

SUPREME COURT OF INDIA

Dinesh Seth

Vs

State of N.C.T. of Delhi

Criminal Appeal No.1239 of 2003

(Altamas Kabir and G.S. Singhvi)

18/08/2008

JUDGMENT

G.S. SINGHVI, J.

1. This appeal is directed against the judgment of Delhi High Court whereby the appellant was acquitted of the charge under Section 304B Indian Penal Code (for short 'IPC') but was convicted under Section 498A IPC and sentenced to three years' rigorous imprisonment.

2. The facts

(i) The appellant was married to Rama on 2.12.1984. She died on 22.11.1986. On receipt of an anonymous call/information that son of Kuldeep Seth (the appellant herein) has murdered his wife in his house situated at Gali No.8, Multani Dhanda, Paharganj. Shri C.L. Jatav, Sub-Inspector of Police visited the spot and found the dead body of Rama in a room on the second floor of the house.

He also found one piece of printed cloth (chunni) near the dead body and another piece which was tied with the ceiling fan. Shri Naresh Tandon, brother-in-law of the deceased who was present at the site told Shri Jatav that the deceased had been subjected to harassment and torture by her husband and in-laws. The Sub-Divisional Magistrate recorded the statement of Smt. Raj Rani Mehra (mother of the deceased), who had also reached the house of the appellant and on that basis a case was registered under Sections 304B/306/498A read with Section 34 IPC. On the next day, Dr. Bharat Singh (PW-21) conducted post mortem. He found the following injuries on the body of the deceased:-

1. One ligature mark around the neck placed above the thyroid cartilage which was present all around the neck. The width of the ligature was >" all along except near the right side of the ear where it was irregular and was wider upto 1". Base was depressed. Skin was abraded. Colour was light brown.

2. One lenier abrasion was present on the right knee joint size two and half inches x two and ten inches.

Dr. Bharat Singh opined that the cause of death was asphyxia caused due to hanging.

(ii) The police submitted challan under Sections 304B/306/498A read with Section 34 IPC against the appellant, his brothers Suresh Seth and Naresh Seth and mother Janak Seth. The learned Additional Sessions Judge framed charge under Section 304B read with Section 34 IPC. The prosecution examined as many as 26 witnesses including the mother of the deceased, Smt. Raj Rani Mehra (PW-7), her sisters and brother, Smt. Radha Mehra (PW-1), Ms. Chitra Mehra (PW-6) and Chaman Mehra (PW-26), two neighbours, namely Rajesh (PW-19) and Amit Grover (PW-24), Investigating Officer C.L. Jatav (PW-20) and Dr. Bharat Singh (PW-21). In their statements under Section 313 Code of Criminal Procedure (for short 'the Code'), all the accused denied their involvement in the death of Rama. They also denied the allegation of having subjected the deceased to harassment and torture for dowry.

(iii) The trial court convicted all the accused under Section 304B read with Section 34 IPC and sentenced them to seven years' rigorous imprisonment. On appeal, the High Court held that charge under Section 304B IPC is not made out and acquitted all the accused. However, the appellant was found guilty under Section 498A IPC and sentenced to three years' rigorous imprisonment.

3. Shri K.T.S. Tulsi, senior counsel appearing for the appellant, assailed the impugned judgment on two counts. He argued that the appellant's conviction under Section 498A IPC is liable to be set aside because he was tried for an offence under Section 304B read with 34 IPC and not under

Section 498A IPC. Learned senior counsel submitted that in the absence of a specific charge under Section 498A IPC, the High Court could not have convicted the appellant under that section because he did not get opportunity to defend himself. Shri Tulsi further argued that after having discarded the testimony of PW-1, PW-6 and PW-7 on the issue of harassment, cruelty and demand of dowry and acquitted the appellant of the charge under Section 304B IPC, the High Court could not have relied upon the same evidence for the purpose of convicting him under Section 498A IPC. In support of his arguments, Shri Tulsi referred to the judgments of this Court in State of West Bengal vs. Orilal Jaiswal & Another [1994 (1) SCC 73], Himachal Pradesh Admn. vs. Shri Om Prakash [1972 (2) SCR 765], Ramakant Rai vs. Madan Rai & Others [JT 2003 (Supp.2) SC 344], Gokaraju Venkatanarasa Raju vs. State of A.P. [1993 Supp.(4) SCC 191] and Shivanand Mallappa Koti vs. State of Karnataka [2007 (8) Scale 408]. Learned senior counsel then submitted that the judgments of this Court in Pyare Lal vs. State of Haryana [1997 (11) SCC 552] and Satpal vs. State of Haryana [1998 (5) SCC 687] on which reliance has been placed by the High Court for convicting the appellant under Section 498A IPC are clearly distinguishable because in neither of those cases question similar to the one arising in this appeal was considered.

4. Shri P.P. Malhotra, senior counsel representing the State relied upon the provisions of Sections 221, 222 and 464 of the Code and argued that omission to frame specific charge under Section 498A IPC cannot be made a ground for acquittal of the appellant because absence of charge under that section did not prejudice his defence and no failure of justice was occasioned. Shri Malhotra submitted that the evidence produced by the prosecution was sufficient to prove that the appellant had subjected the deceased to cruelty and the High Court did not commit any error by convicting him under Section 498A IPC.

5. We have considered the respective submissions. For deciding whether the High Court committed an illegality by convicting the appellant under Section 498A IPC, it will be useful to notice the provisions of Sections 221, 222 and 464 of the Code. The same read as under:-

221. Where it is doubtful what offence has been committed?

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of subsection (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations (a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

222. When offence proved included in offence charged. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations (a) A is charged, under section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section

406.

(b) A is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

464. Effect of omission to frame, or absence of, or error in, charge. (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. (2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may- (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge.

(b) In the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

6. A reading of the plain language of Section 221(1) and (2) shows that if a single act or series of acts constitute several offences and the prosecution is not certain about the particular offence then the accused can be charged with the allegation of having committed all, some or any of the offences. In such a case the accused can be convicted of the offence with which he may not have been specifically charged but evidence produced by the prosecution proves that such an offence has, in fact, been committed. Section 222(1) lays down that when a person is charged with an offence consisting of several particulars and combination of only some of the particulars constituting a minor offence is proved then he can be convicted of the minor offence with which he may not have been charged. Section 222(2) lays down that when a person is charged with an offence but the facts proved constitute a minor offence then he can be convicted of the minor offence despite the fact that he may not have been charged with that offence. Sub-section (3) of Section 222 lays down that a person charged with an offence, can be convicted of an attempt to commit such offence even though a separate charge may not have been framed on that account. Section 464 lays down that any error, omission or irregularity in the framing of charge including any misjoinder of charges, will not invalidate a finding, sentence or order by a court of competent jurisdiction unless the higher court comes to a conclusion that failure of justice has been occasioned. Sub-section (2) of Section 464 specifies the modes which can be adopted by the Court of appeal, confirmation or revision, if such court is of the opinion that a failure of the justice has been occasioned on account of non framing of charge or any error, omission or irregularity in the framing of charge.

7. The question whether omission to frame a charge or any error or irregularity in the charge, is by itself, sufficient for quashing the conviction of the accused was considered in Willie (William) Slaney vs. State of M.P. [AIR 1956 SC 116]. After examining the issue in detail, the Constitution Bench of this Court observed:-

"Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions."

8. The Constitution Bench then referred to the provisions of Sections 225, 232, 535 and 537 of the Code of Criminal Procedure, 1898, which are analogous to Section 215, 464 and 465 of the Code and held:

"Now, as we have said, Sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

It is the substance that we must seek. Courts have to administer justice and justice includes the

punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

9. In *Gurbachan Singh vs. State of Punjab* [AIR 1957 SC 623], a three Judges' Bench considered the question of prejudice and observed:

"In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

10. In *Lakhjit Singh vs. State of Punjab* [1994 Supp. (1) SCC 173], the accused were charged and convicted of offence under Section 302 IPC. The High Court upheld their conviction. A two Judges' Bench of this Court held that charge under Section 302 IPC is not established but convicted the appellants under Section 306 IPC. While rejecting the argument that in the absence of a specific charge under Section 306 IPC, the appellants cannot be convicted under that section, the Court observed:-

"The learned counsel, however, submits that since the charge was for the offence punishable under Section 302 Indian Penal Code, the accused were not put to notice to meet a charge also made against them under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 Indian Penal Code and; therefore, presumption under Section 113-A of Indian Evidence Act cannot be drawn and consequently a conviction under Section 306 cannot be awarded. We are unable to agree. The facts and circumstances of the case have been put forward against the

accused under Section 313 CrPC and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under Section 313 CrPC would show that they had enough of notice of the allegations which attract Section 306 Indian Penal Code also."

11. In *Sangaraboina Sreenu vs. State of A.P.* [1997 (5) SCC 348], another Bench of two Judges' expressed a contrary view. The facts of that case were that the accused was convicted by the trial court under Section 302 IPC. The High Court converted the conviction to one under Section 306 IPC. While reversing the judgment of the High Court, this Court held:

"This appeal must succeed for the simple reason that having acquitted the appellant of the charge under Section 302 IPC -- which was the only charge framed against him -- the High Court could not have convicted him of the offence under Section 306 IPC. It is true that Section 222 CrPC entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 CrPC for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof."

12. In view of the apparently conflicting judgments of the coordinate Benches, the issue was referred to a larger Bench. In *Dalbir Singh vs. State of U.P.* [2004 (5) SCC 334], a three Judges' Bench considered the provisions of Section 222 and 464 of the Code and observed:-

"Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 CrPC is in the nature of a general provision which empowers the court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely, Chapter XXXV which deals with irregular proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this section provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the

conviction or order of a competent court unless the appellate or revisional court comes to the conclusion that a failure of justice has in fact been occasioned thereby."

13. The three Judges' Bench then referred to the earlier judgments in Willie (William) Slaney vs. State of M.P. (supra), Gurbachan Singh vs. State of Punjab (supra) and observed:-

There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

14. The ratio of the above noted judgments is that in certain situations an accused can be convicted of an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate, confirming or revisional Court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned.

15. Reverting to the facts of this case, we find that the appellant and his co-accused were charged under Section 304B IPC. The specific allegation levelled against them was that they had subjected the deceased to cruelty for or in connection with demand for dowry and she had died unnatural death within seven years of her marriage. Thus, the appellant knew that he was to defend himself against the allegation of cruelty. The cross-examination of prosecution witnesses unmistakably shows that the defense had made concerted effort to discredit the testimony of mother, sisters and brother of the deceased in the context of allegation of cruelty. Not only this in his statement under Section 313 of the Code, the appellant denied the allegation that he had subjected his wife to cruelty. It is thus evident that the appellant was not only aware of the charge of cruelty but he got and availed the opportunity to defend himself with reference to that charge. Therefore, it is not possible to accept the submission of Shri Tulsi that omission of the trial court to frame specific charge under Section 498A IPC had prejudiced the cause of his client or that failure of justice had been occasioned on that count.

16. The next point which requires consideration is whether after discarding the testimony of PW-1,

PW-6 and PW-7 and acquitting the appellant of the charge under Section 304B IPC, the High Court could convict him under Section 498A IPC.

17. Section 498A was added to the IPC by amending Act No.46 of 1983 in the backdrop of growing menace of dowry related cases in which the women were subjected to cruelty and harassment and were forced to commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation appended to this section defines the term 'cruelty' to mean any willful 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 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.

18. After three years, Section 304B was inserted by amending Act No.43 of 1986 to deal with cases involving dowry deaths occurring within seven years of marriage. Sub-section (1) of Section 304B IPC lays down that 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. By virtue of explanation appearing below sub-section (1), the word 'dowry' used therein carries the same meaning as is contained in Section 2 of The Dowry Prohibition Act, 1961.

19. The ingredient of cruelty is common to Sections 304B and 498A IPC, but the width and scope of two sections is different, inasmuch as Section 304B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet unlawful demand for property or valuable security.

20. In order to bring home charge under Section 304B IPC, the prosecution is required to establish that the death of the woman has been caused by burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and soon before her death, the woman is subjected to cruelty or harassment by her husband or his relative. However, for the purpose of conviction under Section 498A IPC, it is sufficient to prove that the woman was subjected to cruelty, as elucidated in the explanation appearing below substantive part of the section, by her husband or his relative.

21. A reading of the impugned judgment shows that after recording a finding that there was no evidence to prove that the deceased was treated with cruelty or harassment in connection with demand of dowry soon before her death, the High Court referred to the judgments of this Court in *Pyare Lal vs. State of Haryana* (supra) and *Satpal vs. State of Haryana* (supra) and held that evidence on record clearly makes out an offence under Section 498A IPC against the appellant.

22. Although the judgment under challenge does not contain an elaborate discussion with reference to the ingredients of Section 498A IPC, having carefully gone through the statements of PW-1, PW-6, PW-7, PW-14 and PW-26, we are convinced that the prosecution succeeded in proving that the appellant had subjected the deceased to cruelty within the meaning of clause (a) of explanation appearing below Section 498A IPC and the mere fact that the statements of three of them were not found convincing by the High Court for sustaining the conviction of the appellant and his other co-accused on the premise that all the ingredients of Section 304B IPC have not been established is not sufficient to discard the prosecution case as a whole. PW- 1, PW-6 (both sisters), PW-7 (mother) and PW-26 (brother) have categorically deposed that immediately after marriage the deceased was given beating by the appellant, his brothers and was subjected to harassment and taunting by mother-in-law and sister-in-law for being dark complexioned and illiterate/not fluent in English. Their statements also show that the appellant had hit the deceased with a brick resulting in wound on her head which had to be stitched. On the date of death also, the deceased was subjected to physical torture and harassment. Both the sisters narrated that when they met the deceased, she was weeping and her eyes were swollen. Their testimony has been substantially supported by PW-14 Rakesh Malhotra. He too stated that the deceased was subjected to beating by her husband and she had suffered injury on her head. This part of the prosecution case has not been disbelieved by the High Court which found discrepancy only on the issue of demand of dowry. The beating given to the deceased and harassment to which she was subjected had direct bearing on her committing suicide. Therefore, we are convinced that the High Court did not commit any error in convicting the appellant under Section 498A IPC.

23. The judgments on which Shri Tulsi has placed reliance do not support the cause of the appellant. Rather, the judgment in *State of West Bengal vs. Orilal Jaiswal & Another* (supra) supports the conclusion that an offence under Section 498A IPC is made out if the woman is subjected to physical assault, humiliation, harassment and mental torture. In *Satpal vs. State of Haryana* (supra), this Court held that even though the prosecution evidence was not sufficient to establish charge under Section 304 or 306 IPC, conviction under Section 498A IPC can be upheld because the deceased was treated with cruelty by the appellant.

24. In the result, the appeal is dismissed. The appellant who is on bail, shall be arrested for serving out the remaining sentence.