

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

Criminal Appeal No.702-DBA of 2006

Date of Decision : January 19, 2009

Sanjay Lata @ Sanju
D/o Shyam Sunder Sharma,
R/o Chiranjeev Colony, Bhiwani.

....Appellant

Versus

1. Amrit Gautam S/o Ram Gopal
2. Ram Gopal S/o Suraj Bhan
3. Smt. Sumitra W/o Ram Gopal
4. Sushma D/o Ram Gopal
5. Shyam Lal S/o Manohar Lal
6. Renu W/o Gobind
7. State of Haryana

....Respondents

**CORAM:HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE SHAM SUNDER**

- 1. Whether Reporters of Local Newspapers may be allowed
to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Sanjay Vashisth, Advocate,
for the appellant.

Mr. Rakesh Nehra, Advocate,
for respondent Nos.1 to 6.

Mr. Naveen Malik, Addl. Advocate General, Haryana,
for respondent No.7.

SHAM SUNDER, J.

This appeal is directed against the judgment dated 2.9.2006,
rendered by the Court of Addl. Sessions Judge (I), Bhiwani, vide which it
acquitted the accused/respondent Nos.1 to 6, in a criminal complaint

under Sections 302, 498-A, 406 and 120-B IPC, P.S. City Bhiwani.

2. The facts of the case, as summarized, proceeded in the manner that Sanjay Lata was married to Amrit Gautam, accused, on 27.4.1996. She had studied upto M.A. B.Ed. level. Her parents had spent a sum of Rs.3 lacs on her marriage. The accused (now respondents) and their relatives were not satisfied with the dowry brought by the complainant. She was taunted time and again, in connection with the demand of fridge, scooter, and a sum of Rs.5000/- in cash, besides gold necklace and saries etc. When she expressed her inability to fulfill the demands, she was assaulted. She was even starved and illegally confined in a room, during summer season. Not only this, she was even bolted inside a bath-room, in December, 1996. On yet another occasion, she was deprived of use of a quilt, with a view to accelerate her death, by exposure to cold. The father of the complainant, in the month of February, 1997, gave a scooter, Rs.5000/- in cash, saries and suits to the accused. After the receipt of these articles, the accused remained inactive for sometime, but shortly thereafter, started abusing her again, in connection with the demand of dowry. On 4.9.1997, at the time of her first delivery, she was got admitted in Ganpat Rai Matri Seva Sadan Hospital, Bhiwani, where she gave birth to a male child on 5.9.1997. Despite the fact that the child weighed only 2.6 grams, and she was also weak, the accused forcibly got her discharged, from the said hospital on 7.9.1997. They did not permit her parents to see the new born child, either in the hospital, or at her matrimonial home. It was further stated that, on the said date Shyam Lal, accused, uncle of Amrit Gautam, accused, brought some liquid in a spoon and administered the same, to the new born child, by taking up in his lap.

Thereafter, the child remained motionless. Shortly, thereafter, when she attempted to breast feed the child, she discovered that he had expired. It was further stated by the complainant, that upon raising cries of alarm, she was threatened by the accused, not to raise an issue. It was further stated that, despite the complainant having decided to go for the post-mortem examination of the child, all the accused buried the dead-body, and did not inform her parents of this development. It was further stated that a few days later, Sushma, accused, sister of Amrit Gautam, and her husband, had deliberately left the gas open, and asked the complainant to prepare tea for her. When the complainant entered the kitchen, she noticed obnoxious smell, emanating from the same. When she attempted to come out of the kitchen, the accused tried to bolt her inside the same, but she was able to come out of the same. Thus, she succeeded in avoiding being burnt alive, as planned by the accused. It was further stated that subsequent thereto, she again became pregnant. At that time, she was very weak. Taking advantage of such situation, the accused obtained her signatures on documents for seeking divorce. When she refused to append her signatures, on those documents, she was again assaulted, and, ultimately, turned out of her matrimonial home. It was further stated that since then, she had been residing with her parents, in whose house, she had given birth to her second child, who is a girl. It was further stated that the complainant was employed as Physical Training Instructor, in S.D.High School, Bhiwani, and was a Judo Coach, in Halwasia Vidya Vihar, but she had to leave her employment, at the instance of the accused. She was, thus, rendered penniless. It was further stated that when she complained against the atrocities, having been

committed by the accused, to the Police, no action was taken. Left with no alternative, a criminal complaint, Ex.PB, was filed on 21.4.1999.

3. After recording the preliminary evidence, led by the complainant, all the accused were summoned by the then Chief Judicial Magistrate, Bhiwani, to stand trial for the offences, punishable under Sections 302, 498-A, 406 and 120-B IPC.

4. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the complainant. After the case was received by commitment, charge for the offences, punishable under Sections 302, 120-B, 498-A and 406 IPC, was framed against the accused, to which they pleaded not guilty and claimed trial.

5. The prosecution, in support of its case, examined Sanjay Lata (PW-1), who made a statement, in line with the allegations, contained in the complaint, Shyam Sunder (PW-2), her father, Gyatri Devi (PW-3), her mother, Subhash Chander (PW-4), her uncle, and Dr. Om Gulia (PW-5). Thereafter, the complainant closed her evidence.

6. The statements of the accused under Section 313 Cr.P.C., were recorded, and they were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. They, however, tendered into evidence Ex.DK, Exs.DK/1 to DK/3, Ex.DL and Ex.DM, in their defence. Thereafter, they closed their defence evidence.

7. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, acquitted the accused, as stated hereinbefore.

8. Feeling aggrieved, the instant appeal was filed by the appellant/complainant.

9. We have heard the Counsel for the parties, and have gone through the record of the case, carefully.

10. The Counsel for the appellant, submitted that the trial Court was wrong in coming to the conclusion, that the complainant was not tortured by the accused, from time to time, nor she was assaulted. He further submitted that the trial Court was also wrong, in disbelieving the cogent and convincing evidence, produced by the complainant, to bring home the guilt to the accused. He further submitted that the trial Court was even wrong, in coming to the conclusion, that the accused did not commit the murder of the new born child of the complainant, in conspiracy with each other. He further submitted that the trial Court was also wrong, in placing reliance, on the written statement filed by the complainant, in the divorce petition, instituted against her, by her husband, as also the statements made by her, and her father therein, to come to the conclusion, that she gave contradictory versions, in the Court, in the criminal case, vis-a-vis her earlier statements. He further submitted that, no doubt, delay occurred in filing the complaint, yet that was only on account of the reason, that the complainant did not want to disturb her matrimonial life, while residing in the house of her in-laws. He further submitted that when the things went beyond all limits, and the complainant was thrown out of her bridal house, left with not alternative, she had to file a criminal complaint. He further submitted that the trial Court was also wrong, in directing that Sanjay Lata, complainant, and her father Shyam Sunder, should be tried by the competent Court, in a regular

trial, qua the commission of offence, punishable under Section 194 IPC, for making false complaint, and fabricating false evidence, to seek conviction of the accused, for a capital offence.

11. On the other hand, the Counsel for the accused/respondent Nos.1 to 6, submitted that there was inordinate delay, in filing the complaint, which clearly showed that the accused were falsely implicated. He further submitted that the trial Court was right in coming to the conclusion, that the complainant had miserably failed to prove through cogent and convincing evidence, that she was ever assaulted, tortured, or in any way maltreated, by the accused, at any point of time, after marriage, in connection with the demand of dowry or otherwise. He further submitted that even the new born child of the complainant died a natural death, but she converted the same, into a homicidal death, just with a view to seek the conviction of the accused, on false grounds. He further submitted that the trial Court after appreciating the evidence of the complainant, and her witnesses, in the instant trial, as also the statements made by them, in the divorce petition, rightly came to the conclusion, that she and her father had scant regard, for the law of land, by filing a false complaint, for seeking conviction of the accused, for a capital offence. He further submitted that the trial Court was also right in coming to the conclusion, that the complainant and her father should face regular trial, qua the commission of offence, punishable under Section 194 IPC.

12. The power of an Appellate Court, to review the evidence in appeal against acquittal, is as extensive as its power in appeal against conviction. The Appellate Court should, however, be slow in interfering

with the order of acquittal, if it comes to the conclusion that the view taken by the trial Court, was possible, on the basis of the evidence adduced by the prosecution. As stated above, the marriage of the complainant with Amrit Gautam, accused, was performed on 27.4.1996. A child was born to the complainant on 5.9.1997, and on 7.9.1997, he died. According to the complainant, he was killed by administering him something in the spoon by Shyam Lal, one of the accused. Earlier to that, on many occasions, as per the allegations, she was physically assaulted, tortured, starved, and even exposed to cold to accelerate her death, in connection with the demand of dowry. Even, as per the allegations, the murder of her child, was committed on 7.9.1997. She, however, kept mum and quiet, for an extraordinary long time and did not report the matter to the Police Authorities. Even, she did not file a criminal complaint. There is a delay of about 01 year and 09 months, in filing the criminal complaint. No explanation was furnished, by the complainant, as to what prevented her, from filing the criminal complaint earlier, if she was really aggrieved, against the alleged atrocities of accused. In the absence of any explanation, for such a long delay, in filing the criminal complaint, against the accused, it could be very well presumed that the same was utilized to concoct a story, false implication of the accused, and introduction of false witnesses. Such delay, in our opinion, must prove fatal to the case of the prosecution. In Thulia Kali V. State of Tamil Nadu (1972) 3 Supreme Court Cases 393, it was held that the FIR/complaint in a criminal case is an extremely vital and valuable piece of evidence, for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report, can hardly be over-estimated, from

the standpoint of the accused. The object of insisting upon prompt lodging of the report, with the Police, in respect of commission of an offence, is to obtain early information, regarding the circumstances, in which the crime was committed, the names of the actual culprits, and the part played by them, as well as the names of the eye-witnesses, present at the scene of occurrence. Delay in lodging the first information report or filing a criminal complaint quite often results in embellishment, which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account of the prosecution story, as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report, or filing a criminal complaint, should be satisfactorily explained. In that case there was a delay of more than 20 hours, in lodging the F.I.R., though the Police Station was only at a distance of two miles. Hence this circumstance was taken, as the one, to raise considerable doubt, regarding the veracity of the case, and it was held that it was not safe to base conviction on it. In the instant case also, as stated above, the delay in filing the criminal complaint, was not at all explained, by the witnesses of the complainant. On account of this reason, the case of the complainant became highly doubtful. The Court is, thus, put on guard to scrutinize the evidence of the witnesses of the complainant, carefully and cautiously, to arrive at a correct conclusion.

13. No doubt, the allegations of ill-treatment, physical assaults, torture, starvation, and her exposure to cold, with a view to accelerate her death, were levelled by the complainant, against the accused. Those

allegations were sought to be proved through the oral evidence, produced, in the shape of the statements of the complainant, her father Shyam Sunder, her mother Gyatri Devi, and her uncle Subhash Shander. All of them, could be said to be highly interested in the complainant. No doubt, the evidence of an interested witness, cannot be disbelieved, merely on account of his or her interestedness. The Court is, however, in such a situation, put on guard to scrutinize the evidence of the witnesses carefully and cautiously. If, after careful and cautious scrutiny, it comes to the conclusion, that the evidence is reliable, then the same can be taken into consideration, to reach a particular conclusion. In the face of the evidence of the interested witnesses, the Court, with a view to assure itself, also needs corroboration, through an independent source. In case, the complainant had been continuously tortured by the accused, in the manner, referred to above, she would have certainly complained the matter to the Police, as also got herself medico-legally examined. She, however, did not get herself medico-legally examined, when she was assaulted. Why she kept mum, for such a long time, was not explained by her. Had the child of the complainant been actually killed by Shyam Lal, one of the accused, in connivance with the other accused, she would have been the first lady, to get the post-mortem examination of the dead-body conducted, so that truth would have come to the surface, as to whether, the death of the child, occurred on account of administration of some poisonous substance, to him, or due to natural causes. She could also inform her parents, at that time, that the murder of her newly born child had been committed by Shyam Lal, one of the accused, in connivance with the other accused, but she did not do so. The complainant, apart

from being M.A. B.Ed. and B.P.Ed., is admittedly a champion and Gold Medalist in Judo. She being not a weak and meek lady, and capable of defending herself, against any physical onslaughts, it could not be conceived, that she would have remained mum, on all such occasions. Even, the evidence of the complainant, with regard to her torture, ill-treatment, and physical assaults, was falsified from Ex.DA, copy of the written statement, furnished by her on 15.6.1999, in the divorce petition, under Section 13 of the Hindu Marriage Act, filed against her, by her husband Amrit Gautam, on 11.3.1999. In that written statement, she in clear-cut terms stated that she was never maltreated by her husband, at any stage, from the time of inception of marriage, till her appearance in that Court on 16.11.2000, nor he had raised any demand of dowry. The trial Court was right in coming to the conclusion, that the deposition of Shyam Sunder (PW-2), in a parrot like manner, was not reliable, as he was found refreshing his memory, after looking at his left palm, whereon facts of the case were written. Exs.P-1 to P-3, letters, were produced by the complainant, which were purportedly addressed by her, to her father, wherein, a reference of the alleged assault was made. These letters were not attached with the complaint, though the same was filed after about more than 1 ½ years, from 7.9.1997, nor copies thereof, were supplied to the accused, prior to the framing of charge. Even, those letters, could be said to be self-serving statements of the complainant, and could be fabricated, at any point of time, especially when the same, had not seen the light of the day, upto the filing of the complaint, and even, at the time of filing the complaint. Not only this, the complainant made a complaint, Ex.DG, to the Deputy Commissioner, Bhiwani, wherein, she stated about

her various complaints, having been put up before the Grievance Committee, Bhiwani, headed by the then Development Minister, Haryana, on 14.6.1999. However, vide report, Ex.DG/1, those complaints were found to be false. Even in those complaints, no mention of the letters, referred to above, was made by the complainant. This clearly showed that the letters were fabricated later on, just with a view to prove the allegations.

14. Gyatri Devi (PW-3), mother of the complainant, no doubt, stated that the complainant used to narrate her the tale of woes through letters, copies whereof are Mark-A to Mark-O. However, during the course of cross-examination, she stated that none of the letters, contained any allegations, against any of the accused. On the other hand, it was proved from these letters that the complainant was leading a happy married life. The complainant being a well-educated lady, could not bear the torture at the hands of the accused, had she been actually subjected to the same. Ex.DC, Ex.DC/1 and Ex.DC/3, letters were produced, during the divorce proceedings, referred to above, between the complainant, and her husband, as Exs.P-13 to P-16. These letters did not indicate any ill-treatment of the complainant-wife, by the accused-husband, or any of his relatives. Even, Shyam Sunder (PW-2), father of the complainant, when appeared, in the divorce petition, filed by her son-in-law, against her daughter, who is the complainant, made statement, copy whereof, is Ex.DJ, in the Court of the then District Judge, Bhiwani, which was recorded on 8.1.2001. In that statement, he in clear-cut terms, stated that no dowry was ever demanded by the accused, from him, or the complainant. He also, in clear-cut terms, stated that her daughter Sanjay

Lata, was never ill-treated or tortured by the accused, from the inception of marriage till 8.1.2001. Keeping in view the previous statements, made by the complainant, her father and her mother, in the divorce proceedings, which was pending between her, and her husband, earlier to the filing of the complaint, referred to above, which contradicted their evidence, in entirety, regarding the demand of dowry and torture of the complainant, the trial Court was left with no alternative, than to come to the conclusion, that the complaint filed by the complainant was nothing, but a tissue of lies, just with a view to falsely implicate the accused, in the instant case.

15. Even, no documentary evidence was produced, by the complainant, to prove that, in fact, the articles of dowry, which were allegedly given, at the time of marriage of the complainant, were purchased. Even, no documentary evidence was produced to prove that the father of the complainant had sufficient means to purchase the scooter, and other articles, for giving the same to the accused. Shyam Sunder (PW-2), during the course of his cross-examination, admitted that he joined BTM in the year 1970, as a labourer, at the rate of Rs.150/- or Rs.170/- per month, and had retired from the said mill in February 1997, while drawing Rs.1800/- per month, as salary, as labourer, in the Folding Branch. He also admitted that he received Rs.55,000/-, as full and final payment of his all dues and gratuity, at the time of his retirement. It was further stated by him, that he had, thereafter, joined as an Accountant (Munim) in Bhagwanti Dharamshala, at the rate of Rs.1500/- per month. He also admitted, in his statement, copy whereof, is Ex.DJ, made in the divorce proceedings, that he did not possess any Bank balance, on

27.4.1996, or at any time prior thereto. He also admitted that he did not possess any agricultural land. A person, who was a labourer, drawing only Rs.1500/- per month, and had no bank account, whatsoever, and could not possibly think of the same, could not be expected to purchase a scooter, or other dowry articles, and give the same, to the accused. No doubt, such a lapse was tried to be covered by Subhash Chander (PW-4), brother of Shyam Sunder, by stating that he paid a sum of Rs.15,000/- to him, for purchasing dowry articles, as demanded by the accused, and subsequently paid a sum of Rs.25,000/- to him, for enabling him, to purchase a scooter, for being given to the accused. However, the falsehood of the statement of Subhash Chander, was proved when Shyam Sunder (PW-2), did not state even a single word, with regard to any amount, having been demanded by him, or paid to him, by his brother Subhash Chander, or that he borrowed an amount of Rs.25,000/- from him, for the purpose of purchase of a scooter, for giving the same to the accused. On careful scanning of the evidence, referred to above, this Court comes to the conclusion, that neither the dowry articles, nor the scooter, nor any cash were paid by the parents of the complainant, to the accused, nor they demanded the same, nor she was tortured or ill-treated, in connection with the demand thereof. All these allegations were falsely levelled against the accused, by the complainant, may be a counter-blast to the divorce petition, which was filed by the Amrit Gautam, accused, and in which he succeeded.

16. Not only this, according to her own saying, the complainant gave birth to another child, from the loins of Amrit Gautam, accused, after the death of her first child. Had the relations, between the parties,

been so strained, had the complainant been tortured and ill-treated, from time to time, and even physically assaulted, by the accused, and had her first child been killed by the accused, as alleged, she would have been the last lady to reside in the house of Amrit Gautam. In that event, she would not have cohabited with Amrit Gautam, accused, so as to become pregnant again, to deliver second child. This clearly showed that the death of the first child was in the natural course. This also clearly proved that she was never tortured, ill-treated or assaulted. It also could not be imagined that Amrit Gautam, father of the child, would connive with other accused, to kill his own newly born son. In the absence of any medical evidence, that the death of the child was not natural, and that the complainant was ever tortured or physically assaulted by any of the accused, at any point of time, right from the inception of marriage, until she left her bridal house, and for want of production of documentary evidence, as also the financial incapacity of the parents of the complainant, regarding the purchase of articles and giving the same, to the accused, it could be very well said that all the allegations were trumped up, by the complainant, just with a view to teach a lesson to the accused, forgetting that she and her father would be caught in a cobweb woven by themselves, by way of making contradictory statements, at two stages of the judicial proceedings i.e. one in the divorce proceedings, and the other in the Criminal Complaint. On careful perusal of the evidence and the findings recorded by the trial Court, that the allegations against the accused were not at all proved, and, on the other hand, were found to be false, we come to the conclusion, that there is no reason to differ with the same. The trial Court was, thus, right in recording the acquittal of the

accused, by finding the evidence produced in the Court, as wholly unreliable.

17. The trial Court was also right, in coming to the conclusion, that Sanjay Lata, complainant, (PW-1), and Shyam Sunder (PW-2), father of the complainant, fabricated false evidence, regarding ill-treatment of the complainant, in connection with the demand of dowry by Amrit Gautam, accused, although while appearing as RW-1 and RW-4, in the divorce proceedings, they admitted that the accused/husband had never ill-treated the complainant-wife, nor ever demanded any dowry. Such two contradictory versions made by the complainant and her father in two different judicial proceedings, between the parties, in two different Courts of law, could certainly be said to be sufficient to come to the conclusion that the complainant and her father were having scant regard for law. The trial Court was, thus, right in holding that the only effort of the complainant and her father was to seek conviction of the accused, on trumped up charges, for a capital offence. The trial Court was, thus right in directing that they should face regular trial, qua the offence, punishable under Section 194 IPC i.e. for giving or fabricating false evidence, in judicial proceedings, with intent to cause any person to be convicted of a capital offence.

18. Reliance was placed by the Counsel for the appellant on *K.T.M.S.Mohd. and another Vs. Union of India 1992(2) RCR (Criminal) 398 (S.C.)*, to contend that a person making contradictory statements, at two different stages, in judicial proceedings, in itself, could not be said to have committed the offence of perjury under Section 193 IPC, but it must be established that the deponent had intentionally given a

false statement, or fabricated false evidence, for the purpose of being used, in any stage of judicial proceedings. There is, no dispute, with the preposition of law, laid down, in the aforesaid case. In the instant case, the trial Court came to the conclusion, that the complainant and her father, committed the offence, punishable under Section 194 IPC, and they should face a regular trial, for the same. During the course of their trial, in the Court of law, for the offence, punishable under Section 194 IPC, the accused would be at liberty, to take whatever defence, was available to them, in accordance with law, to prove that the contradictory statements, in two judicial proceedings were not made by them, intentionally. The direction, given by the trial Court, being based on the correct appreciation of evidence, and law, on the point, does not warrant interference or deletion. The submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

19. No other point, was urged, by the Counsel for the parties.

20. In view of the above discussion, it is held that the judgment rendered by the trial Court, is based on the correct appreciation of evidence, and law, on the point. The same does not warrant any interference, and are liable to be upheld.

21. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment dated 2.9.2006 is upheld.

(K.S.GAREWAL)
JUDGE

(SHAM SUNDER)
JUDGE

January 19, 2009
Vimal