

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO...337/2009

(ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 2857/2008)

ANAND KUMAR

.....APPELLANT

VS.

STATE OF M.P.

.....RESPONDENT

J U D G M E N T

HARJIT SINGH BEDI, J.

1. Leave granted.
2. This appeal has been filed by the accused who stands convicted for offences punishable under Section 306 of Indian Penal Code and Section 4 of the Dowry Prohibition Act 1961 and sentenced to imprisonment for 5 years and 6 months R.I.

respectively - both sentences to run concurrently. The facts are as under:

3. Karuna, deceased and the appellant Anand Kumar were married in the year 1981 while she was yet a child. The gauna of the deceased, however, took place on 13th May 1986 and a month thereafter she visited her parents home to attend a family wedding and on 18th June 1986, returned to her matrimonial home accompanied by her brother-in-law. She, however, consumed aluminium phosphide (Sulphas) tablets on 28th June 1986 and in a precarious condition was removed to Kothi hospital from where she was referred to the Civil Hospital, Satna for further management. The Naib Tehsildar-cum-Executive Magistrate concerned was called by the doctor who recorded her dying declaration. Karuna, however, died soon thereafter, on which information was sent to Police Station City Kotwali, Satna on 29th June 1986 and a case under Section 498 A and 306 of the IPC and Section 4 of the Dowry Prohibition Act was registered. On the completion of the investigation, the four accused i.e. the appellant, his father Manmohan Gautam, mother Ramdulari and brother

Anoop Kumar Gautam were committed to face trial and duly charged for the offences, as above mentioned. The trial court after recording the evidence of 20 witnesses and taking into account, in particular the ocular evidence, acquitted the parents and brother of the appellant but placing reliance on a letter dated 27th February 1986 Exhibit P-20 allegedly written by the appellant to his father-in-law held the case against the appellant proved and accordingly convicted and sentenced him, as already indicated above. In appeal the High Court confirmed the order of conviction and sentence. It is in these circumstances that the matter is before us by special leave.

5. Mr. Tankha, the learned Senior Counsel for the appellant has, at the very outset, pointed out that as per the findings recorded by the Trial Court and confirmed by the High Court, the evidence adduced by the Prosecution was unreliable so as to involve the three accused who had been acquitted although the ocular evidence if at all pointed directly towards Karuna's in-laws rather than at the appellant as being the guilty party. He has submitted that in the fact that the State had not chosen to challenge the acquittal of the three, it had to be held

that the evidence with regard to the present appellant too was ambivalent and insufficient to bring home the charge against him. He has further emphasized that the courts below too were conscious of this fact and had accordingly chosen to rely on the letter Exhibit P-20 in support of the ocular evidence against the appellant although the said letter was inadmissible in evidence as it had not been proved, and had on the other hand ignored the dying declaration recorded by the Naib Tehsildar which exonerated all the accused of any wrongdoing. Ms. Makhija, the learned State Counsel has, however, pointed out that in the light of the presumption raised under Section 113-A of the Evidence Act, 1872 and the ocular evidence in the case there was other unimpeachable evidence against the appellant, even assuming that the letter Exhibit P-20 could not be looked into. She has relied on **State of Punjab Vs. Iqbal Singh and Others** (1991) 3 SCC 1 to support her plea that a presumption had advisedly been raised against an accused in an offence relating to abetment of suicide in view of the malaise of dowry which had afflicted

Indian society and if this gross social evil had to be curbed, the court must also lend a helping hand.

6. We have heard the learned counsel for the parties and gone through the record. The fact that three of the accused have been acquitted and that no appeal against their acquittal has been filed is admitted on record. It is also clear from the impugned judgments that the courts have relied heavily on the letter Exhibit P-20 to support the finding of conviction against the appellant. This letter was sought to be proved in evidence by PW-11 Ram Prasad, the father of the deceased, to whom it had been addressed. This is what he had to say in his examination in chief by way of its proof :

“I had received letter of threat from accused Anand Kumar on 27.02.86 through Peon Achchhe Lal and that letter is exhibit P20. He had raised the demand for radio, watch, cycle and fan through that letter, at the time of gauna, I had given him watch, radio, cycle and fan as demanded in the letter.”

7. We are of the opinion that this excerpt from his evidence cannot be said to be proof of the document as no statement was made that he recognized the handwriting or the signature of the appellant. Moreover, this letter had not been produced before the police during the course of the initial investigation and had been handed over to the police after several months. This fact, as also a reading of the letter, indicates that this was a concocted piece of evidence and the work of a legal mind, as no person would write such a letter meeting all legal requirements for implicating himself and his near relatives, in a claim for Dowry.

8. Faced with this situation, Ms. Makhija has pointed out that even if this letter was ignored, the other evidence against the appellant was sufficient to maintain his conviction. She has, in particular, relied on the evidence of Arun Kumar Mishra, the brother of the deceased PW-1, a friend of the deceased Sudha Tripathi PW-8, her father Ram Prasad PW-11, and Brij Kumari PW-17 Karuna's Sister-in-law to submit that their evidence conclusively spelt out the prosecution's case.

We, however, find from a reading of the testimonies of these witnesses that the problem, if any, lay with Karuna's mother-in-law Ramdulari and she and nobody else was the villain and general allegations with regard to the other accused find mention only in the statement of Ram Prasad. We are, therefore, of the opinion that in this background and keeping in view of the fact that Ramdulari has been acquitted, it would not be possible to maintain the conviction of the appellant on the basis of this evidence.

9. Ms. Makhija has then placed reliance on the presumption raised in a case of abetment of suicide by a married woman, as envisaged under Section 113-A of the Evidence Act to contend that the onus lay on the accused to prove his innocence. She has in this connection referred us to **Iqbal Singh's case (Supra)** to emphasize that the legislative intent in the introduction of Sections 113-A and 113-B of the Evidence Act was 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 seven years of marriage."* She has accordingly

submitted that in the light of this presumption it was for the accused to prove that nothing amiss had happened at their instance.

10. Undoubtedly, the aforesaid provisions do raise a presumption but the facts of the case cannot be ignored. The different terminology of Sections 113-A and 113-B itself brings out the real purpose behind the two provisions and whereas Section 113-B places a heavier onus on an accused, the onus placed under Section 113-A is far lighter. We reproduce the two Sections hereunder to focus on this distinction:

“113-A. Presumption as to abetment of suicide by a married woman.- *When the question is whether the commission of suicide by a woman had been abetment by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*

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. “*

11. A comparative reading of the two provisions (particularly the underlined portions) would highlight that under Section 113-A the Court ‘may presume’, having regard to all the other circumstances of the case, an abetment of suicide as visualized by Section 306 of the IPC but in Section 113-B which is relatable to Section 304-B the word ‘may’ has been substituted by ‘shall’ and there is no reference to the circumstances of the case. Admittedly, the conviction of the appellant has been recorded under Section 306 which is relatable to Section 113-A and though the presumption against an accused has to be raised therein as well, the onus is not as heavy as in the case of a dowry death. In this background, Ms. Makhija’s arguments that the onus shifts

exclusively and heavily on an accused in such cases is not entirely correct and in the background of sketchy ocular evidence and the additional fact that the dying declaration recorded by the Naib Tehsildar completely exonerates all the accused of any misconduct, clearly dispels any suspicion with regard to their involvement in this unfortunate incident.

12. We accordingly allow this appeal, set aside the impugned judgments and direct that the Appellant be released forthwith, if not already on bail.

.....J.
(DALVEER BHANDARI)

.....J.
(HARJIT SINGH BEDI)

New Delhi,

Dated: February 20, 2009