

AMRUTLAL LILADHARBHAI KOTAK & ORS.

A

v.

STATE OF GUJARAT

(Criminal Appeal No. 186 of 2010)

B

FEBRUARY 26, 2015

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Penal Code, 1860 – ss. 498-A, 304-B and s.306 r/w s.114-B – Dowry death – Conviction by courts below relying on evidence of friends and relatives of the deceased as regards mental torture and harassment of the deceased by the accused, for bringing insufficient dowry – On appeal, held: As the deceased died by committing suicide within seven years of her marriage and four witnesses have further proved that cruelty was meted out to the deceased immediately before her death, courts below rightly presumed that the suicide was abetted by the accused persons (husband and relatives of the husband) – Evidence Act, 1872 – ss.113-A and 113-B.

C

D

E

ss. 304-B and 498-A – Nature of the provisions under – Held: ss.304-B and 498-A are not mutually inclusive – Acquittal under one provision does not necessarily lead to acquittal under another provision.

F

Evidence Act, 1872 – s.113-A and 113-B – Introduction of the provisions – Object of – Discussed.

G

Dismissing the appeal, the Court

HELD: 1. Section 304B and Section 498A of IPC are

H

A not mutually inclusive. If an accused is acquitted under one section, it does not mean that the accused cannot be convicted under another section. According to Section 113B of the Evidence Act, presumption arises when a woman has committed suicide within a period of seven years from the date of the marriage. In the present case, after going through the documentary evidence and the version of the witnesses, the accused were convicted u/ss. 304B and 498A of the IPC. Therefore, a reasonable apprehension can be raised, for that the accused committed a crime under Section 304B of the IPC and a presumption can be raised under Section 113B of the Evidence Act, since seven years of marriage had not been completed. [para 13] [879-D-G]

D *Balwant Singh and Ors. vs State of Himachal Pradesh* 2008 (13) SCR 1111 = (2008) 15 SCC 497- relied on.

2. It is not easy to gather direct evidence in cases of dowry death because such crimes are generally committed in the privacy of residential homes. That is why the legislature has by introducing Sections 113A and 113B of the Evidence Act, tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within a period of seven years. [para 14] [880-A-B]

State of Punjab v. Iqbal Singh and Ors. 1991 (2) SCR 790 = (1991) 3 SCC 1 – relied on.

G 3. The first criterion with regard to establishment of guilt in the cases of dowry death is that the suicide must have been committed within seven years of marriage. The second criterion is that the husband or some relative of the husband had subjected the victim

H

to cruelty, which led to the commission of suicide by A
the victim. This is when Section 113A of the Evidence
Act indicates that in such circumstances, the Court may
presume, having regard to all the circumstances of the
case, that such suicide has been abetted by her B
husband or by such relative of her husband. In the
present case, both the above mentioned criteria have
been satisfied, since the deceased died within seven
years of marriage and with the version of the witnesses
i.e. PWs 1, 7, 8 and 9, it has been further proved that C
there was cruelty meted out to the deceased
immediately before her unfortunate death. [para 16]
[880-F-H; 881-A]

Dinesh v. State of Haryana, 2014 (5) SCALE 641,
Thanu Ram v. State of M.P. 2010 (12) SCR 710 = (2010) D
10 SCC 353 – relied on.

Kishori Lal v. State of M.P. 2007 (7) SCR 1051 =
(2007) 10 SCC 797; *Sushil Kumar Sharma v. Union of India*
2005 (1) Suppl. SCR 730 = (2005) 6 SCC 281; *Sakatar E*
Singh & Ors. v. State of Haryana 2007 (9) SCR 842 =
(2004) 11 SCC 291, *M. Srinivasulu v. State of A.P.*, (2007)
12 SCC 443, *Matru v. State of U.P.* 1971 (3) SCR 914 =
(1971) 2 SCC 75 – cited.

Case Law Reference F

2007 (7) SCR 1051	cited	para 12	
2005 (1) Suppl. SCR 730	cited	para 13	
2004 (11) SCC 291	cited	para 13	G
2007 (9) SCR 842	cited	para 13	
1971 (3) SCR 914	cited	para 13	
2008 (13) SCR 1111	relied on	para 14	H

- A **1991 (2) SCR 790** **relied on** **para 15**
 2014 (5) SCALE 641 **relied on** **para 16**
 2010 (12) SCR 710 **relied on** **para 17**

B **CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 186 of 2010**

From the Judgment and Order dated 17.06.2009 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No.

C **1327 of 2004.**

K. T. S. Tulsi, Huzefa Ahmadi, Pradhuman Gohil, Taruna Singh, Kuber Boddh, Jaikriti S. Jadeja, Prabuodha Sharma, Charu Mathur for the Appellants.

D Nitin Sangra, Hemantika Wahi, Swati Vaibhav, Preeti Bhardwaj, Puja for the Respondent.

The Judgment of the Court was delivered by

- E** **PINAKI CHANDRA GHOSE, J.** 1. This criminal appeal, by special leave, is directed against the impugned common judgment dated June 17, 2009 of the High Court of Gujarat whereby the High Court dismissed Criminal Appeal No.1327 of 2004 filed by the appellants and confirmed the order
F passed by the Trial Court. The High Court in the present matter upheld the sentence as awarded by the Trial Court by stating that the evidence led by the complainant (PW-1), the elder sister of the deceased (PW-8) and the grandfather of the deceased (PW-9) gets support from the
G evidence led by PW-7, who are the friends and relatives of the deceased.

1. The case of the Prosecution is that the marriage between Truptiben (the deceased) and the appellant No.3
H herein took place on 01.05.1996. Truptiben was the

daughter of one Kantilal Dhanjibhai Karia of District Rajkot A
in Gujarat. After the marriage, Truptiben was residing in a
joint family with her in-laws appellant Nos.1 and 2 and her
husband appellant No.3 at Morbi, Gujarat. Out of the said
wedlock, a girl named Gopi was born.

2. On 23.03.2000 at around 1130 Hrs, while Kantilal B
Dhanjibhai Karia was discharging his duties in the Bank of
Baroda at Rajkot, he received a telephonic message from
Appellant No.1, that his daughter is hanging by the fan and
that he may immediately come to Morbi. Kantilal Dhanjibhai C
Karia informed about the said telephonic message to his
nearest relatives and thereafter, they all proceeded towards
Morbi.

3. In the meantime, Appellant No.1 had informed about D
the said incident to Morbi City Police Station. The P.S.O,
who was on duty at the relevant time, made the relevant
entry in the Station Register and directed the ASI to
investigate the matter. The ASI went to the scene of the
offence and carried out preliminary investigation. He E
recorded the statement of Appellant No.1 and thereafter,
sent a yaadi to the P.S.O to register the incident as an
accidental death, which came to be registered as A.D.
No.16/2000. Thereafter, investigation into the said incident F
was taken over by Police Inspector Mr. Jaynarayan
Rameshwar Srivastav. The Investigating Officer informed
Kantilal Dhanjibhai Karia, the father of the deceased, of the
said incident and in return he asked the Investigating Officer
not to disturb the position of the dead body of his daughter G
till he arrives at Morbi.

4. The said Kantilal Dhanjibhai Karia, the father of the
deceased arrived at 1500 Hrs on the same day. He felt
something fishy behind the death of her daughter Truptiben,
as the appellants had demanded dowry several times in the H

A past, which was further strengthened by the fact that none of the appellants were present in the house at the relevant point of time.

5. On the same day, i.e on 23.03.2000, in the evening
B hours, a criminal complaint with regard to the said incident was filed by the father of the deceased against the appellants, which ultimately, came to be registered as I-C.R No. 92/2000 for offence punishable under Sections 498-A, 304-B & 306 read with Section 114 of the IPC. The body
C of the deceased was taken off the fan and sent for post-mortem examination. The investigation was carried out and the statements of several witnesses were recorded.

6. After the registration of the complaint against the
D appellants, an arrest warrant was issued by the concerned Judicial Magistrate, 1st Class, Morbi on report filed by the Investigating Officer under Section 70 Cr.P.C, but the appellants were untraceable. They were absconding for a period of thirty six days and ultimately on 29.04.2000 at
E around 2130 Hrs., the appellants surrendered themselves at the Morbi City Police Station.

7. The appellants were produced in the court of the District & Addl. Sessions Judge, Fast Track Court No.7,
F Morbi in Sessions Case No.52/2000 and the trial was held. During the trial, the witnesses were examined at length. The witnesses PW-1 , PW-8 and PW-9 stated that the deceased used to complain about the mental torture and harassment frequently meted out to her by the accused due to the
G insufficient dowry provided during the marriage. This evidence was supported by PW-7, the friend of the deceased who stated that the deceased had informed her that she was subject to frequent mental torture and harassment by the accused for bringing less dowry. This
H witness was also cross-examined at length by the other side

alike the other witnesses and based on the evidence provided by the witnesses, the accused were convicted for the offences punishable under Sections 498A, 304B & 306 IPC read with Section 114 IPC. A

8. Aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellants preferred an appeal before the High Court. The counsel for the appellants contended before the High Court that the evidence stated by the relatives of the deceased are interested witnesses and their statements could not be solely relied upon. B C

9. The High Court opined out that the deceased died of a suicidal death is not a dispute though the evidence on record, more particularly, the photographs of the dead body at Exhibits 49/1 to 49/7 and the inquest Panchnama, say an altogether different story. The High Court further observed that since it was an appeal under Section 374 Cr.P.C, it did not want to enter into the other aspect of the case and instead focus on the present appeal. The evidence led by the complainant (PW-1), the elder sister (PW-8) and the grandfather of the deceased (PW-9) gets support from the evidence led by (PW-7) who are the friend and relatives of the deceased. The High Court further opined out that the evidence of PW-1, PW-7, PW-8 and PW-9 clearly establishes that the appellants were greedy people, who had started to demand dowry right from the date of marriage i.e on 01.05.1996. It is the case of the appellants that the essential ingredient of Section 304-B IPC regarding the existence of cruelty soon before the death has not been established by the prosecution. The High Court thus upheld the ultimate conclusion and the resultant order of conviction recorded by the Trial Court. D E F G

10. We have heard the learned counsels on both the H

A sides.

11. The counsel for the appellant contended that the prosecution has failed to substantiate the guilt of the appellants under Sections 306 and 304B of IPC. The
B counsel further contended that to satisfy the conditions of Sections 304-B and 306 of the IPC, it must be shown that the deceased was incited, provided or virtually driven to committing suicide by the accused. The counsel for the
C appellant stated that in the case of *Kishori Lal v. State of M.P.*, (2007) 10 SCC 797, this Court has held that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated wife with cruelty is not enough.

D

12. The counsel for the appellants further stated that in the case of *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281, this Court has held that the object of Section 498A of the IPC is to get to the root of dowry
E menace and its unleashing will lead to a legal terrorism. The provision is to be used as a shield and not as an assassin's weapon. The counsel further contended that in the case of *Sakatar Singh & Ors. v. State of Haryana*, (2004) 11 SCC 291, this Court has held that such evidence which is not
F based on the personal knowledge of the witness cannot be the foundation for basing of conviction. The learned counsel for the appellant further contended that in the case of *M. Srinivasulu v. State of A.P.*, (2007) 12 SCC 443, it was held by this Court that a presumption under Section 113B
G of the Indian Evidence Act can be only raised in case of dowry death, if there is concrete proof of cruelty and harassment meted out to the deceased by the accused. The learned counsel for the appellants further contended
H that merely because the accused was absconding, the said

fact cannot be made the basis for inferring his guilt. The learned counsel cited the case of *Matru v. State of U.P.*, reported in (1971) 2 SCC 75, where it has been held that the appellants' conduct in absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime.

13. We would like to conclude that going by the version provided by PW-1, PW-7, PW-8 and PW-9, there is a reasonable apprehension of the crime committed by the accused. With regard to the position of law involving applicability of Sections 498A, 304B and 306 of the IPC, in the case of *Balwant Singh and Ors. v. State of Himachal Pradesh*, (2008) 15 SCC 497, it has been held that Section 304B and Section 498A of the IPC are not mutually inclusive. If an accused is acquitted under one section, it does not mean that the accused cannot be convicted under another section. According to Section 113B of the Indian Evidence Act, presumption arises when a woman has committed suicide within a period of seven years from the date of the marriage. In this case, after going through the documentary evidence and the version of the witnesses, the accused were convicted under Sections 304B and 498A of the IPC. In the present case that we are dealing with, a reasonable apprehension can be raised, for that the accused committed a crime under Section 304B of the IPC and a presumption can be raised under Section 113 B of the Indian Evidence Act, since seven years of marriage had not been completed.

14. With regard to the applicability of Sections 113A and 113B of the Indian evidence Act, in the case of *State of Punjab v. Iqbal Singh and Ors.*, (1991) 3 SCC 1, this Court observed that the legislative intent is clear to curb the menace of dowry deaths, etc, with a firm hand. It must be

A remembered that since crimes are generally committed in the privacy of residential homes, it is not easy to gather direct evidence in such cases. That is why the legislature has by introducing Sections 113A and 113B of the Indian Evidence Act, tried to strengthen the prosecution hands by
B permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within a period of seven years.

15. With regard to whether any direct link has been
C shown between dowry demand and death, in the case of *Dinesh v. State of Haryana*, 2014 (5) SCALE 641, the accused has been convicted under Sections 113B and 304B of the IPC, on the basis of presumption, since certain
D foundational facts were established. In the present case, it has been established from the versions of PW-1, PW-7, PW-8 and PW-9 that there was a demand for dowry and the deceased was being mentally harassed.

16. In the case of *Thanu Ram v. State of M.P.*, (2010)
E 10 SCC 353, this Court has observed certain criteria with regard to establishment of guilt in the cases of dowry death. The first criterion being that the suicide must have been committed within seven years of marriage. The second
F criterion is that the husband or some relative of the husband had subjected the victim to cruelty, which led to the commission of suicide by the victim. This is when Section 113A of the Indian Evidence Act indicates that in such
G circumstances, the Court may presume, having regard to all the circumstances of the case, that such suicide has been abetted by her husband or by such relative of her
H husband. In the present case that we are dealing with, both the above mentioned criteria have been satisfied, since the deceased died within seven years of marriage and with the version of the witnesses, it has been further proved that

there was cruelty meted out to the deceased immediately before her unfortunate death. A

17. We, therefore, see no reason to interfere with the impugned judgment passed by the High Court or the Trial Court. The appeal is accordingly dismissed. B

Kalpana K. Tripathy

Appeal dismissed.