

CASE NO.:
Appeal (crl.) 452 of 2001

PETITIONER:
Arvind Kumar & Anr

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 24/07/2007

BENCH:
R.V. Raveendran & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Panta, J.

1. Appellants have filed this appeal against the judgment dated the 23rd June, 2000 passed by a learned Single Judge of the High Court of Madhya Pradesh at Jabalpur, confirming the conviction and sentence of 7 years\022 R.I. imposed upon each of the appellants in respect of offences punishable under Section 306 of the Indian Penal Code [for short \023IPC\024] and 6 months R.I., each under Section 4 of the Dowry Prohibition Act, 1961 and fine of Rs. 5,000/- each with default stipulation for 6 months R.I., awarded by the learned Third Additional Sessions Judge, District Sagar dated 29th August, 1989 in Criminal Case No. 517/82.

2. Brief facts, which led to the trial of the appellants, are as follows:-

3. Arvind Kumar\026accused No.1 is the son of Prem Bai @ Gulabrani\026accused No.2. On April 26, 1982 Arvind Kumar married Sadhna, daughter of Bhag Chand (P.W.9) and sister of Sudarshan Kumar Jain (P.W. 5). After the marriage of Sadhna, the accused started harassing and humiliating her for not bringing adequate dowry articles. Prosecution alleged that on 29th June, 1982 both the accused demanded one table fan, one automatic watch and one almirah from Sadhna. The demand of the articles was again repeated on 2nd July, 1982. Sadhna was unable to satisfy the persistent demand of the accused. She was constantly tortured and harassed by the accused and as a result thereof Sadhna committed suicide by pouring kerosene oil on her person and setting her body on fire on 2nd July, 1982. The incident of suicide had taken place after one month and seven days of the marriage of the deceased Sadhna with Arvind Kumar\026accused. On 3rd July, 1982, the crime report (Ex. P-10) of the death of Sadhna was reported by Santosh Kumar (P.W. 7), brother of Arvind Kumar \026accused, to the Police at Check Post Barha, Police Station Banda. After receiving the report and preparing First Information Report, P.W. 12 Rameshwar Prasad, Head Constable went to the place of incident and held the necessary Panchnama like seizure of certain articles found near the scene of offence, got the spot map (Ex. P-11) prepared from Ram Sewak Khare, Patwari. The dead body of Sadhna was sent for post mortem to District Hospital, Khargaon. After recording the statements of the material witnesses and after receipt of post mortem report Ex. P-16 of Dr. J.C. Jain, Medical Officer, District Hospital Khargaon (P.W. 14) and letter (Ex. P-14) of the District Magistrate granting sanction of prosecution

of the accused for an offence under Section 4 of the Dowry Prohibition Act, 1961, charge sheet was filed against the accused for offences punishable under Section 306 IPC and under Section 4 of the Dowry Prohibition Act.

4. The Prosecution examined as many as 14 witnesses in support of its version. In their statements recorded under Section 313 of the Code of Criminal Procedure, the accused denied their involvement in the crime. Arvind Kumar\026 accused stated that Sadhna committed suicide on her own by pouring kerosene oil on her body because she was mentally disturbed. He stated that he is innocent and has been falsely implicated in the present case. Smt. Prem Bai\026accused stated that she used to treat her daughter-in-law (Sadhna) very affectionately and she had never demanded any dowry article from the brother or the father of the deceased. The accused examined Mohanlal Pathak (D.W. 1) and Chandra Kumar (D.W. 2) in their defence. Both these witnesses stated that Sadhna was a simple girl but was mentally disturbed.

5. Initially both the accused were acquitted on 27th September, 1983 by the Additional Sessions Judge, Sagar. The appeal filed by the State against the acquittal order came to be allowed by the High Court. The High Court directed the Trial Court to record further evidence in the case. The Trial Court after considering the evidence on record, recorded conviction and awarded sentence as aforesaid. The High Court on reappraisal and re-appreciation of the entire evidence on record confirmed the conviction and sentence imposed upon the accused. Hence this appeal by the accused persons.

6. Learned counsel appearing on behalf of the accused challenged the judgment of the High Court inter alia contending that admittedly, Sadhna died within one and a half month of the marriage, but there is no presumption available under Section 113A of the Indian Evidence Act, 1872 that Sadhna deceased committed suicide owing to harassment or torture by the accused. He submitted that provisions of Section 113A of the Indian Evidence Act as inserted by Act No. 43/1983 [Criminal Law Second Amendment, 1983] is not retrospective in operation. He further submitted that the prosecution has failed to prove the charges against the accused by leading satisfactory, believable and convincing evidence and the Trial Court as well as the High Court have recorded the findings of guilt of the accused on surmises and conjecture. Lastly, it was submitted that the deceased committed suicide on her own by pouring kerosene oil on her body due to her mental ailment.

7. Learned counsel for the State, on the other hand, submitted that the prosecution has clearly established the guilt of the accused persons and no exceptions can be taken to the reasons indicated by the Trial Court in the well-reasoned judgment. The evidence has also been analysed in great detail by the High Court and, therefore, no question of any interference is called for with the conviction recorded in the impugned judgment of the High Court.

8. Before we proceed to consider the respective contentions of the learned counsel for the parties, we, at this stage, may record that during the pendency of the appeal before this Court, Smt. Prem Bai \026 accused No.2 has died. We have analysed the entire evidence and other material on record and find that there is no direct or circumstantial evidence led by the prosecution to prove the charges against deceased Smt. Prem Bai. The evidence brought on record against accused Smt. Prem Bai is not cogent and consistent to establish that Prem Bai had abetted the commission of the offence of suicide committed by deceased Sadhna or Prem Bai accused had tortured or harassed her daughter in law \026 Sadhna for not

bringing adequate dowry articles at the time of marriage or thereafter before Sadhna committed suicide. Therefore, the conviction recorded and the sentence imposed upon deceased Prem Bai by the Trial Court and confirmed by the High Court cannot be sustained and, accordingly, the judgment of the High Court to that extent stands set aside. Deceased Smt. Prem Bai shall stand acquitted of the offences under Section 306 IPC and Section 4 of the Dowry Prohibition Act. Fine, if any, realised from deceased Smt. Prem Bai shall be refunded to her legal heirs.

9. So far the conviction of Arvind Kumar is concerned, we find from scrutiny of the evidence placed on record that there is reliable, cogent and trustworthy evidence led by the prosecution to establish his guilt beyond reasonable doubt. Sudarshan Kumar Jain (P.W. 5) brother of the deceased Sadhna deposed that the marriage of his sister was settled with Arvind Kumar \026 accused in the year 1982 and in all a sum of Rs. 18,000 \026 19,000/- was spent at the time of marriage ceremony, but at the time of vidaai, Arvind Kumar\026 accused raised additional demand of dowry articles, namely, one fan, one automatic watch and one iron almirah which they were not able to meet on that occasion. He stated that they assured the accused that after making some arrangement for money, they would later on give the demanded articles. However, one radio was given at the time of marriage. The father and grandfather of Arvind-accused were not satisfied with the dowry articles given to Sadhna at the time of her marriage and she was humiliated and harassed by the family members of Arvind and she was pressurized to bring additional dowry articles from her parents\022 house. He also stated that considering the greed of the accused, her parents could arrange for one watch and one fan, but the accused refused to accept those articles and he demanded valuable watch and fan of bigger size. He deposed that his sister was not properly treated by the accused during her stay with him. He denied the suggestion of the defence that his sister was suffering from mental ailment. Bhag Chand (P.W. 9) father of the deceased corroborated the testimony of P.W. Sudarshan Kumar and further stated that he had given sufficient dowry articles to his daughter Sadhna at the time of her marriage and additional articles demanded by the accused at the time of vidaai of his daughter were offered to him but the accused refused to accept those articles as they were not found to his liking and standard. Pritam (P.W. 10) is the landlord of P.W. 9. He is an independent witness. He deposed that at the time of vidaai of Sadhna after marriage, her parents offered one watch and one fan to Arvind accused, who declined to accept the same as those were not of higher value and of good make. He stated that he came to know from P.W. 5 that the accused used to beat Sadhna.

10. From the narration of the facts and evidence on record, it is not in dispute that Sadhna committed suicide and died due to injuries as certified by P.W. 14 Dr. J.C. Jain in his post mortem report (Ex. P-16). The testimony of P.Ws. 5, 9 and 10 are consistent, reliable and trustworthy to prove that it was Arvind-accused who constantly harassed, humiliated and tortured his wife Sadhna for bringing insufficient dowry articles. He persistently made demand of sophisticated watch, fan and iron almirah. Sadhna was forced to commit suicide because of the cruel behaviour of the accused. The defence of the accused that Sadhna was suffering from mental ailment is belied by P.W. 2 Sushila Bai, who was a teacher in Naveen School, Banda where Sadhna was studying. P.W. 2 Sushila Bai stated that the behaviour of Sadhna during her student life in the school was proper and normal. P.W. 14 Dr. J.C.

Jain was examined by the Trial Court after remand of the case by the High Court. His deposition is that there were 100 per cent burn marks on the body of deceased Sadhna. Sadhna had already died before Dr. Shrivastav could reach at the house of the accused. The extent of burn injuries found on the body of the deceased would go to show that no effort whatsoever was made by the accused to save his wife from committing suicide though he was present in the house when such incident took place. He has not even bothered to call the doctor and it was his elder brother P.W. 7 Santosh Kumar, who came from another house and immediately contacted Dr. Shrivastav and informed him about the precarious condition of Sadhna. On scrutiny of the entire evidence on record, we are of the view that the conduct of the accused-husband was apathetic, which is an additional circumstance in the link of the ocular version of PWS.5, 9 and 10 who have supported the prosecution case in its entirety. The evaluation of the finding recorded by the learned Trial Court and accepted by the High Court does not suffer from any illegality, manifest error or perversity, nor have the Courts overlooked or wrongly discarded any vital piece of evidence appearing against the accused. Therefore, we hold that the findings of fact as recorded by the courts below do not call for any interference in this appeal.

11. The contention of the learned counsel for the accused that the presumption enumerated under Section 113A of the Indian Evidence Act is not attracted in the present case does not merit acceptance. It is well-settled law that presumption with respect to the procedural matters is normally to be construed as prospective. Section 113A does not create any new offence or make it punishable. It only deals with presumption which the Court may draw in particular facts situation. This Court in *Gurbachan Singh v. Satpal Singh* reported in AIR 1990 SC 2009 held in para 36 as under:-

\02336. The provisions of the said Section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in the connection to Halsbury\022s Laws of England, (Fourth Edition), Volume 44 page 570 wherein it has been stated that:

The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters or procedure or of evidence, are prima facie prospective and retrospective effect are not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature\005.\024

12. In view of the above settled position, the presumption contemplated under Section 113A is clearly attracted in the facts of the present case and the accused has not led any evidence to rebut the said presumption.

13. No other point was urged by the learned counsel for the parties.

14. In the result, the conviction recorded and the sentence imposed upon Arvind Kumar\026accused No.1 by the Trial Court and confirmed by the High Court are maintained. Arvind Kumar-accused No.1 is on bail. He is directed to surrender before the Trial Court forthwith and to suffer the

remaining period of sentence. The appeal of Arvind Kumar is, accordingly, dismissed. The conviction and sentence of second accused is, however, set aside. Bail/surety bonds in respect of Smt. Prem Bai shall stand discharged.

JUDIS