

SATISH KUMAR BATRA & ORS.

v.

STATE OF HARYANA

(Criminal Appeal No. 976 of 2001)

APRIL 1, 2009

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

*Penal Code, 1860:*

*s. 498A – Wife subjected to cruelty on account of dowry demand – Conviction of husband and his relatives u/s. 498A by courts below – Justification of – Held: Evidence of complainant-wife, mother and brother, clear and cogent and establishes accusations as regard the husband – Conviction of husband upheld and sentence reduced to the period already undergone – However, lot of improvements in the evidence of complainant-wife, mother and brother as regard appellant no. 2 and 3 – Prosecution unable to establish their accusations, thus, conviction of appellant no. 2 and 3 set aside.*

*s. 498A – Object of enactment – To combat menace of dowry death and cruelty.*

The question which arose for consideration was whether High Court was justified in upholding the conviction of the appellants for offence punishable under s. 498A IPC.

Disposing of the appeal, the Court

**HELD:**1.1. 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 are required to be established in

A order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Sections 304-B and 498-A 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 498-A gives the meaning of "cruelty". In Section 304-B 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 498-A under which "cruelty" by itself amounts to an offence. [Para 11] [459-E-H; 460-A]

1.2. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. The increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty. [Para 12] [460-B-D]

1.3. The basic difference between the two sections i.e. Section 306 and Section 498-A is that of intention. Under the latter, cruelty committed by the husband or his

relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended. [Para 13] [460-E]

2.1. In the first information report the thrust of allegations was primarily directed against the acquitted accused persons. They have been acquitted by the High Court. So far as the evidence of PW 1-complainant, PW 5-mother and PW 6-brother, the High Court noticed that there were lots of improvements. But the High Court found that even if these improvements are kept out of consideration, the evidence was sufficient to hold the present appellants guilty. It is to be noted that these improvements primarily related to appellant nos. 2 and 3, therefore acquittal as directed qua the co-accused persons should have also been done in the case of appellant nos. 2 and 3. However, the evidence is clear and cogent so far as the appellant no. 1 is concerned. [Para 5] [457-G-H; 458-A-B]

2.2. The evidence of PWs 1, 5 and 6 clearly establish the accusations as regard appellant no.1, thus there is nothing infirm in the judgment of the High Court in upholding the conviction of accused appellant. The sentence imposed was two years. It is on record that he has undergone sentence of more than 13 months. He has been released on bail. Therefore, while upholding the conviction, sentence is reduced to the period already undergone. So far as the appellant nos.2 and 3 are concerned, the prosecution has not been able to establish the accusations so far as they are concerned. Their appeal is accepted and the conviction is set aside. [Para 20] [462-C-E]

*A. Thangal Kunju Musaliar v. M. Venkatchalam Potti 1955 (2) SCR 1196; Budhan Choudhry v. State of Bihar 1955 (1) SCR 1045; Mafatlal Industries Ltd. v. Union of India 1997*

- A **(5) SCC 536**; *Collector of Customs v. Nathella Sampathu Chetty* **1962 (3) SCR 786**; *State of Rajasthan v. Union of India* **1977 (3) SCC 592**; *Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* **1954 SCR 1005**; *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat* **2004 (6) SCC 672**; *Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corpn.* **2003 (2) SCC 455**; *Padma Sundara Rao v. State of T.N.* **2002 (3) SCC 533** – referred to.

**Case Law Reference:**

- |   |                          |              |                |
|---|--------------------------|--------------|----------------|
| C | <b>1955 (2) SCR 1196</b> | Referred to. | <b>Para 14</b> |
|   | <b>1955 (1) SCR 1045</b> | Referred to. | <b>Para 15</b> |
|   | <b>1997 (5) SCC 536</b>  | Referred to. | <b>Para 17</b> |
| D | <b>1962 (3) SCR 786</b>  | Referred to. | <b>Para 17</b> |
|   | <b>1977 (3) SCC 592</b>  | Referred to. | <b>Para 18</b> |
|   | <b>1954 SCR 1005</b>     | Referred to. | <b>Para 18</b> |
|   | <b>2004 (6) SCC 672</b>  | Referred to. | <b>Para 19</b> |
| E | <b>2003 (2) SCC 455</b>  | Referred to. | <b>Para 19</b> |
|   | <b>2002 (3) SCC 533</b>  | Referred to. | <b>Para 19</b> |

- F **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 976 of 2001.**

From the Judgment & Order dated 14.03.2001 of the High Court of Punjab & Haryana at Chandigarh in Cr. Revision No. 620 of 2000.

- G H.B. Sinha, Kawaljit Kochar and Kusum Chaudhary for the Appellants.

T.V. George and Naresh Bakshi for the Respondent.

- H The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the Criminal Revision Petition filed by the present appellants. Challenge in the Revision Petition was to the judgment of learned Additional Sessions Judge, Sonapat, finding each of the present appellants guilty of offence punishable under Section 498A of the Indian Penal Code, 1860 (in short the 'IPC'). Learned Chief Judicial Magistrate, Sonapat, had found the accused persons guilty and had convicted them as aforesaid. In appeal learned Additional Sessions Judge confirmed the same. Six persons were arrayed as accused persons on the basis of information lodged by Santosh Kumari.

2. Prosecution version in a nutshell is as follows:

Marriage between Santosh Kumari and Satish Kumar (Appellant No.1) was solemnized on 21.10.1985. According to FIR No. 695 dated 20.6.1992 that was registered in Police Station City Sonapat at the behest of Santosh Kumari, at the time of her engagement, her parents had given sufficient articles valued at Rs.20,000/- to her husband and other members of his family. At the time of her marriage, various articles listed in the complaint were handed over to the accused and in all about Rs.1,50,000/- were spent thereon. Despite this, the persons mentioned in the complaint were not satisfied with the articles of dowry handed over to them, with the result that her husband Satish Kumar, mother-in-law Satya, brother-in-law Sunil Kumar, father-in-law Ram Lal, his sister Ishwar Devi and Om Parkash, brother-in-law of Ram Lal had been pressing her to bring more dowry. Satish Kumar husband had demanded Rs.5,000/- and Rs.10,000/- for purchase of goods for his shop which amount was given to him. In spite of that, the petitioners were not satisfied and had been beating her on several occasions. After the birth of the children, the petitioners turned her out of the matrimonial home, so that her parents could be forced to spend money on the upbringing of the children. On

A the birth of each of her children, her parents had spent Rs.20,000/-. But this had not satisfied her in-laws. Om Prakash, the brother-in-law of her father-in-law used other methods to torture her and she bore the atrocities attributing them to her wedlock. On 01.12.1991 the appellants had tried to kill her by  
B pouring kerosene oil on her, but she was able to save herself by running away. The neighbours had pacified her and assured that her in laws would behave properly in future. Despite this assurance, there was no change in their attitude and on 03.03.1992 her husband gave her severe beating and asked  
C her to bring Rs.45,000/- for the purpose of taking agency and they could give only Rs.25,000/-. On account of the beating, she started bleeding and was about to leave for Delhi Police Station, but was dissuaded by the members of the locality from doing so. The attitude of the in-laws did not change and on  
D 21.05.1992 she was turned out from the house after being told that she should not return to the matrimonial home, otherwise she and her children would be done to death. She was also told that if she wanted to settle with Satish Kumar then her parents should purchase a separate house for her. The Stridhan was kept by them. On the basis of this complaint, formal FIR  
E under Sections 406 and 498-A read with section 120-B IPC was registered.

During investigation list of articles Ex.PB and letters alleged to have been written by Santosh Kumari Ex.PD, Ex.PE,  
F Ex.PF, Ex.PG and Ex.PH were taken into possession vide recovery memo Ex.P5. On completion of the investigation challan was put in Court under sections 406, 498-A IPC. On going through the challan, the learned trial Court framed charges under sections 406 and 498-A IPC and when the  
G accused pleaded not guilty to the charges, called upon the prosecution to lead evidence in support of its case. After completion of the trial, the learned trial court acquitted the appellants of the offence under Section 406 IPC but convicted them under Section 498A IPC and sentenced them to undergo  
H R.I. for two years and to pay a fine of Rs.500/- each and in

default of payment of fine to further undergo R.I. for one month. A

Before trial was completed, Ram Lal, the father of Santosh Kumar died and the other five persons faced trial. Each one of them was convicted as in the case of the present appellants. They also filed appeals along with the present appellants and their appeals were dismissed. However, the High Court by order in a separate Criminal Revision Petition (Criminal Revision No. 607 of 2000) directed their acquittal. Conviction under Section 498A IPC was upheld by the High Court so far as the present appellants are concerned. Primarily the prosecution relied upon the version of the complainant (PW 1), mother (PW 5), and the brother (PW 6). The stand of the appellants all through was that the evidence of these witnesses does not inspire confidence. The High Court noted that there were lots of improvements and false implication of two other persons. The trial court, the First appellate court and the High Court did not accept this plea. However, finding that the evidence was inadequate, the High Court directed acquittal of the co-accused persons. B  
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3. In support of the appeal learned counsel for the appellant submitted that the courts below did not notice the inherent improbabilities in the evidence of PWs 1, 5 & 6. Though the High Court noted that there were lots of inconsistencies and improvements, yet chose to direct acquittal only of two persons while upholding the conviction on the self-serve evidence qua the appellants. It is submitted that appellant No.1 has already suffered custody for more than 13 months. E  
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4. Learned counsel for the respondent on the other hand supported the judgment of the courts below including the High Court. G

5. It is to be noted that in the first information report the thrust of allegations was primarily directed against the acquitted accused persons i.e Om Prakash and Ishwar Devi. They have been acquitted by the High Court. So far as the evidence of H

A PWs 1, 5 & 6 is concerned, it is true as noticed by the High Court, that there were lots of improvements. But the High Court found that even if these improvements are kept out of consideration, the evidence was sufficient to hold the present appellants guilty. It is to be noted that these improvements  
B primarily related to appellant Nos.2 & 3. Therefore, in our considered opinion the acquittal as directed qua the co-accused persons should have also been done in the case of appellant Nos.2 & 3. However, the evidence is clear and cogent so far as the appellant No.1 is concerned.

C 6. Section 498-A appears in Chapter XX-A IPC.

7. Substantive Section 498-A IPC and presumptive Section 113-B of the Indian Evidence Act, 1872 (in short "the Evidence Act") have been inserted in the respective statutes  
D by the Criminal Law (Second Amendment) Act, 1983 and by the Dowry Prohibition (Amendment) Act, 1986, respectively.

8. Section 498-A IPC and Section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-B of the Evidence Act is seven years,  
E presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

9. Section 498-A reads as follows:

F "498-A. *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  
G liable to fine.

*Explanation.*—For the purposes of this section, 'cruelty' means—

H (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."

10. Section 113-B reads as follows:

"113-B. *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 had 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 purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)."

11. 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 are required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. It is to be noted that Sections 304-B and 498-A 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 498-A gives the meaning of "cruelty". In Section 304-B 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 498-

A A under which "cruelty" by itself amounts to an offence.

12. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "CrPC") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

13. One other provision which is relevant to be noted is Section 306 IPC. The basic difference between the two sections i.e. Section 306 and Section 498-A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.

14. It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". (See *A. Thangal Kunju Musaliar v. M. Venkatchalam Potti* (1955 (2) SCR 1196))

15. In *Budhan Choudhry v. State of Bihar* (1955 (1) SCR 1045) a contention was raised that a provision of law may not be discriminatory but it may lend itself to abuse bringing about discrimination between the persons similarly situated. This

Court repelled the contention holding that on the possibility of abuse of a provision by the authority, the legislation may not be held arbitrary or discriminatory and violative of Article 14 of the Constitution.

16. From the decided cases in India as well as in the United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved.

17. In *Mafatlal Industries Ltd. v. Union of India* (1997 (5) SCC 536) a Bench of nine Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In *Collector of Customs v. Nathella Sampathu Chetty* (1962 (3) SCR 786), this Court observed: (SCR p. 825)

"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity."

18. It was said in *State of Rajasthan v. Union of India* (1977 (3) SCC 592): (SCC p. 658, para 147)

"It must be remembered that merely because power may sometime be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief."

(Also see *Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954 SCR 1005).

A 19. As observed in *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat* ((2004 (6) SCC 672), *Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corpn.* (2003 (2) SCC 455) and *Padma Sundara Rao v. State of T.N.* ((2002 (3) SCC 533), while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

C 20. In the instant case the evidence of PWs 1, 5 & 6 clearly establish the accusations so far as the accused appellant No.1 i.e. Satish Kumar is concerned and therefore we find nothing infirm in the judgment of the High Court in upholding the conviction of accused appellant Satish Kumar. The sentence imposed was two years. It is on record that he has undergone sentence of more than 13 months. He has been released on bail pursuant to order dated 9.7.2001. Therefore, while upholding the conviction, sentence is reduced to the period already undergone. So far as the appellant nos.2 & 3 i.e. Sunil Kumar and Satya Devi are concerned, the prosecution has not been able to establish the accusations so far as they are concerned. Their appeal is accepted and the conviction is set aside. The bail bonds executed by them for giving effect to the order dated 9.7.2001 shall stand discharged.

F 22. The appeal is disposed of accordingly.

N.J.

Appeal disposed of.