

Bench: A Pasayat, D Jain

CASE NO.:

Appeal (crl.) 11 of 2002

PETITIONER:

M. Srinivasulu

RESPONDENT:

State of A.P.

DATE OF JUDGMENT: 10/09/2007

BENCH:

Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:

J U D G M E N T

CRIMINAL APPEAL NO. 11 OF 2002

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court upholding the conviction of the appellant for offences punishable under Sections 304 B and 498 A of the Indian Penal Code, 1860 (in short the 'IPC'). Sentence of seven years was imposed on each count. By the impugned judgment conviction recorded in respect of co-accused Laxmi was set aside and she was directed to be acquitted.

2. Background facts as projected by prosecution in a nutshell are as follows:

Padma @ Pitchamma (hereinafter referred to as the 'deceased') was married to accused No.1-Srinivasulu on 21.5.1989. At the time of marriage, PW.1 father of the deceased gave rupees 10,000/- in cash, five tolas of gold, other household articles worth Rs.3000/- and Rs.1200/- towards clothes to accused No.1, who was employed as sub-staff of Karnataka Bank, Secunderabad. Accused No.2 is the mother of accused No.1 and she used to visit accused No.1 in the city and did not allow the deceased to fulfil conjugal obligations. At the instigation of accused No.2, accused No.1 had demanded Rs.5,000/- more from the parents of the deceased to purchase a Scooter as additional dowry. PW.1, father of the deceased paid the said amount to accused No.1. In spite of the same, both the accused made repeated demands for additional dowry upon the deceased. On one occasion, a sum of Rs.1,000/- and on another occasion a sum of Rs.2,000/- was paid by PW.1 to the accused. But the accused persons did not stop ill-treatment and harassment towards the deceased. After some time, when the deceased and her parents came to know that accused No.2 was thinking of a second marriage of accused No.1, immediately they went to the house of the accused but accused No.1 refused to take the deceased into the house. Accused No.2 ill-treated the deceased and both the accused asked the deceased to go back to her parents' house. Accused No.1 threatened to immolate the deceased and accused No.2 threatened to poison the deceased and insisted that she continues to stay in the house of her parents. Therefore, the deceased was taking shelter in the house of her parents and about 2 months prior to the incident, on the assurance given

by both the accused before the elders, the deceased joined accused Nos.1 and 2 to fulfil conjugal obligations. In spite of the same, the accused continued ill-treatment and harassment for more dowry. Because of the persistent ill-treatment and cruelty meted out by the accused towards the deceased, on 17.9.1992 at about 9.30 a.m. the deceased set herself ablaze and died with 100% burn injuries in Gandhi Hospital while undergoing treatment.

First information report was filed, investigation was undertaken and on completion thereof charge sheet was filed. Accused persons pleaded innocence.

3. To establish its accusations prosecution examined 11 witnesses and 16 documents were exhibited. PWs. 1 and 2 were the father and mother of the deceased respectively while PW3 was a relative. PW4 was a brother of the deceased while PW5 was the sister of the deceased. PW 6 was a caste elder. PW 10 is the Doctor who conducted the autopsy while PW 11 was the investigating officer. On consideration of the evidence on record, learned II Additional Metropolitan Sessions Judge, Hyderabad convicted the appellant for offence punishable under Section 304B and sentenced him to undergo imprisonment for ten years and to pay a fine of Rs.10,000/- with default stipulation. The acquitted co-accused A2 i.e. the mother of the appellant was sentenced to undergo imprisonment for seven years. Though the accused person was found guilty for offence punishable under Section 498A no separate sentence was imposed. Questioning correctness of the trial court's judgment, an appeal was preferred before the High Court by both the accused. It was essentially the stand of the appellant before the High Court that there was no material to show any demand of dowry and therefore neither Section 498A nor Section 304B had any application. It was pointed out that the deceased stayed for only 12 days at the matrimonial home. Reference was made to several letters which clearly establish that the deceased was unhappy not because of any demand of dowry but because the appellant used to stay most of the times with the parents and the mother in law was taking objection to her long absence from the marital home. The High Court did not find any substance in the stand of the appellant but found that there was no material to show that the co-accused i.e. the mother in law was guilty of the charged offences. Accordingly her conviction was set aside and she was acquitted. However, in case of the appellant the conviction was maintained and the sentence was reduced as afore-stated.

4. In support of the appeal, it was submitted that there is no evidence of any dowry demand. On the contrary, the letters on which prosecution placed reliance indicated that the dispute was not relating to demand of dowry but was on account of normal marital discord.

5. Learned counsel for the respondent on the other hand supported the impugned judgment.

6. Section 304B IPC deals with dowry death which reads as follows:

"304B. Dowry Death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation For the purpose of this sub- section 'dowry' shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

7. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

8. Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B IPC and Section 113B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:-

"113B: Presumption as to dowry death- When the question is whether a person has

committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the

dowry death.

Explanation For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

9. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the Court must be whether the accused has committed the

dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives. (3) Such cruelty or harassment was for, or in connection with any demand for dowry. (4) Such cruelty or harassment was soon

before her death.

10. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon after' used in Section 114 (illustration (a)) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

11. Section 498A reads as follows:

"498A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman

to cruelty shall be punished with

imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation For the purpose of this section 'cruelty' means

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such

harassment is with a view to coercing her or any person related to her to meet any

unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such

demand."

12. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act

have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142)). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

13. Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under:-

Section 2. Definition of 'dowry' In this Act, 'dowry' means any property or 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 the 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 in Section 30 of the Indian Penal Code (45 of 1860)."

14. The prosecution version primarily rests on three documents i.e. exhibits 2, 3 and 4 dated 3.1.1990, 20.6.1991 and 25.10.1990 respectively. A careful reading of these documents which were letters by the deceased show there was in fact no allegations of any demand of dowry made by the accused. Exhibit 3 i.e. the letter dated 20.6.1991 is very significant. Grievance in the said letter was not to any demand of dowry. In fact the deceased had clearly written that she was forced to marry with the accused against her wish and that

created a lot of problems for her. The underlying essence of the letter is that the deceased was not willing to get married and wanted to continue her studies and she was married against her wish. There is one significant statement in the letter, which is to the effect that the deceased did not want to go to her parental home for Gangamma festival as her husband was taking due care of her. In exhibit 4 i.e. letter dated 25.10.1990 she has clearly stated that she was all right and was happy in her in laws place and her in laws were taking good care of her and she on the other hand stated that somehow or other she does not want to live in the marital home. In Exhibit 2 i.e. letter dated 3.1.1990 also she had stated that she was happy. In fact she wrote to her father that he should take good care of her mother.

15. Learned counsel for the State referred to a particular sentence which speaks as to the effect that Rajamma was scolding her. It is to be noted that Rajamma was appellant's grand mother, she is not an accused. It is also not indicated in the letter that she was scolding her for any dowry. It is to be noted that the reference to the grand mother being unhappy is relatable to the deceased's long absence from the matrimonial home. In fact there is no allegation of any harassment due to dowry. What the trial court and the High Court appears to have done is to pick up one line from one place and another from another place and conclude that there was demand of dowry. Reading of the letters in the entirety show that there was, in fact, no mention of any demand for dowry. Therefore the conviction in terms of Section 498A and Section 304B cannot be maintained. The judgment of the High Court is accordingly set aside and the appellant is acquitted of the charges. Bail bond executed for the release of appellant on bail pursuant to the order dated 8.1.2002 shall stand discharged.

16. The appeal is allowed.