

PETITIONER:
SMT. SHANTI AND ANR.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 13/11/1990

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
PANDIAN, S.R. (J)

CITATION:
1991 AIR 1226 1990 SCR Supl. (2) 675
1991 SCC (1) 371 JT 1991 (1) 118
1990 SCALE (2) 988

ACT:
Indian Penal Code, 1860: Sections 304-B and 498-A--Scope of.
Dowry Death--Relative of the husband of a woman subject-
ing her to cruelty--Woman's death occurring in unnatural
circumstances--Prosecution of Accused--Conviction under sec-
tion 304-B--Acquittal under section 498-A--Effect of--Sec-
tions 304-B and 498-A--Whether mutually exclusive.

Evidence Act, 1872: Section 113-B--Presumption as to
dowry death.

Dowry Prohibition Act, 1961: Section 2--Dowry--Meaning of.

HEADNOTE:

The appellants, along with three other co-accused, were charged of committing a dowry death. They were prosecuted under sections 201, 304-B and 498-A of the Indian Penal Code. The Trial Court convicted the appellants on all the counts but acquitted the other three co-accused.

The appellants preferred an appeal before the High Court which set aside their conviction under section 498-A holding that Sections 304-B and 498-A are mutually exclusive and that when once the cruelty envisaged in section 498-A culminates in dowry death of the victim Section 304-B alone is attracted. Accordingly, the High Court acquitted the appellants under section 498-A. But their convictions under section 304-B and 201 were affirmed.

In the appeal to this Court, it was contended on behalf of the appellants: (i) that the acquittal of the appellants under section 498-A indicates that cruelty on the part of the accused was not proved and consequently the death cannot be one of "dowry death", and (ii) that there was no direct evidence in this case and that all the ingredients of section 304-B of Indian Penal Code were not made out.

Disposing of the appeal, this Court,

676

HELD: 1. The view of the High Court that Sections 304-B and 498-A I.P.C are mutually exclusive is not correct. Sections 304-B and 498-A cannot be held to be mutually exclusive. 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 the common background to these offences, the meaning of "cruelty or harassment" will be the same as found in the explanation to Section 498-A under which "cruelty" by itself mounts to an offence and is punishable. Under Section 304-B, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498-A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further a person charged and acquitted under section 304-B can be convicted under Section 498-A without charge being there, if such a case, is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the Section and if the case is established they can be convicted under both the Sections but no separate sentence need be awarded under Section 498-A in view of the substantive sentence being awarded for the major offence under Section 304-B. [682D-H; 683A]

1.1 In the instant case, the High Court has not held that the prosecution has not established cruelty on the part of the appellants but on the other hand it considered the entire evidence and held that the element of cruelty which is also an essential of Section 304-B I.P.C. has been established. In these circumstances, therefore, the mere acquittal of the appellants under Section 498-A I.P.C. makes no difference for the purpose of this case. [682C-D]

2. In the instant case, there is absolutely no material to indicate even remotely that it was a case of natural death. It is nobody's case that it was accidental death. In the result it was an unnatural death; either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304-B is attracted. Therefore, the prosecution has established that the appellants have committed an offence punishable under Section 304-B beyond all reasonable doubt. [681G-H; 682A]

JUDGMENT :