

BALWANT SINGH AND ORS.

v.

STATE OF H.P.

(Criminal Appeal No. 831 of 2001)

SEPTEMBER 29, 2008

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

Penal Code, 1860: S.498-A – Applicability of – A person charged and acquitted u/s.304B can be convicted u/s. 498A without that charge being there, if a case is made out – s.304B and s.498A deal with distinct offences hence cannot be held to be mutually inclusive – On facts, since no evidence to establish guilt of brother-in-law, his conviction under s.498A is set aside – Offence established in case of husband and in-laws on the basis of testimony of witnesses and letters and their conviction is upheld – However, considering age of in-laws, sentence of one year imposed on them by High Court reduced to period undergone – Sentence/sentencing – Evidence Act, 1872 – S.113B.

Prosecution case was that A-1 was father-in-law, A-2 was husband, A-3 was brother-in-law and A-4 was mother-in-law of the deceased. After few days of her marriage, when deceased visited her parents house, she complained of ill treatment by in-laws for dowry. On the day of incident, mother of deceased came to know that deceased was admitted in hospital. She went to the hospital but did not find her there. Then she came to know from her brother-in-law that deceased was taken to the village where the accused were staying. Both of them went to the house of the accused where they found deceased lying dead. The Investigating officer took into possession vomit of deceased and the clothes worn by her at the time of vomiting prior to her death. Two letters were also taken in possession.

A The Trial Court held the accused persons guilty of offences punishable under s.498A and 306 IPC while directing acquittal from charge under s.304B IPC. High Court after referring to the evidence, held that the offence under s.306 was not made out.

B In appeal to this Court, appellants contended that there was no evidence of any overt act by A-3; that the letters showed that there was no demand of dowry but there was improper treatment; and that having held that appellants were not guilty u/s.306, there was scope of conviction u/s.498A.

C Dismissing the appeal so far as A-2 is concerned and disposing of the appeal relating to A-1, A-3 and A-4, the Court

D HELD: 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 order to bring home the application of s.498A IPC. Cruelty has been defined in the Explanation for the purpose of s.498A. Substantive s.498A IPC and presumptive s.113B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that s.304B and s.498A, 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 s.498A gives the meaning of 'cruelty'. In s.304B 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 s.498A under which 'cruelty' by itself amounts to an offence. Under s.304B it is 'dowry death' that is punishable and such death should

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have occurred within seven years of marriage. No such period is mentioned in s.498A. A person charged and acquitted under s.304B can be convicted under s.498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. S.498A IPC and s.113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of s.113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage. [Para 7] [1117, B-H].

Akula Ravinder and Ors. v. The State of Andhra Pradesh AIR (1991) SC 1142; *M. Srinivasulu v. State of Andhra Pradesh* AIR (2007) SC 3146 – relied on.

2. On analyzing of the evidence it is clear that there is no material to establish the guilt of A-3 i.e. brother-in-law of the deceased. Consequently he stands acquitted of the charge. So far as other three accused persons are concerned, the accusations have been established by the evidence of PWs 3, 4 and 5, the documentary evidence and the exhibited letters and the convictions recorded so far as they are concerned cannot be faulted. It is to be noted that the High Court has imposed sentence of one year. Considering the age of the father-in-law and mother-in-law (A-1 and A-4) and the period of sentence already undergone by them while upholding the conviction the sentence is reduced to the period already undergone. [Paras 8, 9] [1118, A-D]

Case Law Reference

AIR (1991) SC 1142	relied on	Para 7
AIR (2007) SC 3146	relied on	Para 7

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 831 of 2001

A From the final Order dated 12/1/2001 of the High Court of Himachal Pradesh at Shimla in CrI. Appeal No. 318 of 1997

Varinder Kumar Sharma for the Appellants.

Naresh K. Sharma for the Respondent.

B The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. In this appeal challenge is to the judgment of a learned Single Judge of the Himachal Pradesh High Court holding each of the appellants guilty of offence punishable under Section 498A of the Indian Penal Code, 1860 (in short the 'IPC') while setting aside the conviction and the sentence imposed in respect of Section 306 IPC.

2. Background facts in a nutshell are as follows:

D The appellants-accused were tried for offences punishable under Sections 498A, 304B and 306 IPC. Accused No.1 Balwant Singh was father-in-law, accused No.4-Kanta Devi was mother-in-law, accused No.3-Ravinder Singh was brother-in-law and accused No.2-Anup Singh was husband of Renu Bala (hereinafter referred to as the 'deceased'). The deceased was daughter of one Gurdayal Singh and Kamla Devi. She was married to A-2, Anup Singh on July 6, 1992 in accordance with the Hindu rites and rituals. After few days of her marriage, when Renu Bala visited the house of her parents, she complained as to how accused persons were treating her with cruelty by putting demands for refrigerator and scooter as dowry. It was alleged that on January 5, 1993, Kamla Devi, mother of Renu Bala came to know from Tilak Raj, her brother-in-law that Renu Bala was admitted in a hospital at Gagret. She, therefore, along with Tilak Raj went to the hospital, but Renu Bala was not there, and they came to know that Renu Bala was taken to Patohar Kalan, the village where the accused were staying. Both of them then went to the residence of the accused and found Renu Bala lying dead in verandah of the house of the accused and none of the accused was there. Kamla Devi suspected foul play that her daughter Renu Bala was either killed or was compelled to

commit suicide by consuming poison on account of their unlawful demand of dowry by the accused and by treating her with cruelty. She, therefore, lodged a report with the police Ex.PW-3/A under Section 154 of the Code of Criminal Procedure, 1973 (in short the 'Code') at Police Station, Una, which was registered as formal F.I.R. vide Ex.PW-11/A. After registration of the case, the investigation started. The police went to the spot, prepared inquest report and rough spot map of the place where dead body of Renu Bala was found. The Investigating officer also took into possession vomit of Renu Bala and the clothes worn by her at the time of vomiting prior to her death. Two letters, which were produced by Devinder Singh, were also taken in possession. Postmortem was conducted by Dr. Vijay Kumar Raizda, which revealed that Renu Bala was having pregnancy of fourteen to sixteen weeks. He reserved his opinion regarding cause of death till receipt of report of Chemical Analyser. After receiving the report, Dr. Gurcharan Singh opined that cause of death was peripheral circulatory failure due to aluminum phosphide which was sufficient cause of death in natural course of events. Further investigation was conducted by ASI, Jarnail Singh, who obtained two letters produced by Gurdyal Singh, father of deceased Renu Bala. He submitted a report under Section 173 of the Code in the Court of learned Chief Judicial Magistrate, Una, who committed the case to the Court of learned Sessions Judge, Una, vide his order dated April 25, 1994.

After hearing the learned Public Prosecutor for the State as well as learned defence counsel, a charge was framed against the accused for the offences punishable under Sections 498-A, 304-B and 306 of the IPC and they were asked as to whether they plead guilty.

The accused did not plead guilty to the charge and claimed to be tried.

3. In order to prove its case the prosecution examined 16 witnesses. After the prosecution evidence was closed statements of the accused persons were recorded in terms of the

A Section 313 of the Code. Six witnesses were examined to establish their innocence. From the suggestions put during cross examination the accused persons tried to make out a case that deceased was suffering from epilepsy and frustrated by her life she committed suicide. The trial court as noted above held the accused persons guilty of offences punishable under Section 498A and 306 IPC while directing acquittal of the charge in terms of Section 304-B IPC. In appeal after referring to the evidence High Court came to hold that the offence under Section 306 is not made out.

C 4. Learned counsel for the appellants submitted that there is no evidence of any overt act by A-3. The letters Exh.PW-5/A and PW-5/C show that there was no demand of dowry but there was improper treatment.

D 5. Learned counsel for the appellants further pointed out that having held that the appellants were not guilty of offence punishable under Section 306 IPC there is no scope for convicting the appellants under Section 498A IPC.

E 6. Learned counsel for the State on the other hand supported the judgment of the High Court.

Section 498A reads as follows:

F "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.

G *Explanation* – For the purpose 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." A

7. 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 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, 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 498A gives the meaning of 'cruelty'. In Section 304B 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 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See *Akula Ravinder and others v. The State of Andhra Pradesh* (AIR 1991 SC 1142)). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage. B
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A The above position was highlighted in *M. Srinivasulu v. State of Andhra Pradesh* (AIR 2007 SC 3146).

8. On analyzing of the evidence it is clear that there is no material to establish the guilt of A-3 i.e. brother-in-law of the deceased. Consequently he stands acquitted of the charge. So far as other three accused persons are concerned, the accusations have been established by the evidence of PWs 3, 4 and 5, the documentary evidence and the exhibited letters and the convictions recorded so far as they are concerned cannot be faulted.

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D 9. It is to be noted that the High Court has imposed sentence of one year. Considering the age of the father-in-law and mother-in-law (A-1 and A-4) and the period of sentence already undergone by them while upholding the conviction the sentence is reduced to the period already undergone. The appeal stands dismissed so far as A-2 is concerned.

10. The appeal is disposed of accordingly.

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Appeal disposed of.