

BHUPENDRA

A

v.

STATE OF MADHYA PRADESH
(Criminal Appeal No. 1774 of 2008)

NOVEMBER 11, 2013

B

[**RANJANA PRAKASH DESAI AND
MADAN B. LOKUR, JJ.**]

PENAL CODE 1860:

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ss.498, 304-B and 306 - Demand for dowry by bride's husband and his parents - Death of bride by consuming poisonous substance - Conviction of husband by courts below - Upheld.

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ss.304-B and s.306 - Dowry death - Chemical examination of viscera - Held: Not mandatory in every case of a dowry death -- Even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable u/s 304-B or u/s 306 takes place -- In a case of unnatural death inviting s.304-B IPC (read with the presumption u/s 113-B of Evidence Act) or s.306 IPC (read with the presumption u/s 113-A of Evidence Act) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary.

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ss.304-B and 306 - Dowry death and suicide - Held: ss.306 and 304-B not mutually exclusive -- If a conviction for causing suicide is based on s.304-B, it will necessarily attract s.306 -- However, the converse is not true.

MEDICAL JURISPRUDENCE:

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Chemical analysis of viscera - Object of, and circumstances under which it is done - Explained.

A The appellant was married on 7.6.1993. On 20.8.1996,
 his wife committed suicide. The prosecution case was
 that the appellant and his family members demanded
 dowry at the time of marriage and thereafter, which was
 given to them. On 20.8.1996, they demanded Rs.10,000/-
 B and as bride's father was unable to fulfill the demand, she
 consumed wheat tablets and died in the hospital on the
 same date at 11.30 p.m. A charge-sheet was filed against
 the appellant and his parents for offences punishable u/
 ss 498-A, 304-B and 306, IPC. The trial court convicted the
 C appellant and his father of the offences charged and
 acquitted his mother. The High Court upheld the
 conviction of the appellant, and acquitted his father on
 benefit of doubt.

D In the instant appeal, it was contended for the
 appellant that since there was no chemical examination
 report of the viscera, it could not be said that the
 deceased died because of consuming poisonous wheat
 tablets; and that a conviction could not be sustained both
 u/s 304-B IPC as well as u/s 306 of the IPC. It was urged
 E that both these sections were mutually exclusive and a
 conviction can be founded on either of these sections but
 not both. However, these points were not raised before
 the courts below.

F Dismissing the appeal, the Court

HELD: 1.1 Normally, the viscera are preserved and
 submitted for chemical analysis under the following
 circumstances: (1) When the investigating officer
 requests for such an examination; (2) When the medical
 G officer suspects the presence of poison by smell or some
 other evidence while conducting an autopsy on injury
 cases; (3) To exclude poisoning, in instances where the
 cause of death could not be arrived at on post mortem
 examination and there is no natural disease or injury to
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account for it, and (4) In decomposed bodies. [para 22] A
[278-C-E]

Taiyab Khan and Others v. State of Bihar (Now Jharkhand), (2005) 13 SCC 455; *Ananda Mohan Sen and Another v. State of West Bengal*, 2007 (6) SCR 1088 = (2007) 10 SCC 774; *State of Karnataka v. K. Yarappa Reddy*, 1999 (3) Suppl. SCR 359 = (1999) 8 SCC 715 - relied on. B

1.2 A chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable u/s 304-B or u/s 306, IPC takes place; in a case of an unnatural death inviting s.304-B, IPC (read with the presumption u/s 113-B of the Evidence Act) or s.306, IPC (read with the presumption u/s 113-A of the Evidence Act) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary. [para 26] [279-G-H; 280-A-B] C D

1.3 Besides, on facts from the evidence adduced in the instant case, it has been established that the cause of death of the deceased was clearly a result of consumption of poison. The post mortem doctor had stated in his testimony that the death of the deceased was caused due to suspected poisoning. This particular statement was not challenged. Similarly, the doctor who examined the deceased had mentioned in his intimation to the Police Station that the patient had been brought to the hospital because she had consumed a wheat tablet. Even DW-1, in his statement before the court, stated that the brother-in-law of the appellant told him that the deceased had consumed some poisonous pills in the house of the appellant and was admitted in the hospital. All this evidence clearly suggests that there was no doubt that the deceased had died an unnatural death and that her death was due to consumption of some E F G H

A poisonous substance. [para 27-30] [280-B-F]

Mutual exclusivity of ss.304-B and 306 IPC

B 2. Section 306 IPC is much broader in its application and takes within its fold one aspect of s.304-B. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on s.304-B, it will necessarily attract s.306. However, the converse is not true. [para 35] [282-B-C]

C *Satvir Singh and Others v. State of Punjab and Another*, 2001 (3) Suppl. SCR 353 = (2001) 8 SCC 633; *Shanti and Another v. State of Haryana*, 1990 (2) Suppl. SCR 675 = (1991) 1 SCC 371 and *Kans Raj v. State of Punjab and Others*, 2000 (3) SCR 662 = (2000) 5 SCC 207 - relied on.

D **Case Law Reference:**

(2005) 13 SCC 455	relied on	para 23
2007 (6) SCR 1088	relied on	para 24
E 1999 (3) Suppl. SCR 359	relied on	para 25
2001 (3) Suppl. SCR 353	relied on	para 32
1990 (2) Suppl. SCR 675	relied on	para 33
F 2000 (3) SCR 662	relied on	para 33

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1774 of 2008.

G From the Judgment and Order dated 26.10.2007 of the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior in Criminal Appeal No. 344 of 2001.

J.Ā. Gupta, Rajesh, Yogesh Tiwari, Dharam Singh for the Appellant.

H C.D. Singh, Sakshi Kakkar for the Respondent.

The Judgment of the Court was delivered by

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MADAN B. LOKUR, J. 1. The question before us is whether Bhupendra (the appellant) was rightly convicted by the Additional Sessions Judge, Morena, Madhya Pradesh of having committed an offence punishable under Section 498-A, Section 304-B and Section 306 of the Indian Penal Code (IPC) and whether his conviction was rightly upheld by the High Court of Madhya Pradesh. In our opinion the question must be answered in the affirmative and therefore we find no merit in this appeal.

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The facts

2. Geeta Bai married Bhupendra on 7th June, 1993 and at that time her father PW-1 Bhika Ram gave dowry to Bhupendra and his family according to their means. The case of the prosecution was that Geeta Bai was harassed by Bhupendra and members of his family who demanded dowry over and above what was given to them at the time of marriage. Initially, the demand was for a she buffalo which was met by Bhika Ram. Then there was a further demand for Rs. 10,000/- in cash on 20th August, 1996. However, since Bhika Ram was unable to meet this demand, and apparently fearing the worst, Geeta Bai consumed wheat tablets on the evening of 20th August, 1996 at her matrimonial home.

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3. Since Geeta Bai had taken unwell, Bhupendra took her to the District Hospital at Morena for treatment. PW-8 Dr. S.C. Aggarwal informed the Station Officer of Police Station City Kotwali at about 10.30 p.m. about the incident. Later on, Geeta Bai died at about 11.25 p.m. and intimation of this was also sent by Dr. Aggarwal to the Station Officer of Police Station City Kotwali. On the basis of the information received, a case was registered and investigations commenced by the police.

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4. Separately, Bhika Ram made a complaint on 21st August, 1996 to the Superintendent of Police and to the District

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A Magistrate at Morena that Bhupendra, his father Vrindavan and his mother Sheela Devi had caused the dowry death of Geeta Bai.

5. On the same day, a post mortem examination was conducted on the body of Geeta Bai and it was opined by PW-7 Dr. Siyaram Sharma (who had conducted the post mortem examination) that she had two injuries on her body, one on the left forearm which was caused by a hard, blunt object while the other injury was on the back of the right hand caused by a tooth bite. Both these injuries were ante mortem. It was also opined that the cause of death was suspected poisoning.¹

6. On these broad facts, a charge sheet was filed against the three accused persons for offences punishable under Sections 498-A and 304-B of the IPC and in the alternative for an offence punishable under Section 306 of the IPC.

Decision of the Trial Court

7. The Sessions Judge in Sessions Trial No. 328 of 1996 pronounced judgment on 6th June, 2001. It was held, on an examination of the oral and documentary evidence, that there was nothing to doubt the correctness and veracity of the evidence given by Bhika Ram, his wife PW-2 Munni Devi, his brother-in-law PW-3 Munna Lal, the aunt of the deceased being PW-4 Urmila and Bhika Ram's brother PW-5 Ram Narayan.

8. It was held, on the basis of their evidence, that apart from the dowry given to Bhupendra's family at the time of marriage, there was an additional demand for dowry made by Vrindavan to give him one buffalo. This demand was met by Bhika Ram but there was a further demand on 20th August, 1996 for a sum of Rs. 10,000/- which could not be met by him.

9. It was also held that due to the inability of Bhika Ram to

1. Though the viscera of the deceased were sent for chemical examination, the examination report had not been received when the witness was examined on 13th August, 1999.

immediately meet the demand for additional dowry, Geeta Bai was subjected to harassment and cruelty for not bringing adequate dowry. She was subjected to beating and was not given proper clothes to wear about which she had even informed Bhika Ram. A

10. Finally, it was held that Geeta Bai had died an unnatural death within 7 years of her marriage thereby inviting an adverse presumption of a dowry death against all the accused persons. B

11. The Sessions Judge noted that according to the accused, Geeta Bai died due to food poisoning. He noted that there was no evidence brought forth in this regard and that no other member of the family had complained of any food poisoning. It was also noted that Dr. S.C. Aggarwal had stated in his cross examination that the ill effects of food poisoning are not so intense as to cause the death of a person within an hour. C D

12. On the basis of the evidence on record the Sessions Judge found Bhupendra and Vrindavan guilty of offences punishable under Section 498-A, Section 304-B and Section 306 of the IPC. However, he found that the prosecution had failed to prove that Sheela Devi had humiliated Geeta Bai or treated her with cruelty which resulted in her death within 7 years of her marriage under unnatural circumstances. E

Decision of the High Court F

13. Feeling aggrieved, by their conviction and the sentence imposed upon them, Vrindavan and Bhupendra filed Criminal Appeal No. 344 of 2001 in the High Court of Madhya Pradesh. By judgment and order dated 26th October, 2007 the High Court upheld the conviction of Bhupendra but held that there was no clinching evidence against Vrindavan and therefore he was entitled to the benefit of doubt and consequent acquittal. G

14. The High Court noted the contentions made on behalf of the convicts on the merits of the case, namely, that the H

A statements of Geeta Bai's parents were not reliable and that she had died as a result of food poisoning. It was also contended that some material witnesses had not been examined by the prosecution.

B 15. The High Court concluded that virtually from the date of her marriage, Geeta Bai had been treated with cruelty and subjected to harassment for not bringing sufficient dowry. In fact Vrindavan had clearly informed Bhika Ram that Geeta Bai would be killed in case the demand for additional dowry was not fulfilled. Even on 20th August, 1996 Bhupendra had come to Bhika Ram's house and had demanded Rs. 10,000/- cash as additional dowry. On that occasion, when Geeta Bai was going to her matrimonial home along with Bhupendra, she told Bhika Ram that she was being harassed and requested him to fulfill the demand for additional dowry otherwise she would be killed.

E 16. The High Court found no reason to disbelieve the testimony of Bhika Ram nor did it find any reason to disbelieve the testimony of other witnesses even though they belonged to Bhika Ram's extended family. The High Court also concluded that Geeta Bai was subjected to cruelty and harassment as a result of which she consumed wheat tablets and died an unnatural death. It was also noted that there were ante mortem injuries on the body of Geeta Bai.

F 17. As regards the failure of the prosecution to record the testimony of some material witnesses, the High Court held that the prosecution had examined witnesses who gave evidence in detail about the cruelty and death of Geeta Bai and no adverse inference could be drawn if additional witnesses were not examined.

H 18. The High Court found that in so far as the conviction of Bhupendra is concerned, there was adequate evidence to uphold it but the evidence to hold Vrindavan guilty was insufficient and accordingly he was acquitted.

19. Feeling aggrieved by the judgment and order dated 26th October, 2007 passed by the High Court, Bhupendra is in appeal. A

Discussion

20. Learned counsel urged two contentions before us, none of which were raised before the Sessions Judge or before the High Court. Frankly, we ought not to entertain these contentions. But, according to learned counsel there is some lack of clarity on the issues raised and it is only because of this that we have entertained his submissions. B C

21. The first contention was that since there was no chemical examination report of the viscera, it could not be said that Geeta Bai died because of consuming poisonous wheat tablets. The second contention was that a conviction could not be sustained both under Section 304-B of the IPC as well as under Section 306 of the IPC. In this context it was urged that both these sections were mutually exclusive and a conviction can be founded on either of these sections but not both. D

Section 304-B of the IPC reads as follows: E

"304-B. 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. F G

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

(2) Whoever commits dowry death shall be punished with H

A imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Section 306 of the IPC reads as follows:

B **"306. Abetment of suicide.**-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

C **Absence of a viscera report**

D 22. Normally, the viscera are preserved and submitted for chemical analysis under the following circumstances: (1) When the investigating officer requests for such an examination; (2) When the medical officer suspects the presence of poison by smell or some other evidence while conducting an autopsy on injury cases; (3) To exclude poisoning, in instances where the cause of death could not be arrived at on post mortem examination and there is no natural disease or injury to account for it, and (4) In decomposed bodies.²

E 23. In *Taiyab Khan and Others v. State of Bihar (Now Jharkhand)*, (2005) 13 SCC 455 it was urged that the viscera report would have shown whether the dowry death of the appellant's wife occurred on account of consumption of poison. Since the chemical examination report of the viscera was not received, it could not be said to be a case of death by poisoning. This contention was rejected by holding that factually the case was one of an unnatural death. Therefore, since Section 304-B of the IPC refers to death which occurs otherwise than under normal circumstances, the absence of a viscera report would not make any difference to the fate of the case. In other words, for the purposes of Section 304-B of the IPC the mere fact of an unnatural death is sufficient to invite a

H ^{2.} Parikhs's Textbooks of Medical Jurisprudence and Toxicology: Fourth edition, 1985 at page 90.

presumption under Section 113-B of the Evidence Act, 1872.

24. The view expressed in *Taiyab Khan* was reiterated in *Ananda Mohan Sen and Another v. State of West Bengal*, (2007) 10 SCC 774. In that case the exact cause of death could not be stated since the viscera preserved by the autopsy surgeon were to be sent to the chemical expert. In fact, one of the witnesses stated that the unnatural death was due to the effect of poisoning but he would be able to conclusively state the cause of death by poisoning only if he could detect poison in the viscera report. This Court noted that it was not in dispute that the death was an unnatural death and held that the deposition of the witness indicated that the death was due to poisoning. It is only the nature of the poison that could not be identified. In view of this, the conviction of the appellant under Section 306 of the IPC was upheld, there being no charge under Section 304-B of the IPC.

25. In *State of Karnataka v. K. Yarappa Reddy*, (1999) 8 SCC 715 the accused and the victim had coffee at a friend's house. Soon thereafter, the accused launched a murderous assault on the victim with a chopper. It was pleaded by the accused that if they actually had coffee at the friend's house, it would have shown up in the stomach contents. This Court dismissed the contention as "too puerile". It was held that there was no need for the doctor to ascertain whether there was coffee in the stomach contents of the victim. This is because

26. These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B of the IPC or under Section 306 of the IPC takes place; in a case of an unnatural death inviting Section 304-B of the IPC (read with the presumption under Section 113-B of the Evidence Act,

A 1872) or Section 306 of the IPC (read with the presumption under Section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary.

B 27. That apart, we find on facts from the evidence adduced in this case that the cause of death of Geeta Bai was clearly a result of consumption of poison. Dr. Siyaram Sharma had stated in his testimony that the death of the deceased was caused due to suspected poisoning. This particular statement was not challenged by Bhupendra.

C 28. Similarly, Dr. Aggarwal had mentioned in his intimation on 20th August, 1996 at 10.30 p.m. to Police Station City Kotwali, Morena that Geeta Bai had been brought to the hospital because she had consumed a wheat tablet.³

D 29. Even DW-1 Ram Naresh Sharma, in his statement before the Court stated that the brother-in-law of Bhupendra told him that Geeta Bai had consumed some poisonous pills in the house of the appellant and was admitted in the hospital.

E 30. All this evidence clearly suggests that there was no doubt that Geeta Bai had died an unnatural death and that her death was due to consumption of some poisonous substance. What exactly is the poison she consumed pales into insignificance even on the facts of the case and the evidence on record.

F 31. We therefore reject the first contention advanced by learned counsel both in law as well as on merits.

G **Mutual exclusivity of Sections 304-B and 306 of the IPC**

32. The second contention is also without any substance. In *Satvir Singh and Others v. State of Punjab and Another*,

H 3. A wheat tablet is used by farmers for killing insects in the wheat crop and is said to be commonly found in a village house.

(2001) 8 SCC 633 this Court drew a distinction between Section 306 of the IPC and Section 304-B of the IPC in the following words:-

"Section 306 IPC when read with Section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498-A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused "soon before her death" or earlier. If it was caused "soon before her death" the special provision in Section 304-B IPC would be invocable, otherwise resort can be made to Section 306 IPC."

33. It was held that Section 306 of the IPC is wide enough to take care of an offence under Section 304-B also. However, an offence under Section 304-B of the IPC has been made a far more serious offence with imposition of a minimum period of seven years imprisonment with the sentence going upto imprisonment for life. Considering the gravity of the offence it is treated separately from an offence punishable under Section 306 of the IPC. On this basis, this Court rejected the contention that if a dowry related death is a case of suicide it would not fall within the purview of Section 304-B of the IPC at all. Reliance in this regard was placed on *Shanti and Another v. State of Haryana*, (1991) 1 SCC 371 and *Kans Raj v. State of Punjab and Others*, (2000) 5 SCC 207 wherein this Court held that a suicide is one of the modes of death falling within the ambit of Section 304-B of the IPC.

34. In *Shanti* this Court was concerned with a death that had occurred "otherwise than under normal circumstances" as mentioned in Section 304-B of the IPC. It was held that an unnatural dowry death, whether homicidal or suicidal, would attract Section 304-B of the IPC. This expression was also considered in *Kans Raj* where it was held that it would mean death, not in the normal course, but apparently under suspicious

A circumstances, if not caused by burns or bodily injury. In *Kans Raj* the conviction of the husband of the deceased was upheld both for offences punishable under Section 304-B of the IPC and Section 306 of the IPC also.

B 35. We are, therefore, of the opinion that Section 306 of the IPC is much broader in its application and takes within its fold one aspect of Section 304-B of the IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304-B of the IPC, it will necessarily attract Section 306 of the IPC. However, the
C converse is not true.

36. Consequently, we reject the second contention urged by the learned counsel for the appellant.

D **Conclusion**

37. We see no merit in the appeal and it is accordingly dismissed.

E 38. The bail bond of Bhupendra is cancelled and it is directed that he should be taken into custody to serve out the remainder of his sentence.

R.P.

Appeal dismissed.