

CASE NO.:
Appeal (crl.) 825 of 2002

PETITIONER:
Hira Lal and Ors.

RESPONDENT:
Vs.
State (Govt. of NCT) Delhi

DATE OF JUDGMENT: 25/07/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T
ARIJIT PASAYAT, J

Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters the dreams. Inlaws are characterized to be outlaws for perpetrating a terrorism which destroys matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.

With a view to curb the spiraling number of cases where demand for dowry leads to loss of life, Dowry Prohibition (Amendment) Act 1986 brought about sweeping changes in the penal statutes, and Sections 304-B of the Indian Penal Code, 1860 (in short the 'IPC') and Section 113B of Indian Evidence Act, 1872 (in short the 'Evidence Act') came to be enforced.

One Sarita (hereinafter referred to as 'deceased') committed suicide by consuming poison on 14.4.1999. She was married to accused Surrender on 26.11.1995. Other appellants Hiralal and Angoori Devi were her father-in-law and mother-in-law respectively. Since the death was unnatural, information was lodged with police and investigation was undertaken.

Grievance was made by the family members of deceased that she was subjected to torture for dowry and that led to her suicide. On completion of investigation, charge-sheet was placed for alleged commission of offences punishable under Section 304-B and 498A IPC. Trial was conducted by learned Sessions Judge, New Delhi in Sessions case No. 11/1999 and the appellants were found guilty under Sections 304-B and 498A read with Section 34 IPC. They were sentenced to undergo RI for 10 years and fine of Rs.10,000/- each with default stipulation of SI for one year, and also one year RI with fine of Rs.5000/- with stipulation of SI for one month for the two substantive offences respectively. It is relevant to note that for substantiating the accusations twelve witnesses were examined. Bahadur Singh (PW-1), Sobha

Rani (PW-5), Ratti Ram (PW-10), Manju (PW-11), the father, brother, cousin brother and sister, respectively of the deceased spoke about the dowry demands. The testimony was accepted to be truthful and cogent by the Trial Court.

The matter was carried in appeal before the Delhi High Court. By the impugned judgment, learned Single Judge reduced the sentence to 3 years RI instead of 10 years RI in respect of accused-appellants Hiralal and Angoori keeping in view their old age. The fine imposed was maintained but the default sentence was reduced to six months, custodial sentence and fine for offences punishable under Section 498A were maintained. In case of appellant-Surender, the sentence was reduced to 7 years in respect of first offence, while for the second offence the sentence was maintained.

In support of the appeal, learned counsel for the appellants submitted that ingredients of Section 304-B and 498A are not made out. There was no evidence regarding any dowry demand. On the contrary it was confirmed that at the time of marriage there was no demand for dowry. It is of relevance to note that while deceased was married to accused-Surender, her sister, Manju (PW-11) was married to Virender, elder brother of Surender. Both the marriages were solemnized on the same date. It has been accepted by the prosecution witnesses that there was no demand for valuable articles at any point subsequent to the marriage in case of Manju. If the demand was made for deceased as alleged, there is no reason as to why a departure was made in case of her sister. The evidence of relatives (PW-1, PW-2, PW-10 and PW11) does not inspire any confidence. Before the alleged suicide, there were differences between the deceased and her husband for which allegations were made with the police. Finally the difference was sorted out by settling that they shall stay separately from other members of the family. There was a conciliation made by the officials and the conditions indicated related to separate residence. There was not even inkling about demand of money or articles. This has been categorically accepted by both PWs 10 and 11. It is, therefore, submitted that both Trial Court and the High Court fell in grave error by going into surmises to convict the appellants.

In response learned counsel for the State -Govt. of NCT of Delhi, submitted that the ingredients of the offences have been clearly made out. In any event the case can be considered in terms of Section 306 IPC.

Section 304-B IPC deals with dowry death reads as follows:

"304-B. Dowry Death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation â\200\223 For the purpose of this sub-

section 'dowry' shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304-B IPC, the essential ingredients are as follows:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

"113-B: Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation â\200\223 For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision

relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a

proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

The evidence of PWs 1, 5, 10 and 11 shows that at the time of marriage there was no demand for dowry. But subsequently, the demands were made, and ill-treatments were meted out. The crucial question is whether they were soon before the death. PWs 10 and 11 stated that grievances were made before the Crime against Women Cell and the authorities brought about reconciliation. It however was candidly admitted that there was no mention about any dowry aspect while the differences were ironed out. The settlement arrived at on 30.11.1998 was essentially for separate residence. Therefore, there is no definite evidence about ill-treatment to the deceased at any time having immediate proximity to the date of death of the deceased on 14.4.1999 about ill-treatment by the accused persons to attach culpability under Section 304-B IPC. Therefore, the basic requirement of cruelty or harassment soon before the death to bring application of Section 304-B is absent.

Further question is whether a case under Section 498-A has been made out, even if accusations under Section 304-B fail. Section 498-A reads as follows:

"498-A: 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.

Explanation â\200\223 For the purpose of this section 'cruelty' means â\200\223

(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."

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 is required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-B 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 304-B and 498-A, 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 498-A gives the meaning of 'cruelty'. In Section 304-B 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 498-A under which 'cruelty' by itself amounts to an offence. Under Section 304-B 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 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A 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 498-A IPC and Section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-B 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.

Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under:-

Section 2. Definition of 'dowry' â\200\223 In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly â\200\223

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I- For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression 'valuable security' has the same meaning in Section 30 of the Indian Penal Code (45 of 1860)."

vs. State of Punjab and Anr. (2001 (8) SCC 633), "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is causedor occurs otherwise than under normal circumstances" as expressed in Section 304B IPC.

Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

"306: Abetment of suicide â\200\223 If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

It may be noted that though no charge was framed under Section 306 IPC that is inconsequential in view of what has been stated by a three-judge Bench of this Court in K. Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors. (2003 (1) SCC 217).

On the facts of the case even though it is difficult to sustain the conviction under Section 304B IPC, there are sufficient materials to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC.

Custodial sentence of three years for the offence punishable under Section 306 IPC would meet the ends of justice. The sentence awarded for offence punishable under Section 498A by Trial Court and upheld by the High Court is maintained. Both the sentences relatable to Sections 498A and 306 IPC shall run concurrently.

It may be noted here that the High Court had reduced the sentence to three years from 10 years in case of accused â\200\223appellant Hiralal and Angoori Devi, while upholding their conviction under Section 304B IPC. It is unfortunate that the High Court failed to notice that the minimum sentence for offence punishable under Section 304B is seven years in terms of sub-section (2) thereof.

Since the appellants 1 and 2 were released on bail pursuant to the order dated 25.10.2002, they shall surrender to serve out the remainder of the sentence, if not already served. The appeal is disposed of accordingly.