

HAZARILAL
v.
STATE OF M.P.

JUNE 20, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Penal Code, 1860—ss.498A—Prosecution u/ss. 304 B and 498 A—Of accused-husband—Deceased committed suicide after ten days she was blessed with a son—Deposition of parents of deceased was relatable to dowry alone—Conviction by trial court for both the offences—High Court acquitting him u/s 304 B holding that there was no question of demand of dowry—But convicting under 498A holding that because suicide was committed, there must be some harassment and cruelty—On appeal, Held: Conviction under s. 498A is impermissible in absence of any material to show harassment or cruelty—Conviction cannot be recorded on surmises and conjectures.

Appellant - accused (husband) and co-accused (mother of the appellant) was prosecuted for alleged commission of offence punishable u/ ss 304-B and 498-A IPC. According to prosecution, the appellant's wife committed suicide by burning herself in the house of her husband after 10 days she was blessed with a son. PWs 1 and 2 (parents of the deceased) had deposed that the deceased had complained to them that the accused persons were harassing her by demanding dowry. Trial court held the accused persons guilty for commission of offences charged under.

High Court acquitted the co-accused (mother of appellant) of both the charges. It acquitted the appellant-accused u/s 304 B holding that there was no evidence of demand of dowry. However it convicted the appellant u/ s 498A holding that after giving birth to a child she could not have entertained the idea to commit suicide unless she was being harassed. Hence the present appeal.

Allowing the appeal, the Court

HELD : The evidence of PWs 1 and 2 was only relatable to dowry. The High Court held that there was no question of demand of dowry, and in

- A** fact, appellant was financing the father of the deceased. There being no other material to show as to how the deceased was being harassed or subjected to cruelty, the conclusion of the High Court that because the deceased committed suicide there must be some harassment and cruelty is insupportable and indefensible. There was no material to substantiate this conclusion. Merely on surmises and conjectures the conviction could not have been recorded.
- B** There is a vast difference between "could have been", "must have been" and "has been". In the absence of any material, the case falls to the first category. In such a case conviction is impermissible. [Para 8] [1084-B, C, D]

- C** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 585 of 2001.

From the Final Judgment and Order dated 24.3.2000 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 382 of 1993.

Vikas Singh Jangra (for Hari Shankar K, Adv.) for the Appellant.

- D** Govind Goyal (for C.D. Singh) for the Respondent .

The Judgment of the Court was delivered by

- E** **DR. ARIJIT PASAYAT, J.** 1. Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court, Jabalpur. Appellant along with his mother Smt. Sumatranj faced trial for alleged commission of offence punishable under Sections 304-B and 498A of the Indian Penal Code, 1860 (in short the 'IPC'). The learned second Additional Sessions Judge, Sagar, in Sessions Case No.125 of 1990, held the accused persons guilty and convicted each for offence punishable under
- F** Sections 304B and 498A IPC and imposed sentence of 10 years and 3 years respectively with fine of the second offence.

2. Dashoda Bai (hereinafter called as 'deceased') was the daughter of Asha Ram (PW-1) and Parvati Bai (PW-2). According to the prosecution she committed suicide by burning herself on 28.8.1989 in the house of her husband.
- G** About 10 days before the occurrence she was blessed with a son.

3. Prosecution version in a nutshell is as follows:

- H** In January, 1989 Dashoda Bai came to the house of her parents and told them that now she would not go to the place of her in-laws because she was being harassed by her mother-in-law and being beaten by her husband. She

had also shown the marks of the injuries to them. According to her they were demanding a golden ring, golden chain and a fan as dowry. They were threatening that accused-appellant Hajarilal would re-marry. The parents of the deceased complained to Motilal, father of Hajarilal that their daughter was being harassed and beaten by the mother-in-law and the husband. Motilal promised that there would be no such complaint in future. On this assurance the parents of the girl sent her with Motilal. On the birth of the male child the parents of the girl sent certain gifts which have been described as "Panch". On that occasion accused Hajarilal had expressed that he was not happy with the deceased and her father should take her away. He also expressed that he does not want to keep her. On 22.9.1989 Motilal lodged the F.I.R. (Ex.P/10) at Garhakota Police Station that Dashoda Bai had sustained burn injuries. She died on account of those injuries. The accused pleaded not guilty. Their defence was that Dashoda Bai died on account of bursting of the stove. It was further stated that the father of the deceased asked Motilal to make a gift of eight acres of land in favour of the child left by the deceased and on his refusal to do so he has given a false statement to the police.

4. The trial court held the accused person guilty and as noted above sentenced them.

5. In the appeal before the High Court it was urged that there was no evidence to establish the demand of dowry and also there was no evidence that the deceased was being harassed and subjected to cruelty. The High Court found that there was no evidence of demand of dowry. The prosecution version relating to demand of dowry of golden ring, golden chain and a fan did not appear to be true. It noted that the father of the deceased had been financed by the appellant for purchase of some articles and in fact the appellant had taken a loan in his name for the purpose. The amount was far in excess of the cost of the golden ring. Therefore, the High Court noted that he was not demanding any dowry. Accordingly, the convictions so far as related to Section 304-B was set aside in respect of both the accused persons. So far as the accusation under Section 498A was concerned, the High Court came to hold that after giving birth to a child in the normal course she could not have entertained the idea to commit suicide unless she was being harassed by the appellant. Accordingly conviction under Section 498A was maintained only so far as it related to appellant but the co-accused was acquitted.

6. In support of the appeal, learned counsel for the appellant submitted

A that after having recorded a positive finding that there was no question of any dowry demand the conviction in terms of Section 498A was clearly untenable.

B 7. Learned counsel for the State on the other hand submitted that though there was no evidence of any demand for dowry, the harassment and cruelty could be for special reasons.

C 8. The evidence of PWs 1 and 2 show that they spoke about the dowry to be the basis for suicide. The High Court came to the conclusion that because the deceased had given birth to a child there was no reason for her to commit suicide. The evidence of the parents of the deceased PWs 1 and 2 was only relatable to dowry. The High Court held that there was no question of demand of dowry, and in fact, appellant was financing the father of the deceased PW1. There being no other material to show as to how the deceased was being harassed or subjected to cruelty, the conclusion of the High Court that because the deceased committed suicide there must be some D harassment and cruelty is insupportable and indefensible. There was no material to substantiate this conclusion. Merely on surmises and conjectures the conviction could not have recorded. There is a vast difference between "could have been", "must have been" and "has been". In the absence of any material, the case falls to the first category. In such a case conviction is E impermissible.

9. That being so, the conviction as recorded by the High Court cannot be maintained and the order of the High Court is unsustainable and indefensible.

F 10. The appeal is allowed. The bail bonds executed for the purpose of bail stand discharged.

K.K.T.

Appeal allowed.