



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Talwinder Singh and another

....Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jasraj Singh, Advocate
for the appellants.

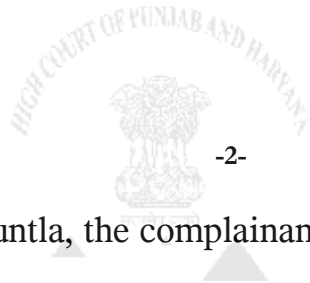
Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J.

1. The present appeal is preferred against the judgment of conviction and order of sentence dated 03.05.2004 passed the learned Sessions Judge, Hoshiarpur in the case stemming from FIR No. 86 dated 28.02.2003 registered under Section 306 of the Indian Penal Code, 1985 (hereinafter referred to as 'the IPC ' for short)at Police Station Sadar, Hoshiarpur. The appellants were convicted under Section 498-A of IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

FACTUAL BACKGROUND

2. Succinctly, the facts of the prosecution case are that the daughter of Jagat Ram-the complainant namely, Shakuntla was married to the appellant No.1 in June 2002. The appellant No.1 had a love affair with his elder brother's wife (appellant no.2) and due to this reason, there remained quarrel in the house. Since, appellant No.1, his brother-Satpal and his wife (appellant No.2)



the used to harass Shakuntla, the complainant met with them to pacify them but to avail. Consequently, he took Shakuntla back to his house, where she remained for about two months. Thereafter, with the intervention of respectables, Shakuntla was sent to her matrimonial home but the quarrelling did not cease. On 26.02.2003, the complainant went to meet Shakuntla who told him that the appellants harassed her and at the instance of appellant No.2 (*jethani*), they beat her. Subsequently, on 28.02.2003, he received a telephonic message that his daughter has died due to strangulation, upon which he along with other respectables reached Civil Hospital, Hoshiarpur, where they found her lying dead and came to know that she committed suicide by hanging herself.

3. The dead body of Shakuntala was handed over to HC Satnam Singh, and a post mortem was conducted. Thereafter, appellant No.1 was arrested, while Satpal (*jeth*) and appellant no.2 (*jethani*) were found innocent during investigation. Later on, charge under Section 306 IPC was framed against appellant No.1 by the learned trial Court to which he pleaded not guilty and claimed trial. After recording the statement of complainant-Jagat Ram as PW-1, Satpal and Santosh Kumari were also summoned to face trial, on the application under Section 319 Cr.P.C. After their appearance, charge under Section 306 IPC was framed against all the accused to which they did not plead guilty and claimed trial. Upon conclusion of the prosecution evidence, statements of the accused were recorded in terms of Section 313 Cr.P.C wherein they denied the prosecution case in its entirety and pleaded false implication.



4. Learned trial Court, on minutely scrutinizing the evidence on record and going through the record of the case, held the appellants guilty and convicted and sentenced them as discussed herein above.

CONTENTIONS

5. Learned counsel appearing on behalf of the appellants, while assailing the impugned judgment, submits that it is a case where there is absolute dearth of evidence to establish the allegations of maltreatment by the accused so as to justify their conviction. Learned counsel further submits that as a matter of fact, no specific charge for an offence under Section 498-A IPC had been framed and under these circumstances, conviction of the appellants, for the offence under Section 498 IPC, cannot be said to be a lesser offence than the one under Section 306 IPC. Reliance in this regard is placed on *Shamnsaheb M. Multtani v. State of Karnataka, 2001 (1) R.C.R. (Criminal) 617*, *Anandrao Tukaram Gudape v. State of Maharashtra, 2018 (1) Bom. C.R. (Cri.) 714*, *Balbir Singh v. State of Punjab, 1986 (2) R.C.R. (Criminal) 255* and *Abdul Jabbar v. State of Haryana, 2015 (1) R.C.R. (Criminal) 91*.

6. *Per contra* learned State counsel opposes the prayer made by the appellants on the ground that the conviction under Section 498-A IPC has been clearly and unimpeachably proved. The learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, and therefore, no interference is warranted by this court in the instant appeal.

OBSERVATIONS AND ANALYSIS

7. I have considered the rival submissions made by the learned counsel and perused the record with their able assistance.



8. The question that arises for the consideration of this Court is whether the learned trial Court, having acquitted the accused for offence under Section 306 IPC, could still proceed to convict the appellants for offence under Section 498-A IPC, despite the fact that no specific charge had been framed under it. A three Judges Bench of Hon'ble Supreme Court in ***Shamnsaheb M. Multtani vs. State of Karnataka, 2001 (1) R.C.R. (Criminal) 617*** has held as follows:

"14. Sections 221 and 222 of the Code are the two provisions dealing with the power of a criminal court to convict the accused of an offence which is not included in the charge. The primary condition for application of section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the section permits "to convict to accused" of the offence of which he is shown to have committed though he was not charged with it." But in the nature of the acts alleged by the prosecution in this case there was absolutely no scope for any doubt regarding the offence under Section 302 Indian Penal Code, at least at the time of framing the charge.

15. Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars". The Section permits the court to convict the accused "of the minor offence, though he was not charged with it." Sub-section (2) deals with a similar, but slightly different, situation. "When a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence although he is not charged with it."

16. What is meant by "a minor offence" for the purpose of Section 222 of the Code ? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-a-vis the other offence."

9. Therefore, the aforesaid issue would primarily revolve around the question as to whether an offence under Section 498-A IPC can be said to be a



lesser offence than under Section 306 IPC, so as to justify the conviction under Section 498-A IPC, even in the absence of any specific charge for such offence. In this context, a study of Section 222 Cr.P.C. is also called for, which is reproduced below:

Section 222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

10. After analyzing the elements of Section 222 Cr.P.C., it is evident that Section 498-A of the IPC cannot be regarded as a ‘minor offence’ in relation to Section 306 IPC. The essential components of these offences are distinct. However, in certain cases—particularly those involving a wife’s suicide—the alleged acts of abetment may also constitute ‘cruelty’ under Section 498-A IPC. That said, unless the specific acts constituting both abetment and cruelty are explicitly set out in the charge under Section 306 IPC, a conviction under Section 498-A cannot be sustained in the absence of a separate charge for it. Accordingly, it is concluded that an offence under Section 498-A IPC is not a lesser offence of Section 306 IPC, warranting automatic application of Section 222 Cr.P.C. Nonetheless, as previously clarified, in exceptional cases, a conviction under Section 498-A IPC may still be valid even if there is no separate charge, provided that the charge under Section 306 IPC is framed in a manner that comprehensively includes all



incriminating acts falling under Section 498-A. Reliance in this regard can also be placed upon the judgment rendered by a Division Bench of this Court in *State of Punjab v. Jasbir Singh & other CRA-D-245-DBA-2003* decided on 29.05.2024.

CONCLUSION

11. In view of the above discussion, the present appeal is allowed. The judgment of conviction and order of sentence dated 03.05.2004 passed by learned Sessions Judge, Hoshiarpur are set aside. Appellant no.1, namely Talwinder Singh has passed away during the pendency of the present appeal therefore the present appeal stands abated *qua* him while appellant no.2 namely Santosh Kumari is hereby acquitted. Her bail bonds and surety bonds also stand discharged.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

13. The case property, if any, may be dealt with as per rules after the expiry of period of limitation for filing the appeal(s). Record of the case, if any, be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

06.03.2025

Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No