

KANTILAL MARTAJI PANDOR

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v.

STATE OF GUJARAT & ANR.

(Criminal Appeal No. 1567 of 2007)

JULY 25, 2013

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**[A.K. PATNAIK AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]**

Penal Code, 1860 - s.498A - Suicide by second wife of appellant - One day earlier, the deceased-wife had written letter to the police station against the appellant - Conviction of appellant u/s.498A - Justification - Held: Not justified - Explanation u/s.498A defines "cruelty" for purpose of s.498A to mean any of the acts mentioned in clause (a) or clause (b) of the Explanation - Alleged acts or conduct of the appellant did not amount to cruelty within meaning of clauses (a) or (b) of the Explanation - As the cause of the death of deceased was not in question, the statements made by her in her letter to the Police Station cannot be taken to be proof of cruel acts committed by the appellant for holding him guilty u/s.498A - Except the letter written by the deceased to the Police Station, no other witness spoke about the appellant having starved her of food and having committed acts of mental cruelty to her - In view of the evidence of deceased's mother (PW-3), the High Court could not have come to the conclusion that the deceased was subjected to financial exploitation and starving and mental cruelty by the appellant - Finding of the High Court that the appellant committed a cruel act by permitting his first wife to enter the house of the deceased with new born child, is erroneous - No evidence of any physical harm or mental cruelty by the appellant against the deceased - Appellant therefore acquitted.

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The appellant had two wives. The second wife of the appellant wrote a letter dated 26.03.1992 to the police

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- A station complaining that the appellant's family was living on her salary and the appellant had started torturing her to a limit no longer tolerable by her and she was also not given meals and that the appellant was threatening to kill her and for all this the appellant and his first wife and his other family members were involved. The next day, the appellant's second wife jumped into a well and died.

- In view of the allegations made by the deceased in her letter dated 26.03.1992 to the police station, FIR was registered under Sections 498A and 306 IPC. The trial court acquitted the first wife of the appellant, but convicted the appellant under Sections 498A and 306, IPC. In appeal, the High Court acquitted the appellant from the charge under Section 306, IPC, but maintained the conviction under Section 498A, IPC, and therefore the instant appeal.

Allowing the appeal, the Court

- HELD: 1.1. It is clear from the language of Section 498A, IPC, that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The Explanation under Section 498A defines "cruelty" for the purpose of Section 498A to mean any of the acts mentioned in clause (a) or clause (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand. [Para 10] [146-C-E]

- 1.2. The first limb of clause (a) of the Explanation of Section 498A, IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. In the present case, although the trial court found the appellant guilty of conduct which had driven the deceased to commit suicide and hence

liable for the offence of abetment of suicide under Section 306, IPC, the High Court has given a clear finding in the impugned judgment that the conviction of the appellant under Section 306, IPC, cannot be sustained in the eye of law and the appellant deserves to be acquitted of the charge of abetment of suicide under Section 306, IPC. This part of the finding has not been challenged by the State in appeal before the Supreme Court and has, therefore, become final. Thus, the appellant cannot be held guilty of any wilful conduct which was of such a nature as is likely to drive the deceased to commit suicide. [Para 11] [146-E-H]

1.3. The second limb of clause (a) of the Explanation of Section 498A, IPC, states that cruelty means any illful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. In the present case, the High Court has recorded findings against the appellant to hold him guilty of the offence under Section 498A, IPC, presumably for "cruelty" which falls within the second limb of clause (a) of the Explanation under Section 498A, IPC. [Para 12] [147-A-C]

1.4. The finding of the High Court that permitting the first wife to enter the house of deceased with new born child amounts to a cruel act is erroneous as such act cannot amount to cruelty within the meaning of second limb of clause (a) of the Explanation under Section 498A, IPC. However, the High Court, relying on the letter written by the deceased to the Police Station on 26.03.1992 (Ext.10), has also come to a finding that the appellant had starved the deceased of food when she was pregnant by spending the salary earned by the deceased on his own family and had also subjected the deceased to other acts of mental cruelty. [Para 13] [148-F-H]

A 1.5. The letter written by the deceased on 26.03.1992
 could be relevant only under Section 32(1) of the Indian
 Evidence Act, 1872, which provides that a statement,
 written or verbal, of relevant facts made by a person who
 is dead, is relevant when the statement is made by a
 B person as to the cause of his death, or as to any of the
 circumstances of the transaction which resulted in his
 death, in cases in which the cause of that person's death
 comes into question. The High Court in the present case
 has already held that the appellant was not guilty of
 C abetting the suicide of the deceased and was, therefore,
 not guilty of the offence under Section 306, IPC. As the
 cause of the death of the deceased is no more in question
 in the present case, the statements made by the
 deceased in the letter dated 26.03.1992 to the Police
 Station cannot be taken to be proof of cruel acts
 D committed by the appellant for the purpose of holding
 him guilty under Section 498A, IPC. [Para 14] [149-B-E]

1.6. In the present case, except Ext.10, the letter
 written by the deceased to the Police Station on
 E 26.03.1992, no other witness has spoken about the
 appellant having starved the deceased of food and
 having committed acts of mental cruelty to the deceased.
 On the other hand, in view of the evidence of the
 deceased's mother (PW-3) in her cross-examination, the
 F High Court could not have come to the conclusion that
 the deceased was subjected to financial exploitation and
 starving and mental cruelty by the appellant. There is no
 evidence of any physical harm having been caused by
 the appellant to the deceased nor any acts of mental
 G cruelty committed by him. Hence, the appellant cannot be
 held guilty of any cruelty within the meaning of clause (a)
 of the Explanation under Section 498A, IPC. The appellant
 is therefore acquitted of the charge under Section 498A,
 IPC. [Paras 16, 17, 18] [150-G; 151-B-D]

H *Inderpal v. State of M.P.* (2001) 10 SCC 736 - relied on.

KANTILAL MARTAJI PANDOR v. STATE OF GUJARAT 141

State of West Bengal v. Orilal Jaiswal & Anr. (1994) 1 SCC 73; *Manju Ram Kalita v. State of Assam* (2009) 13 SCC 330: 2009 (9) SCR 902 - referred to. A

Case Law Reference:

(1994) 1 SCC 73 referred to Para 7, 8, 17 B

2009 (9) SCR 902 referred to Para 7

(2001) 10 SCC 736 relied on Para 15

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1567 of 2007. C

From the Judgment and Order dated 13.09.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 294 of 1994. D

Aishwarya Bhati, Gp. Cap. Karan Singh Bhati, Dr. Prikhshayat Singh, Sanjoli Mittal, Pawan Kr. Saini for the Appellant.

Pinky Behera, Hemantika Wahi for the Respondents. E

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment and order dated 13.09.2007 of the Gujarat High Court in Criminal Appeal No.294 of 1994. F

FACTS

2. The facts very briefly are that the appellant was married to Laxmiben in 1980. The appellant, who was a teacher, used to travel in a bus along with Amriben, who was also a teacher, for their work in their respective schools located at a distance of 2 kms. from each other. The appellant and Amriben fell in love and got married in 1990. A daughter was born to Amriben H

A in 1991. The appellant, Laxmiben and Amriben were living
together in different portions of one house of the appellant in
village Dhuleta Palla. On 26.03.1992, a letter written by
Amriben was received in Shamlaji Police Station. In this letter,
B Amriben alleged inter alia that the appellant was more
interested in money and not in love and he had threatened and
kidnapped her, although he had a wife and three children and
the appellant had cheated her and persuaded her to have civil
marriage on 21.08.1990. She further alleged in the letter that
C after marriage the appellant's family was living on her salary and
the appellant had started torturing her to a limit which was no
longer tolerable by her and she was also not given meals and
the appellant was threatening to kill her and for all this the
appellant and his first wife Laxmiben and his other family
members were involved. On 26.03.1992 in the afternoon, the
D appellant came to the school of Amriben and enquired from the
Principal of the school and the teacher of Amriben as to
whether Amriben had made a complaint to the Police Station.
That evening, the appellant who usually took Amriben back
from her school instead requested the Principal of her school,
E Ms. Timothibhai, to take seat on the scooter with him and as a
result Amriben had to walk along with Lilavatiben, who was
holding her little daughter, to the bus stand. During the night of
26.03.1992, the appellant slept with Laxmiben while Amriben
slept with her new born daughter in another room of the house.
On 27.03.1992, early in the morning, the appellant and
F Laxmiben heard the little daughter of Amriben crying and they
found that Amriben had jumped into the well and had died.

3. A post mortem on the dead body of Amriben (for short
'the deceased') was conducted on 28.03.1992 at 2.30 p.m. and
G the cause of the death was found to be drowning. Initially, on
the report of the appellant, the Shamlaji Police Station
registered an accidental death case under Section 174 of the
Criminal Procedure Code, (for short 'the Cr.P.C.').
Subsequently, however, on 03.04.1992 an FIR was registered
H by Shamlaji Police Station under Sections 498A and 306 of

KANTILAL MARTAJI PANDOR v. STATE OF GUJARAT 143
[A.K. PATNAIK, J.]

the Indian Penal Code (for short 'the IPC') in view of the allegations made by the deceased in her letter dated 26.03.1992 to the police station. Investigation was carried out and a charge-sheet was filed against the appellant and Laxmiben under Sections 498A and 306, IPC.

4. At the trial, amongst other witnesses examined on behalf of the prosecution, Ms. Timothibhai, Principal of the school, was examined as PW-1, the doctor who carried out the post mortem was examined as PW-2, the mother of the deceased was examined as PW-3, Lilavatiben, co-teacher of deceased was examined as PW-4 and the Investigating Officer was examined as PW-10. The appellant also examined various witnesses in his defence. The trial court by its judgment dated 10.02.1994 in Sessions Case No.59/92 acquitted Laxmiben, but convicted the appellant under Sections 498A and 306, IPC, and sentenced him to simple imprisonment for one year and two years for the two offences respectively and also imposed a fine of Rs.100/- for each of the offences. Aggrieved, the appellant filed criminal appeal before the High Court, and by the impugned judgment, the High Court acquitted the appellant from the charge under Section 306, IPC, but maintained the conviction and sentence on the appellant under Section 498A, IPC. Aggrieved, the appellant has filed this appeal.

Contentions of the learned Counsel for the parties:

5. Learned counsel for the appellant, Ms. Aishwarya Bhati, submitted that in the impugned judgment, the High Court found the appellant to be guilty of the offence under Section 498A, IPC, because of some conduct or acts of the appellant of which the deceased has complained of in her letter to the Police Station on 26.03.1992. She submitted that the High Court held that the acts or conduct of the appellant amounted to cruelty for which the appellant was liable for the offence under Section 498A, IPC, but did not amount to abetment of suicide within the meaning of Section 306, IPC. She submitted that the statements of the deceased in the letter of the deceased to the

A Police Station (Ext.10) were not proof of the acts or conduct of the appellant in the letter and in any case these acts or conduct of the appellant did not amount to cruelty within the meaning of clauses (a) or (b) of the Explanation under Section 498A, IPC.

B 6. Ms. Bhati submitted that the evidence of PW-3, the mother of the deceased, would show that when the deceased was carrying the child, PW-3 had been to see the deceased and she did not find that the deceased had any food problem. She also referred to the evidence of PW-4 to show that the appellant's conduct was not such as to amount to cruelty or harassment within the meaning of clauses (a) or (b) of the Explanation of Section 498A, IPC. She submitted that the post mortem report (Ext.15), on the other hand, would show that the deceased was well-nourished and was well-built and did not suggest that she was starved of any food.

D 7. Ms. Bhati cited the decision of this Court in *State of West Bengal v. Orilal Jaiswal & Anr.* [(1994) 1 SCC 73] in which it has been held that the charges made against an accused under Section 498A, IPC, must be proved beyond all reasonable doubt and that the requirement of proof is not satisfied by surmises and conjectures. She also cited the decision of this Court in *Manju Ram Kalita v. State of Assam* [(2009) 13 SCC 330] wherein it has been held that for holding an accused guilty under Section 498A, IPC, it has to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time to the lodging of the complaint and petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498A, IPC, though mental torture to the extent that it becomes unbearable may be termed as cruelty. She vehemently submitted that in this case the prosecution has not proved beyond reasonable doubt that the appellant was in any way guilty of any act or conduct which is of the nature described in clauses (a) and (b) of Section 498A, IPC, so as to amount to cruelty within the meaning of this Section and, therefore, the

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appellant is entitled to be acquitted by this Court of the charge under Section 498A, IPC. A

8. Ms. Pinky Behera, learned counsel appearing for the respondent-State, on the other hand, relied on Ext.10, which is the letter written by Amriben to Shamlaji Police Station on 26.03.1992 to the Police Station and submitted that there was sufficient evidence in Ext.10 to show that the appellant had treated the deceased with cruelty within the meaning of Section 498A, IPC. She also relied on the findings of the High Court in paragraph 15 of the impugned judgment in which the High Court has found the appellant guilty of the offence punishable under Section 498A, IPC. She vehemently argued that even though the High Court has found that the appellant was not guilty of abetment of suicide within the meaning of Section 306, IPC, the appellant can still be held liable for the offence under Section 498A, IPC, if he had committed acts of cruelty towards the deceased. In support of this contention, she relied on the decision of this Court in *West Bengal v. Orilal Jaiswal & Anr.* (supra). B C D

Findings of the Court: E

9. Section 498A, IPC, under which the appellant's conviction has been maintained by the High Court is extracted hereinbelow:

"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. F G

Explanation.- For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely H

A 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 (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."

C 10. It will be clear from the language of Section 498A, IPC, that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The Explanation under Section 498A defines "cruelty" for the purpose of Section 498A to mean any of the acts mentioned in clause (a) or clause D (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand.

E 11. The first limb of clause (a) of the Explanation of Section 498A, IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. In the present case, although the trial court found the appellant guilty of conduct which had driven the deceased to commit suicide and hence liable for the offence of abetment F of suicide under Section 306, IPC, the High Court has given a clear finding in paragraph 13 of the impugned judgment that the conviction of the appellant under Section 306, IPC, cannot be sustained in the eye of law and the appellant deserves to be acquitted of the charge of abetment of suicide under Section G 306, IPC. This part of the finding has not been challenged by the State in appeal before this Court and has, therefore, become final. Thus, the appellant cannot be held guilty of any wilful conduct which was of such a nature as is likely to drive the deceased to commit suicide.

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KANTILAL MARTAJI PANDOR v. STATE OF GUJARAT 147
[A.K. PATNAIK, J.]

12. The second limb of clause (a) of the Explanation of Section 498A, IPC, states that cruelty means any wilful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. In the present case, the High Court has recorded findings against the appellant to hold him guilty of the offence under Section 498A, IPC, presumably for "cruelty" which falls within the second limb of clause (a) of the Explanation under Section 498A, IPC. The relevant findings of the High Court in paragraph 15 of the impugned judgment are extracted hereunder:

"As discussed earlier, permitting to enter his first wife in the house of deceased Amariben with new born child, is an act of the appellant - accused, which can be said to be a cruel act. The document Exhibit 10 indicates that she was financially exploited and the demand of money were made by the appellant - accused frequently. She has stated that on account of this, she was falling in starving. It is not in evidence that this Court can notice on one fact based on biological reasons assigned that the pregnant lady or lady, who has given birth to child, need more food, as such women are feeling more hungry then other normal women. She was facing very much financial problem and there should be possibility to go into depression and the present appellant - accused was the responsible person for creating this situation. The deceased was dropped woman, but self-respect is privilege of each individuals. The accused depended on the income of deceased Amariben after performing second marriage with her and was under legal as well as moral obligation to see that she may be treated well and may not be felt to insult or ignore. It is settled position that the cruelty includes mental cruelty, physical marks falls over the body are not required to be proved by the prosecution. The date of the application received by the police is 26.3.1992 and the evidence of PW-1 also show that on 26.3.1992 the appellant-accused had come to the school to inquire whether the deceased

A Amariben had made an application to the Principal of
school or not. He must have been frightened that the
deceased may complain genuinely to the school authority
and Government and he may lose the job or at least, may
invite some departmental action, so anxiety of the
B appellant-accused is found, which is exposed in the
deposition of PW-1. When the deceased Amariben felt in
creating apprehension in the mind that she may be killed
by her husband is sufficient to conclude that the wife must
have been treated with cruelty either mentally or physically
C or both types of cruelty and that too frequently made
otherwise the defence ought to have prove that she was a
patient of depression. No such suggestive evidence made
to the school teacher or other witness including mother.
Meaning thereby, there is sufficient evidence to show that
D the deceased was treated with cruelty and that had led her
to frustration and thereafter, depression, this is not an act
of commission of a lady with child. She had decided to
jump into the well leaving the child and accused behind,
therefore, the act of the suicide appears to be intentional
E act to get rid of the frequent insult, ignorance and
exploitation. The learned Trial Judge has rightly linked the
accused with the offence punishable under Section 498A.
There is no error in evaluating the evidence so far as
cruelty is concerned.

F 13. Obviously, the finding of the High Court that permitting
the first wife to enter the house of deceased Amriben with new
born child amounts to a cruel act is erroneous as such act
cannot amount to cruelty within the meaning of second limb of
clause (a) of the Explanation under Section 498-A, IPC.
G However, the High Court, relying on the letter written by the
deceased to the Police Station on 26.03.1992 (Ext.10), has
also come to a finding that the appellant had starved the
deceased of food when she was pregnant by spending the
salary earned by the deceased on his own family and had also
H subjected the deceased to other acts of mental cruelty.

KANTILAL MARTAJI PANDOR v. STATE OF GUJARAT 149
[A.K. PATNAIK, J.]

14. The question that we have, therefore, to decide is whether the Court could have arrived at this finding that the appellant has starved the deceased and committed various acts of mental cruelty towards the deceased only on the basis of the contents of the letter dated 26.03.1992 written by the deceased to the Police Station. The letter written by the deceased on 26.03.1992 could be relevant only under Section 32(1) of the Indian Evidence Act, 1872, which provides that a statement, written or verbal, of relevant facts made by a person who is dead, is relevant when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. The High Court in the present case has already held that the appellant was not guilty of abetting the suicide of the deceased and was, therefore, not guilty of the offence under Section 306, IPC. As the cause of the death of the deceased is no more in question in the present case, the statements made by the deceased in the letter dated 26.03.1992 to the Police Station cannot be taken to be proof of cruel acts committed by the appellant for the purpose of holding him guilty under Section 498A, IPC.

15. For taking this view, we are supported by the decision of this Court in *Inderpal v. State of M.P.* [(2001) 10 SCC 736]. In this case, Inderpal was charged and tried for the offence under Section 306, IPC, and convicted by the trial court for the said offence of abetment of suicide. In appeal filed by Inderpal, the High Court found that the offence under Section 306, IPC, was not made out as it could not be held that death of the deceased was due to commission of suicide, but the High Court held the appellant guilty of the offence under Section 498A, IPC. This finding of the High Court was based on the evidence of the father, mother, sister and another relative of the deceased who deposed on the basis of inter alia the two letters (Exhibits P-7 and P-8) written by the deceased Damyanti that Inderpal, her husband, had subjected her to beating. This Court found that apart from the statement attributed to the deceased,

A none of the witnesses had spoken of anything which they had seen directly and the question that this Court had to decide was whether the statement attributed to the deceased could be used as evidence including the contents of Exts.P-7 and P-8 and this Court held that the contents of Exts. P-7 and P-8 written
B by the deceased could not be treated as proof of the acts of cruelty by Inderpal for the purpose of offence under Section 498A, IPC. The reasons given by this Court in paragraph 7 of the judgment as reported in the SCC are as follows:

C "7. Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a
D dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P-7 or Exhibit
E P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1)
F of the Evidence Act will stand at bay so far as these materials are concerned.

G 16. In the present case also, except Ext.10, the letter written by the deceased to the Police Station on 26.03.1992, no other witness has spoken about the appellant having starved the deceased of food and having committed acts of mental cruelty to the deceased. On the other hand, the mother of the deceased (PW-3) has stated in her cross-examination:

H "I have not recorded in my statement before police that Amri was giving her salary to her husband. It is not true

KANTILAL MARTAJI PANDOR v. STATE OF GUJARAT 151
[A.K. PATNAIK, J.]

that when I went to see Amri, at that time, my daughter was crying she had food problem, I say it is false." A

17. This being the evidence of the mother of the deceased, the High Court could not have come to the conclusion that the deceased was subjected to financial exploitation and starving and mental cruelty by the appellant. Unlike the case of *State of West Bengal v. Orilal Jaiswal & Anr.* (supra) cited by Ms. Behera in which there was evidence of the husband coming home drunk and abusing and assaulting the deceased wife, in this case there is no evidence of any physical harm having been caused by the appellant to the deceased nor any acts of mental cruelty committed by him. Hence, the appellant cannot be held guilty of any cruelty within the meaning of clause (a) of the Explanation under Section 498A, IPC. B C

18. In the result, we set aside the impugned judgment of the High Court and acquit the appellant of the charge under Section 498A, IPC. Since the appellant is on bail, his bail bonds be discharged. D

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Appeal allowed. E