

GURDIP SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 1308 of 2013)

SEPTEMBER 3, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND
KURIAN JOSEPH, JJ.]

Penal Code, 1860 - ss.304B & 489A - Death of married woman - Allegations of cruelty and harassment - Two accused- husband and father-in-law - Conviction of appellant (father-in-law) u/ss. 304B & 498A - By courts below - Challenge to - Held: Evidence that deceased had been harassed by both the accused before two weeks of her death - Clear proof in evidence of PWs 1 & 2 that appellant was taunting the deceased demanding dowry - Deceased was even sent out from her matrimonial home on this account - Yet, for conviction u/s.304B, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage - Sans the requirement of seven years, the offence would fall only u/s.498A - On facts, trial Court went only on assumptions with regard to the date of marriage - S.304B IPC permits presumption of law only in a given set of facts and not presumption of fact - Fact is to be proved and then only, law will presume - In the instant case, prosecution failed to establish the crucial fact on the death occurring within seven years of marriage - Conviction u/s.304B IPC set aside, but conviction u/s.498A IPC confirmed - Evidence Act, 1872 - s.113B.

Penal Code, 1860 - s.489A - Cruelty by husband or relative of a married woman -Conviction u/s.498A - Held: No requirement u/s.498A that the cruelty should be within seven years of marriage - No invariable necessity u/s. 498A that the cruelty should be in connection with the demand for dowry.

A *Penal Code, 1860 - ss.304B & 489A - Introduction of - Purpose - Held: S.498A was introduced to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" - s.304B was introduced to make the penal provisions "more stringent and effective".*

B *Penal Code, 1860 - s.304B - Words "shall be deemed" - Meaning - Held: Though the expression "presumed" is not used u/s.304B of IPC, the words "shall be deemed" u/s.304B carry, literally and under law, the same meaning since the intent and context requires such attribution.*

C *Evidence Act, 1872 - ss. 113A and 113B - Introduction of - Vide amendments -Effect - Held: The amendments are only consequential to the amendments under the Dowry Prohibition Act and IPC - Under s.113A, the expression is "court may presume" whereas u/s.113B, the expression is "court shall presume" - The Parliament intended the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the amending Acts - Dowry Prohibition Act, 1961 -Penal Code, 1860.*

D **In a case relating to the death of a married woman, the appellant-father-in-law was the second accused. First accused was husband of the deceased, who is no more alive.**

E **The Sessions Court had convicted both the accused under Section 498A of IPC for rigorous imprisonment for a period of two years, and under Section 304B of IPC for rigorous imprisonment for a period of ten years. The sentences were ordered to run concurrently. The High Court, in appeal, had maintained the conviction but reduced the sentence under Section 304B of IPC to seven years rigorous imprisonment and confirmed the rest.**

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The appellant challenged his conviction under Sections 498A/304B before this Court. A

Partly allowing the appeal, the Court

HELD: 1.1. "Dowry death" in the Indian Penal Code was introduced under Section 304B as per Act 43 of 1986. Under the said provision, if a married woman dies, (i) on account of burns or bodily injury or dies otherwise than under normal circumstances, (ii) such death occurs within seven years of marriage, (iii) it is shown that she was subjected to cruelty or harassment by her husband or any relative, (iv) such cruelty or harassment be soon before her death and (v) such cruelty or harassment by the husband or his relative be or for or in connection with demand for dowry, such death is called dowry death under Section 304B of IPC and the husband or relative shall be presumed to have caused the dowry death. Section 498A of IPC deals with the offence of cruelty by the husband or relative. If a married woman is subjected to cruelty by the husband or his relative, he is liable for conviction under Section 498A. There is no requirement under Section 498A that the cruelty should be within seven years of marriage. It is also not invariably necessary under Section 498A that the cruelty should be in connection with the demand for dowry. Section 498A was introduced as per Act 46 of 1983 to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" and Section 304B was introduced as per Act 43 of 1986 to make the penal provisions "more stringent and effective". [Para 5] [284-D-H; 285-A-B] B C D E F G

1.2. Though the expression "presumed" is not used under Section 304B of IPC, the words "shall be deemed" under Section 304B carry, literally and under law, the same meaning since the intent and context requires such attribution. Section 304B of IPC on dowry death and H

- A Section 113B of the Indian Evidence Act, 1872, on presumption, were introduced by the same Act, i.e., Act 43 of 1986, with effect from 19.11.1986, and Section 498A of IPC and Section 113A of the Evidence Act were introduced by Act 46 of 1983, with effect from 25.12.1983.
- B [Para 7] [286-G-H; 287-A-B]

C 3. The amendments under the Evidence Act are only consequential to the amendments under the Dowry Prohibition Act, 1961 and the Indian Penal Code. Under Section 113A, the expression is "court may presume" whereas under Section 113B, the expression is "court shall presume". The Parliament did intend the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the amending Act. [Para 8] [287-B-C]

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E 4. Being a mandatory presumption on the guilty conduct of an accused under Section 304B, it is for the prosecution to first show the availability of all the ingredients of the offence so as to shift the burden of proof in terms of Section 113B of the Evidence Act. Once all the ingredients are present, the presumption of innocence fades away. [Para 9] [287-D-E]

F 91st Report on Dowry Deaths and Law Reform by Justice K.K. Mathew, Chairman, Law Commission of India on 10-8-1983 - referred to.

G 4. In the instant case, it has clearly been proved in the evidence of PW-1 and PW-2 that the appellant/accused was also taunting the deceased demanding dowry. They were all staying in the same premises. The issue had also been brought before the Village Panchayat many times. The deceased was even sent out from her matrimonial home on this account. There is also evidence that the deceased had been harassed by both H accused before two weeks of her death. Yet with all

these, for conviction under Section 304B of IPC, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Sans the requirement of seven years, in this case, the offence would fall only under Section 498A of IPC. And for that matter, sans any of the five ingredients of Section 304B IPC, the offence will fall out of Section 304B of IPC. The Sessions Court has not addressed this crucial aspect and has gone only on assumptions with regard to the date of marriage. Neither PW-1, father of the deceased nor PW-2 Sarpanch or any other witness has given any evidence with regard to the date of marriage. No document whatsoever has been produced with regard to the marriage. There is no evidence even with regard to the date of birth of the children. Also, according to PW-1 father of the deceased, the marriage had taken place five to seven years back. DW-1 elder devrani/sister-in-law of the deceased had stated in her evidence that the marriage had taken place around eleven years back. Nobody has even spoken on the exact date of marriage. The death reportedly took place on 06.04.1990. The evidence was recorded in 1996. The High Court counted the eleven years from the date of recording of the evidence. However, on going through the evidence, it is not at all clear as to whether the same is with respect to the date of tendering evidence or with respect to the date of the incident. In view of the mandatory presumption of law under Section 304B of IPC/113B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304B of IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume. In the instant case, prosecution has failed to establish the crucial fact on the death occurring within seven years of marriage. [Para 10] [288-A-H; 289-A-C]

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A 5. The conviction of the appellant under Section
304B IPC is set aside. The conviction under Section 498A
IPC is confirmed. However, taking note of the late evening
age of the appellant, the substantive sentence is limited
B trial. [Para 11] [289-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1308 of 2013.

From the Judgment & Order datd 11.08.2008 of the High
C Court of Punjab & Haryana at Chandigarh in Criminal Appeal
No. 676/DB of 1997.

Ishma Randhawa, S.K. Verma for the Appellant.

D Saurabh Ajay Gupta, AAG, Kuldeep Singh for the
Respondent.

The Judgment of the Court was delivered by

E **KURIAN, J.** 1. Close to be called a centenarian, the
appellant is before us challenging the conviction and sentence
under Sections 498A/304B of the Indian Penal Code (45 of
1860) (hereinafter referred to as 'IPC').

F 2. Appellant is the second accused in Sessions Case No.
41/1991 on the file of Additional Sessions Judge, Amritsar.
First accused is his son. The prosecution case as succinctly
summarized by the High Court in the impugned judgment is
extracted below:

G "Harjit Kaur, daughter of Mohinder Singh was married with
Mohan Singh accused. Mohinder Singh along with Hari
Singh Sarpanch, who was his brother from the
brotherhood, had gone to village Gharyala to see his
daughter Harjit Kaur because the in-laws of Harjit Kaur
were in the habit of picking up quarrels with her for bringing
less dowry. The in-laws of Harjit Kaur used to pressurize
H her to bring scooter, refrigerator and cash from her parents.

On her failure to do so, they after conspiring with each other, threatened to kill her by giving some poisonous substance. Gurdip Singh, father-in-law of Harjit Kaur, on many occasions told Harjit Kaur that in case she failed to bring the above said articles before Rabi crop, then after murdering her, he will re-marry his son. This fact was disclosed to Mohinder Singh by Harjit Kaur on many occasions but he ignored the same with the hope that Harjit Kaur may settle in her in-laws house.

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The prosecution story further is that on 6.4.1990, Mohinder Singh along with Hari Singh had gone to the residential farm house of Mohan Singh accused here the dead body of Harjit Kaur was lying on the ground. No one was present in the house. Mohinder Singh suspected that his daughter Harjit Kaur had consumed some poisonous substance out of frustration or the accused have murdered her by administering her some poisonous substance. Hari Singh was deputed to look after the dead body.

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Mohinder Singh made his statement before the police on 6.4.1990 on the basis of which the present case was registered.

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The investigation in the case was conducted and after the completion of investigation, challan was presented against the appellants in the Court.

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The accused were charge-sheeted under Sections 498-A/304-B IPC to which they pleaded not guilty and claimed trial.

To substantiate the charge against the accused, the prosecution examined PW-1 Mohinder Singh, PW-2 Hari Singh, PW-3 Gurcharan Singh, PW-4 Rishi Ram, PW-5 ASI Gulbag Singh, PW-6 Harbhajan Singh, PW-7 SI Amrik Singh and PW-8 Dr. Ram Krishan Sharma."

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A 3. The Sessions Court convicted both the accused under
Section 498A of IPC for rigorous imprisonment for a period of
two years and fine of Rs.500/- each and, in default of payment
of fine, for another three months, and under Section 304B of
B IPC for rigorous imprisonment for a period of ten years and fine
of Rs.500/- each and, in default of payment of fine, for another
three months. The sentences were ordered to run concurrently.
The High Court, in appeal, maintained the conviction but
reduced the sentence under Section 304B of IPC to seven
years rigorous imprisonment and confirmed the rest.

C 4. It is reported that the husband-first accused Mohan
Singh is no more.

D 5. "Dowry death" in the Indian Penal Code was introduced
under Section 304B as per Act 43 of 1986. Under the said
provision, if a married woman dies,

(i) on account of burns or bodily injury or dies
otherwise than under normal circumstances,

E (ii) such death occurs within seven years of marriage,

(iii) it is shown that she was subjected to cruelty or
harassment by her husband or any relative,

F (iv) such cruelty or harassment be soon before her
death and

(v) such cruelty or harassment by the husband or his
relative be or for or in connection with demand for
dowry,

G such death is called dowry death under Section 304B of IPC
and the husband or relative shall be presumed to have caused
the dowry death. Section 498A of IPC deals with the offence
of cruelty by the husband or relative. If a married woman is
subjected to cruelty by the husband or his relative, he is liable
H for conviction under Section 498A. There is no requirement

under Section 498A that the cruelty should be within seven years of marriage. It is also not invariably necessary under Section 498A that the cruelty should be in connection with the demand for dowry. It is interesting to note that Section 498A was introduced as per Act 46 of 1983 to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" and Section 304B was introduced as per Act 43 of 1986 to make the penal provisions "more stringent and effective".

(Emphasis supplied)

6. In this context, the background for the amendments would be a relevant reference. In the 91st Report on Dowry Deaths and Law Reform submitted by Justice K. K. Mathew, Chairman, Law Commission of India, on 10.08.1983, it is stated at Paragraphs 1.3 to 1.5 as follows:

"1.3 If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise-

- (i) either the facts do not fully fit into the pigeon-hole of any known offence: or
- (ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.

The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognized by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that

A amounts to "abetment" of suicide. Though, according to newspaper reports, there have been judgments of lower courts which seem to construe "abetment" in this context widely, the position is not beyond doubt.

B The second situation mentioned above finds illustration in those incidents in which even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence.

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1.4. Speaking of the law of evidence, it may be mentioned that one of the devices by which the law usually tries to bridge the gulf between one fact and another, where the gulf is so wide that it cannot be crossed with the help of the normal rules of evidence, is the device of inserting presumptions. In this sense, it is possible to consider the question whether, on the topic under discussion, any presumption rendering the proof of facts in issue less difficult, ought to be inserted into the law.

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1.5. Coming to substantive criminal law, if a deficiency is found to exist in such law, it can be filled up only by creating a new offence. Before doing so, of course, the wise law maker is expected to take into account a number of aspects, including the nuances of ethics, the ever-fluctuating winds of public opinion, the Demands of law enforcement and practical realities."

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(Emphasis supplied)

G 7. Though the expression "presumed" is not used under Section 304B of IPC, the words "shall be deemed" under Section 304B carry, literally and under law, the same meaning since the intent and context requires such attribution. Section 304B of IPC on dowry death and Section 113B of the Indian

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Evidence Act, 1872, on presumption, were introduced by the same Act, i.e., Act 43 of 1986, with effect from 19.11.1986, and Section 498A of IPC and Section 113A of the Evidence Act were introduced by Act 46 of 1983, with effect from 25.12.1983.

8. The amendments under the Evidence Act are only consequential to the amendments under the Dowry Prohibition Act, 1961 and the Indian Penal Code. It is significant to note that under Section 113A, the expression is "court may presume" whereas under Section 113B, the expression is "court shall presume". The Parliament did intend the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the amending Act.

9. Being a mandatory presumption on the guilty conduct of an accused under Section 304B, it is for the prosecution to first show the availability of all the ingredients of the offence so as to shift the burden of proof in terms of Section 113B of the Evidence Act. Once all the ingredients are present, the presumption of innocence fades away. Yet another reference to Paragraph 1.8 in the 91st Report of the Law Commission of India would be fruitful in this context:

"1.8. Those who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family: other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family."

(Emphasis supplied)

A 10. Having carefully gone through the entire evidence as appreciated by both the Sessions Court as well as the High Court, we are not inclined to take a different view except on one aspect, viz., the date of marriage. As far as other aspects regarding cruelty or harassment are concerned, it has clearly
B been proved in the evidence of PW-1 and PW-2 that the appellant/accused was also taunting the deceased demanding dowry. They were all staying in the same premises. The issue had also been brought before the Village Panchayat many times. The deceased was even sent out from her matrimonial
C home on this account. There is also evidence that the deceased had been harassed by both accused before two weeks of her death. Yet with all these, for conviction under Section 304B of IPC, it is obligatory on the part of the prosecution to establish that the death occurred within seven
D years of marriage. Sans the requirement of seven years, in this case, the offence would fall only under Section 498A of IPC. And for that matter, sans any of the five ingredients discussed at Paragraph 6 above herein, the offence will fall out of Section 304B of IPC. The Sessions Court, unfortunately, has not
E addressed this crucial aspect and has gone only on assumptions with regard to the date of marriage. It has to be noted that the deceased had two children, the son had died earlier and there is a surviving daughter who is stated to be around seven years. Whether the said age of the daughter is at the time of evidence or at the time of the death of the
F deceased, is not clear. Neither PW-1, father of the deceased nor PW-2 Sarpanch or any other witness has given any evidence with regard to the date of marriage. No document whatsoever has been produced with regard to the marriage. There is no evidence even with regard to the date of birth of
G the children. Also, according to PW-1 father of the deceased, the marriage had taken place five to seven years back. It has to be noted that DW-1 elder devrani/sister-in-law of the deceased had stated in her evidence that the marriage had
H taken place around eleven years back. Nobody has even spoken on the exact date of marriage. The death reportedly

took place on 06.04.1990. The evidence was recorded in 1996. The High Court counted the eleven years from the date of recording of the evidence. However, on going through the evidence, it is not at all clear as to whether the same is with respect to the date of tendering evidence or with respect to the date of the incident. In view of the mandatory presumption of law under Section 304B of IPC/113B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304B of IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume. In the instant case, prosecution has failed to establish the crucial fact on the death occurring within seven years of marriage.

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11. Hence, we set aside the conviction of the appellant under Section 304B of the Indian Penal Code (45 of 1860). The conviction under Section 498A of the Indian Penal Code (45 of 1860) is confirmed. However, taking note of the late evening age of the appellant, the substantive sentence is limited to the period undergone by him during the investigation/trial.

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12. The appeal is allowed as above.

B.B.B.

Appeal partly allowed.