospital, Malout-PW1, Kidar Nath Draftsman PW-2, HC Ved Parkash PW-3, Constable Het Ram PW-4, A.S.I. Hardam Singh PW-5, Lal Chand PW-6, Raj Kumar PW-7, S.I. Gian Chand PW-8, A.S.I. Ajmer Singh PW-9 and closed its evidence by tendering Exh. PT, report of FSL Punjab, Chandigarh, affidavits Exhs. PL and PM of Constable Kashmir Singh and Constable Gurdev Singh respectively.

(5) When examined under Section 313 of the Code of Criminal Procedure, both the accused denied all the incriminating circumstances appearing in the prosecution evidence against them. They put forth that Lal Chand is a poor man. He could not afford any dowry. It was a simple marriage. Rajesh Kumar is lame. Vanita was beautiful. She did not want to marry Rajesh Kumar accused who is handicap. On account of her marriage with Rajesh Kumar who is lame, Vanita used to remain dejected, frustrated and upset. She was married to Rajesh Kumar against her will. She committed suicide on account of dejection, disappointment and frustration brought by her marriage to Rajesh Kumar, a lame.

(6) In their defence, they examined Rajinder Singh Kanwar, Manager, U.C.O. Bank, Malout DW-1. Besides this, Rajesh Kumar accused tendered written statement of his defence urging that on

8th May, 1992, he was on duty in U.C.O. Bank, Malout. The Manager called him at about noon time and told him that he had received message from some body that his wife had committed suicide and he be sent to his house. He made verbal request to the Manager to permit him to go to his house and accordingly, he was permitted. When he reached there, he came to know that his wife had been admitted in Civil Hospital, Malout. He went there and found his wife dead with burns. He made an application to the Manager praying for leave for 9th May, 1992 onwards. At the time when Vanita set herself ablaze, his father was at his shop and mother was away to Village Kallianwali. He and his mother never demanded any dowry or Chhuchhak as his marriage was not possible.

(7) After hearing the learned Public Prosecutor for the State, the learned defence counsel and after examining the evidence on record, the learned trial Court convicted and sentenced both the accused as noticed at the outset. Feeling aggrieved with their conviction/sentence, they preferred appeal to this Court.

(8) On 7th July, 2005, the appeal was listed for arguments. On that day, no one had put in appearance on behalf of the appellants despite the case having been on the list for a reasonable long time with the result this Court proceeded to decide this appeal. After scanning through the record with the assistance of learned State Counsel, the appeal was dismissed. The accused-appellants, feeling aggrieved with the judgment/order dated 7th July, 2005 of this Court, preferred Appeal by Special Leave. This Special Leave to Appeal (Criminal) No. 1720 of 2006 was allowed and the Special Leave was granted by the Hon'ble Supreme Court by its order dated 12th May, 2006. The Criminal Appeal No. 649 of 2006 was disposed of by the Apex Court on 12th May, 2006 with the following observations :—

“We set aside the judgment in Criminal Appeal No. 488-SB/93 on the file of the High Court, Punjab and Haryana at Chandigarh and request the High Court to re-hear the appeal. The second appellant is already on bail. As regards 1st appellant, he is directed to be released on bail on executing

the bail bonds to the satisfaction to the Sessions Court, Faridkot Punjab, pending appeal before the High Court.”

(9) In compliance with the above order, this appeal is being re-heard. I have heard the learned counsel for the parties besides perusing the record with due care and circumspection.

(10) Mr. Sanjeev Manrai, Advocate appearing on behalf of the appellants, strenuously urged that Lal Chand PW-6 has solemnly affirmed that he went to the house of the accused to give invitation card for the marriage of his son along with a pack of sweets though under the stress of cross-examination, he regretted his inability to disclose the name of the Printing Press from where the invitation cards were got printed. It is not possible for this witness to forget the name of the Press if the cards were really got printing. He further pressed into service that on this count, he is contradicted by his own son Raj Kumar PW-7 who has stated that no invitation card was got printed and thus it would be quite risky to place reliance upon the statement of Lal Chand. It is further argued that as emanates from the evidence of Raj Kumar (sic), it was only the postcard on which the invitation was got printed which is further unbelievable for the reason that no body extends invitation of marriage on the postcard and if it was the postcard, there was no fun to deliver the same personally.

(11) To tide over these submissions, Mr. K.D.S. Sidhu, Deputy Advocate General, Punjab urged with great eloquence that on evaluating the evidence of Lal Chand (sic), it transpires that the invitation card along with a pack of sweets was taken to the house of the accused, who retained the card but returned the pack of sweets.

(12) I have given a deep thoughtful consideration to the rival contentions.

(13) As is borne out from the cross-examination of Lal Chand, he regretted his inability to recollect the name of the Printing Press from where he got printed the invitation cards regarding the marriage of Hans Raj. A specific question was put to him that no invitation card was got printed nor any invitation or pack of sweets was sent to Rajesh Kumar. The testimony of Lal Chand that the invitation cards were got printed

is discredited by his own son Raj Kumar, who in his cross-examination, has stated in categorical and candid terms that no invitation cards were got printed regarding Hans Raj's marriage. He went on to say that "it was only postcard on which invitation for marriage of Hans Raj was given, which he and his father took to Malout. No other person accompanied us to Malout at that time. Again said, my mother also accompanied us to Malout at that time." As per Lal Chand's testimony, only he went to Malout with the invitation card for the marriage of Hans Raj. Thus, the evidence of both these witnesses is obviously inconsistent. Had Raj Kumar as well as his mother accompanied Lal Chand, he (Lal Chand) might have spoken so. If the invitation for the marriage of Hans Raj was extended through postcards, there was no fun to deliver the same personally. If the same was to be extended personally, it would have not been got printed on the postcards, rather, it should have been in the form of wedding cards. If the entire matter is viewed in the background of the above perspective, the story with regard to the carrying of invitation card along with a pack of sweets is falsified. It is also unbelievable that the invitation card was retained but the pack of sweets was returned. If the accused Rajesh Kumar was not to go to attend the marriage of his brother-in-law for one or the other reason, he would have returned the invitation card as well. The learned trial Court in paragraph No. 21 of the impugned judgment observed that "it was an act of grave cruelty by Rajesh Kumar and his mother Satya Devi upon Vanita who was not allowed to attend her brother's marriage and whose husband did not attend her brother's marriage. It was an act of grave cruelty by Rajesh Kumar and Satya Devi upon Vanita when they retained the invitation card but returned the pack of sweets. They had brought pack of sweets for Rajesh Kumar and Vanita as it was a joyous occasion for them. Nothing could be more insulting and disheartening to the wife if her husband and mother-in-law refused to acknowledge the pack of sweets presented to them by her parents as a token of invitation to them to attend her brother's marriage." These observations are liable to be reversed in view of the fact that the visit of Lal Chand or his son or his wife or all the three together to the house of the accused along with invitation card as well as a pack of sweets is belied by contradictory evidence of Lal Chand as well as his son Raj Kumar. In paragraph No. 14 of its judgment, the learned trial Court has

observed that “it is thus clear that Lal Chand PW-6 is utterly poor what to talk of having spent Rs. 65,000—70,000 on Vanita’s marriage. It seems that he was not in a position to spend any amount at all on marriage. He has not stated the details of what was given by him in Vanita’s marriage so that it could be seen whether he had really spent on marriage. If he was to spend on marriage, it would not have been a barat of 8—10 persons coming to marry Vanita.” In the succeeding paragraph, it has been observed that “Raj Kumar PW-7 stated that investment in their Parchoon shop is Rs. 1,000—1,200 at one time. They do not pay any income tax or sales tax. In their earlier statements, they did not state that they had spent Rs. 65,000—70,000 in marriage. Only at the trial they stated that they spent Rs. 65,000—70,000 on marriage. Lal Chand PW had vaguely stated in the earlier statement that whatever he could spend, he spent on marriage. But whatever that was which he spent on marriage, that is shrouded in mystery. In the earlier statement he had stated though vaguely that soon after marriage of Vanita, her mother-in-law Satya and husband Rajesh Kumar started demanding more dowry. In his statement, he had no where stated that this was the demand which they started laying after marriage.” In paragraph No. 16, it is observed “how could Rajesh Kumar who is lame demand dowry. It appears to have been a marriage where dowry was not given.” In paragraph 17, it has been said that “I am thus not satisfied that Vanita was subjected to cruelty by her husband and mother-in-law on account of their demand for dowry having not been fulfilled by her father.”

(14) It follows from the above extracted observations that before the learned trial Court, Lal Chand as well as Raj Kumar, Pws made every possible attempt to improve materially on their statements in relation to the amount spent on the marriage of the deceased. If they had gone to this extent, they could also be expected to introduce the story of their having gone to the house of the accused with invitation card along with a pack of sweets for extending invitation to them on the eve of marriage of Hans Raj. Thus, it boils down that the story proffered by the prosecution in this behalf is unsustainable. If there was no invitation, the question of the deceased or her husband Rajesh Kumar accused to attend the marriage of Hans Raj is uncalled for. It that was

so, by no stretch of speculation, Vanita deceased would have undergone depression or dejection or disappointment for her having not been allowed to attend the marriage of her brother.

(15) Now, we come to the demand of Chhuchhak. It is in the evidence of Lal Chand (sic) that Rajesh Kumar and Satya Devi used to harass her (referring to the deceased) since the dowry brought by her was insufficient. On this aspect of the matter, it deserves to be pointed out here that the learned trial court has rightly observed that "I am thus not satisfied that Vanita was subjected to cruelty by her husband and mother-in-law on account of their demand for dowry having not been fulfilled by her father." This observation is substantiated by the evidence of Lal Chand (sic) that he is running a Parchoon (retail) shop in village Nangal Khurd. It is a small shop. He owns no property nor does he own bank balance. He does not own any house. The shop is on rent with him. It was a barat of 8—10 persons who came in the morning and returned in the evening. He did not give any Car, Fridge, Scooter, T.V. etc. He did not give any gold ornaments to Vanita in marriage. So, obviously no exception can be taken to the above observations of the trial Court. It is in the evidence of Lal Chand, PW-6 that "Vanita gave birth to a male child 1-1/4 years after her marriage. In Chhuchhak, we could not give any thing because we are poor. In Chhuchhak, they asked for Rs. 10,000/- in cash." Raj Kumar, PW-7 has also testified that "after the birth of son, they (referring to the accused) demanded Rs. 10,000/- in Chhuchhak. We did not give her Rs. 10,000/- either in cash or dowry as we were poor and unable to afford this sum."

(16) At this juncture, the question arises as to whether the demand of Rs. 10,000/- in Chhuchhak ceremony on account of birth of male child falls under the definition of 'dowry' as couched in the language of Section 2 of the Dowry Prohibition Act. Section 2 of the Dowry Act defines 'dowry' as under :—

"Section 2. Definition of 'dowry'—In this Act, 'dowry' means any property to valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage ; or

- (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I—For the removal of doubts, it is hereby declared that any presents made at that time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II—The expression ‘valuable security’ has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).”

(17) From a bare reading of the above language, it can be culled out that any demand of money, property or valuable security made from the bride or her parents by the bridegroom or his parents would fall within the mischief of dowry under the Dowry Prohibition Act where such demand is made at or before or any time after the marriage in connection with the marriage of the parties. In re: **Satvir Singh versus State of Punjab**, (1) it has been observed by the Apex Court that “there can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of ‘dowry’. Further, in re: **Kamesh Panjiyar @ Kamlesh Panjiar versus State of Bihar**, (2) it has been held that “other payments which are customary payments, e.g. Given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression ‘dowry’.

(1) 2001(4) Recent Criminal Reports (Criminal) 355

(2) 2005(1) Recent Criminal Reports (Criminal) 861

(18) In the present case, the demand of Rs. 10,000/- was allegedly made in Chhuchak. This is a ceremony which too often performed in the northern India at the time of birth of a child and the amounts/gifts are paid by the brother/parents of the wife to the husband and his family members. Sequel, such kind of payment or demand of such payment by the husband or his family members can be hardly described as dowry or a demand made in connection with a marriage. The demand made at the time of "Sandhara" which is generally given on the festive occasions like "Lohri, Karva Chauth, Holi" from the girl's side to the boy's side does not fall within the definition of dowry as held by the Division Bench of this Court in **Hari Singh versus State of Punjab, (3)**. Thus, it is discernible and deducible that the alleged cruelty and harassment herein was not afflicted by the accused to the deceased in connection with demand of dowry. The alleged demand of Rs. 10,000/- at the time of birth of the male child in "Chhuchhak" ceremony has no proximate and live-link with the death of the deceased as the same is so remote in time and has become so stale enough by the time that it was not to disturb the mental equilibrium of the deceased.

(19) On analysing and appraising the evidence of Lal Chand and Raj Kumar, Pws, it stands demonstrated that the deceased was being harassed by the accused-appellants with a view to meet their demand of Rs. 10,000/- which was not satisfied at the time of "Chhuchhak." This demand in view of the afore-extracted rule laid down in the authorities does not fall within the purview of "Dowry."

(20) Learned counsel for the appellants has been emphatic in the course of arguments that indeed the deceased being beautiful and her husband being a crippled, could not adjust herself mentally with the latter and for the reason, she committed suicide. The argument has no legs to stand upon. Of course, the learned trial Court has too observed that "it seems that he (Lal Chand) reconciled himself to marry his daughter to a lame on two scores; first, he was poor and unable to afford dowry; second, he was gainfully employed in the Bank getting handsome salary." But it is not to be lost sight of the fact that the

marriage was celebrated 1-1/2 year prior to this occurrence. The deceased conceived from her husband's loins and gave birth to a male child. If she had been reluctant to marry the accused Rajesh Kumar, she would have refused at the very outset before entering into marriage with him. She would not have adjusted with him. A male child was born from their wedlock. The only cause for her having taken the decision to commit suicide as also to take the life of her own son as demonstrated by the given evidence is that she was subjected to cruelty as defined in Section 498-A of IPC by the accused-appellants to meet their demand of Chhuchhak. She was fully conscious and aware of the fact that her father or brother being poor, would not be able at any point of time to meet this demand. The degree of sensitivity and mental faculty varies from person to person. One may be more sensitive though the other could be less sensitive to the same act in the similar situation. One may take a thing very seriously though the other one may be indifferent towards it. As is borne out from the evidence, the accused/appellants had not brought about the situation to such a boil, with forced the deceased to commit suicide. So, the offence under Section 306 of IPC is not established. The offence, which is made out on the given evidence falls under Section 498-A of IPC.

(21) Sequel, the conviction/sentence of both the accused/appellants under Section 306 of IPC is set aside and they are acquitted of the charge under this Section, though the conviction under Section 498-A of IPC is maintained. The accused/appellant Rajesh Kumar has undergone 7 months and two days, whereas Satya Devi has undergone twenty two days of the actual sentence. They have been facing the agony of trial since May, 1992. Thus axiomatically, this incident is 16 years old. The appellant Rajesh Kumar is undeniably a lame. In the factual scenario, the sentence of both the accused/appellants is reduced to the already undergone, while maintaining the fine as well as its default clause, imposed under them.

(22) In view of the preceding discussions, this appeal is partly accepted.

R.N.R.