

GHUSABHAI RAISANGBHAI CHORASIYA & ORS.

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v.

STATE OF GUJARAT

(Criminal Appeal No. 262 of 2009)

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FEBRUARY 18, 2015

[SUDHANSU JYOTI MUKHOPADHAYA AND
DIPAK MISRA, JJ.]

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Penal Code, 1860 – 498A, 306, 201 and 114 – Dowry death – The deceased committed suicide – Deceased-wife suspecting illicit relationship of her husband-accused – Conviction by courts below of the husband and other three accused – On appeal, held: Mere extra-marital relationship, even if proved, would be illegal and immoral unless proved that the accused had conducted in such a way which amounted to high degree of mental cruelty driving a woman to commit suicide – The facts of the present case did not amount to cruelty under the first limb of s.498-A – The evidence against other appellants-accused also not sufficient to hold them guilty – All the accused acquitted.

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Allowing the appeal, the Court

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HELD: 1. The first limb of Section 498A IPC, which refers to cruelty, has nothing to do with demand of dowry. In the present case, there is no demand of dowry. The deceased was pained and disturbed as the husband was having an illicit affair with appellant No.4. Such a situation would not amount to cruelty under the first limb of Section 498A IPC. Mere extra-marital relationship, even if proved, would be illegal and immoral. However, it

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- A would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with appellant No. 4, but
- B in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A which includes cruelty to drive a woman to commit suicide, would not be attracted. [paras 18 and 20] [602-C-D; 604-G-H; 605-A-B]
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Pinakin Mahipatray Rawal v. State of Gujarat 2013 (10) SCR 306 = 2013 (10) SCC 48 – relied on.

- D *Girdhar Shankar Tawade v. State of Maharashtra* 2002 (3) SCR 376 = 2002 (5) SCC 177, *Gurnaib Singh v. State of Punjab* 2013 (3) SCR 563 = 2013 (7) SCC 108 - referred to.

2. So far as the other accused persons, viz. appellant
- E Nos. 1, 3 and 4 are concerned, there is no allegation of any kind of physical torture. The evidence brought on record against them with regard to cruelty is absolutely sketchy and not convincing. On the basis of the evidence against them, it is difficult to sustain their
- F conviction under Sections 306 and 498A IPC. Since the offence under Section 306 and 498A IPC is not sustainable, the conviction under Section 201 IPC also cannot be sustained. [para 21] [605-C, D-E]

G Case Law Reference

2002 (3) SCR 376 referred to para 16

2013 (3) SCR 563 referred to para 17

- H 2013 (10) SCR 306 relied on para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. A
262 of 2009

From the Judgment and Order dated 09.07.2008 of the High
Court of Gujarat in Criminal Appeal No. 444 of 2005

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Hareesh Raichura, Saroj Raichura, Kalp Raichura, Rajat Vats
for the Appellants.

Anurag Ahluwalia, Hemantika Wahi, Puja Singh for the
Respondent. C

The Judgment of the Court was delivered by

DIPAK MISRA, J. The present appeal, by special
leave, is directed against the judgment of conviction and order
of sentence passed by the High Court of Gujarat at Ahmedabad
in Criminal Appeal No. 444/2005 whereby the Division Bench
has affirmed the conviction recorded by the learned Additional
Sessions Judge, Jamnagar, who had found the appellants guilty
of the offences punishable under Section 498A, 306, 201 and
114 of the Indian Penal Code, 1860 ('IPC' for short) and
sentenced Ghusabhai Raisanghbhai Chorasias, appellant no.1
to suffer five years imprisonment, Rakesh Ghusabhai
Chorasias, appellant no.2 to suffer rigorous imprisonment for
seven years and to pay a fine of Rs.500/- with a default clause
and other accused persons, namely, Bakuben W/o Ghusabhai
Chorasias and Jasuben @ Gaduben Rakeshbhai, appellant
nos. 3 and 4 herein to suffer rigorous imprisonment for three
years and to pay fine of Rs.250/- with a default clause under
Section 306 IPC. That apart, separate sentences were
imposed under Section 498A and 201 with the stipulation that
all the sentences would run concurrently. Be it noted, the
appellants were tried along with two other accused persons,

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A namely, Sangitaben w/o. Vijaybhai and Vijay Ghusabhai
Chorasia who were acquitted by the learned trial Judge. It is
also apt to note here that the State had also preferred two
criminal appeals, one for enhancement of sentence and the
B other challenging the acquittal of the other two accused persons
and both the appeals were dismissed along with the appeal
filed by the appellants in a common judgment.

2. The prosecution case, bereft of unnecessary details, is that
the marriage between the deceased Biniben and Rakesh was
C solemnized approximately eight years before the date of
occurrence, i.e. 4.3.2004. As put forth by the prosecution,
Rakesh, husband of the deceased, had illicit relationship with
D Jasuben, a divorcee. Despite the said situation two children
were born in the wedlock but the compatibility between the
husband and wife and the harmony of family life could not be
sustained. When the first child was three months old, the
deceased was driven out by her husband and she came to
her parental home and stayed there for sometime. After the
E intervention of the elders and relatives a settlement was arrived
at and thereafter she came to stay in her in-laws house. It was
the further case of the prosecution that the husband was keen
in his extra-marital affair and that had led to more marital
discord and bitterness. The in-laws, as alleged, used to take
F away the income earned by her. A time came when she was
compelled to stay on the terrace of the house where she
committed suicide on 4th of March, 2004.

3. As the case of the prosecution further gets uncurtained, the
G dead body was cremated without informing the parents of the
deceased and the factum of the death was reported by the
father-in-law of the deceased on 14th of March, 2004 and
eventually the mother of the deceased came to know about
the death on 17th of March, 2004 and thereafter reported at
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the Police Station in Jamnagar. After the criminal law was set in motion, the investigating agency proceeded with the investigation and recorded the statements of 25 witnesses and eventually placed the charge-sheet under Sections 498A, 306 and Section 201 read with Section 114 of the Indian Penal Code, before the competent court. After the charge-sheet was filed, the learned Magistrate committed the matter to the Court of Session. A B

4. The accused persons abjured their guilt and wanted to be tried. C

5. During the trial, the prosecution in order to establish the charges levelled against the accused persons, examined 25 witnesses and exhibited certain documents. D

6. The learned trial Judge placing reliance on the ocular as well as the documentary evidence came to hold that four accused persons, namely, father-in-law A-1, husband A-2, mother-in-law A-3 and the woman with whom the husband was having illicit relationship, A-4, guilty of the offences. However, the trial Judge acquitted the elder brother of the husband and his wife for lack of evidence. E

7. Being dissatisfied with the aforesaid judgment of conviction and order of sentence, the accused filed Criminal Appeal No. 444 of 2005. As stated earlier, the State preferred Criminal Appeal No. 2408 of 2005 for enhancement of sentence and Criminal Appeal No. 2410 of 2005 assailing the judgment of the acquittal of two accused persons. F G

8. The High Court appreciating the evidence brought on record, declined to interfere in the appeals preferred by the State and resultantly all the appeals stood dismissed. G

9. Be it noted, the principal witnesses on whom the prosecution H

- A relied are Dakshaben Shantilal Shah, PW-9, a social worker at Vikas Vidhyalay (Vadhvan), Miraben Devsinhbhai, PW-21, sister of the deceased, Champaben Devsinhbhai, PW-18, mother of the deceased, Kanaiyabhai Devsinhbhai, PW-19, brother of the deceased and Natubhai Hirabhai, PW-17, Sarpanch of village Rajsitapur.

10. Accused persons in their statements recorded under Section 313 took the plea that there was a divorce between the deceased and the accused No. 2, her husband; that she was staying on the terrace of the house; that she committed suicide by consuming poison; and that the accused persons had no role in it. The defence, to substantiate its plea, examined one witness and got two documents exhibited.

11. We have heard Mr. Harish Raichura, learned counsel for the appellants and Mr. Anurag Ahluwalia, learned counsel for the State.

12. On a careful scrutiny of the findings of the learned trial Judge and that of the High Court, it is noticeable that both the Courts have found that cruelty, as alleged by the prosecution under Section 498A IPC was established as a result of which the deceased committed suicide. It is quite clear from the findings and evidence on record that there was no demand of dowry. The learned trial Judge as well as the High Court has proceeded on the base that there was cruelty as per the first limb of Section 498A IPC.

13. The singular issue that requires to be scrutinized is whether there was such cruelty by the husband and his relations that could have driven the deceased to commit suicide. The stand of the accused persons, as has been indicated hereinabove, was that the husband had already divorced the deceased and she was staying on the terrace. On a proper x-ray of the

material brought on record, it is manifest that the prosecution has brought on evidence, three documents, exhibits 65 to 67, on record to show that there was divorce. The sister of the deceased, Miraben Devsinhbhai, PW-21, has categorically deposed that she had talked to the deceased on telephone before her death and the deceased had told her that there has been a divorce between her husband and herself and she was staying on the terrace of the house and will leave for the parental home after the 'Holi' festival.

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14. The documents that have been produced by the prosecution, namely, Exhibits 67 to 69 have not been believed by the learned trial Judge as well as the High Court on the ground that there is some unacceptable discrepancy.

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15. At this juncture, it is appropriate to mention that the Holi festival in the said year fell on 6.3.2004 and the occurrence took place on March 4, 2004. It is also noticeable that the sister of the deceased had volunteered to speak about the conversation of divorce. The document shows that there was a divorce as per the customs. There is material on record to show that she was staying on the terrace. In this factual backdrop what is to be seen is whether there has been a cruelty which compelled her to commit suicide. In this regard, we may fruitfully refer to Section 498A of the IPC, which reads as under:

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“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.

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Explanation.—For the purpose of this section, “cruelty”

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A 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

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(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.”

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16. This Court in *Girdhar Shankar Tawade V. State of Maharashtra*¹, examining the scope of 498A, has observed thus:

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“The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in

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H 1 (2002) 5 SCC 177

terms of Section 498-A.”

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17. In **Gurnaib Singh V. State of Punjab**², while analyzing the aforesaid provision, it has been opined that Clause (a) of the Explanation to Section 498A IPC defines cruelty to mean “any willful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand and Clause (a) can take in its ambit mental cruelty.

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18. From the aforesaid authorities it is quite clear that the first limb of Section 498A, which refers to cruelty, has nothing to do with demand of dowry. In the present case, in fact, there is no demand of dowry. If the evidence is appropriately appreciated, the deceased was pained and disturbed as the husband was having an illicit affair with the appellant no.4. Whether such a situation would amount to cruelty under the first limb of Section 498A IPC is to be seen. A two-Judge Bench of this Court in **Pinakin Mahipatray Rawal V. State of Gujarat**³, while dealing with extra marital relationship, has held thus:

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“Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on. Extramarital relationship as such is not defined in the Penal Code. Though, according to the prosecution in this case, it was that relationship which ultimately led to mental harassment and cruelty within the Explanation to Section 498-A and that A-1 had abetted the wife to

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2 (2013) 7 SCC 108

3 (2013) 10 SCC 48

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A commit suicide.”

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B “We are of the view that the mere fact that the husband
has developed some intimacy with another, during the
subsistence of marriage and failed to discharge his
marital obligations, as such would not amount to “cruelty”,
but it must be of such a nature as is likely to drive the
spouse to commit suicide to fall within the Explanation to
C Section 498-A IPC. Harassment, of course, need not be
in the form of physical assault and even mental
harassment also would come within the purview of
Section 498-A IPC. Mental cruelty, of course, varies from
person to person, depending upon the intensity and the
D degree of endurance, some may meet with courage and
some others suffer in silence, to some it may be
unbearable and a weak person may think of ending one’s
life. We, on facts, found that the alleged extramarital
relationship was not of such a nature as to drive the wife
E to commit suicide or that A-1 had ever intended or acted
in such a manner which under normal circumstances,
would drive the wife to commit suicide.”

F The Court further proceeded to state:

G “Section 306 refers to abetment of suicide. It says that if
any person commits suicide, whoever abets the
commission of such suicide, shall be punished with
imprisonment for a term which may extend to 10 years
and shall also be liable to fine. The action for committing
suicide is also on account of mental disturbance caused
by mental and physical cruelty. To constitute an offence
under Section 306, the prosecution has to establish that
H a person has committed suicide and the suicide was

abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extramarital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide."

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19. After holding as aforesaid, the Court found on facts and especially referring to suicide note that one can infer that the deceased was so possessive of her husband, and was always under an emotional stress that she might lose her husband and that apart she had exonerated the husband and accordingly it would not come within the scope and ambit of Section 306 IPC.

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20. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal* (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide.

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A In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A which includes cruelty to drive a woman to commit suicide, would not be attracted.

21. Presently, adverting to the involvement of the other accused persons, that is, appellant nos. 1, 3 and 4, we find that there is no allegation of any kind of physical torture. The evidence brought on record against them with regard to cruelty is absolutely sketchy and not convincing. It has been alleged that the mother-in-law used to rob her money which she earned as wages. The said fact has really not been established. As far as appellant no. 4, Jesuben, is concerned, there is only one singular allegation that at one public place, i.e. in a 'mela', she had threatened the deceased that she would be divorced by her husband. On the basis of the said evidence, it is difficult to sustain the conviction under Sections 306 and 498A IPC. Once we are holding that the accused-appellants are not guilty of the offence under Section 306 and 498A IPC, the conviction under Section 201 IPC is also not sustainable.

22. In view of the aforesaid analysis, the appeal is allowed, the conviction and sentence of all the appellants are set aside. As they are on bail, they be discharged of their bail bonds.

Kalpana K. Tripathy

Appeal allowed.

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