

# SUPREME COURT OF INDIA

Gopal

Vs.

State of Rajasthan

CrI.A.No.57 of 2002

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

13.02.2009

## JUDGMENT

### **Dr.Arijit Pasayat, J**

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court allowing the appeal of the State Government and holding the appellant guilty of offence punishable under Section 498-A of the *Indian Penal Code, 1860* (in short 'IPC') while upholding the acquittal in respect of offence punishable under Section 306 IPC. The appellant was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-with default stipulation.

2. Background facts giving rise to the prosecution are as under:

“On 4.7.1988, at about 10 p.m. Laxman Singh (P.W.13) who was S.I. in the Police Station Nimbaheda received information from the Medical Officer Dr. R.D. Bhatt (P.W.15) from the Hospital and on receiving that information, Laxman Singh reached the hospital where Prem Chand was present who informed orally to Laxman Singh that in the morning all the persons of his family had gone to the field in the house; wife of his son Gopal, namely, Ram Kumari (hereinafter referred to as "the deceased") was alone and in the noon, when he went to his house, he found the deceased unconscious and then he called his wife Lahar Bai (PW-4) who was living nearby and she also came there. Then he called doctor and doctor advised him that she should be taken to the hospital and in the hospital, when the treatment was going on, the deceased died.

This oral report was reduced into writing and the same is Ex. P/6 and on this report, Laxman Singh (P.W.13) registered Marg FIR No.6/88 under Section 174 of the Code of Criminal Procedure, 1973 (in short the 'Code') and started investigation.

During investigation, post mortem of the dead body of the deceased was conducted by Dr. R.K. Gupta (P.W. 11) and Dr. R.D. Bhatt (P.W.15) and the post mortem report is

Ex.P/4 and both the doctors have stated that cause of death of Smt. Ram Kumari was asphyxia and this may be probably due to opium poisoning and they also found 6 bruises, three on the right thigh and three on her right hip. Thereafter P.W.13 Laxman Singh came to the conclusion that accused Gopal who was husband of the deceased used to treat her with cruelty and used to beat her and a case for offence under Sections 498A and 306 I.P.C. was made out and he himself lodged FIR Ex.P/8 and on this FIR Ex.P/8 investigation of the case was done by Netrapal Singh (PW-14) who was S.H.O. in the police station Nimbaheda. After usual investigation challan was submitted in the Court of Magistrate for offence under Section 498A and 306 IPC from where the case was committed to the Court of Additional Sessions Judge, Nimbaheda.

Since the accused pleaded innocence trial was held and 15 witnesses were examined. The trial Court directed acquittal of the appellant inter-alia holding as follows:

- (i) It has not been proved by the prosecution that the deceased has been subjected to cruelty and single act of cruelty or beating is not sufficient.
- (ii) Since the deceased had undergone tubectomy operation after delivery of 3rd child and because of that she was not in a position to work and she used to feel restlessness and accused respondent used to ask her to work and there was dispute between husband and the wife on this point and such type of dispute cannot be covered

Aggrieved by the judgment and order, State filed an appeal and as noted above the same was allowed.”

3. In support of the appeal, learned counsel for the appellant submitted that the marriage took place some time in 1976 and the date of occurrence is July, 1998 and therefore Section 113-B of the *Indian Evidence Act, 1872* (in short the 'Evidence Act') has no application. Further it is submitted that the ingredients of Section 498-A have not been established.

4. It has been concluded by the High Court that suicide has not been proved. Therefore, Section 498-A has no application. Section 498-A(b) relates to demand of dowry for which there is no evidence.

5. In response, learned counsel for the respondent-State submitted that the case is covered by Section 498-A(b). It is submitted that in any event injuries have been established and therefore Section 323 IPC has been clearly established. It is by way of reply learned counsel for the appellant submitted that no charge has been framed for Section 323.

6. The ingredients of Section 498-A are as follows:

“498A: 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 - For the purpose of this section 'cruelty' means -

(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.”

7. 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 are required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B 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 304B and 498A, 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 498A gives the meaning of 'cruelty'. In Section 304B 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 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B 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 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A 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*<sup>1</sup>. Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B 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.

8. The above position was highlighted in *Balwant Singh & Ors. v. State of H.P.*<sup>2</sup>.

9. Section 498A IPC has two limbs. The first limb of Section 498A provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished. 'Cruelty' has been defined in clause (a) of the Explanation to the said Section as any willful conduct which is of such a nature as is likely to drive to a woman to commit suicide. When there is demand of dowry, the case comes under clause (b) of the Explanation to Section 498A. Clause (a) of the Explanation has definite application to the facts of the present case. Additionally, effect of Section 113 A of the Indian Evidence Act cannot be lost sight of.

10. Further as per Section 113 A of the Evidence Act when the question as to whether commission of suicide by a woman had been abetted 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 that such suicide had been abetted by her husband or by such relative of her husband. This has not been rebutted by the appellants.

11. For bringing in application of Section 306 IPC, suicide has to be established. In the instant case, the trial Court and the High Court have categorically held that no suicide has been established.

12. So far as Section 498-A(b) is concerned, there must be an evidence of demand of dowry. There is no evidence in that regard adduced by the prosecution. That being so, as rightly contended by learned counsel for the appellant Section 498-A(b) has no application.

13. The crucial question is whether the appellant can be convicted in terms of Section 323 IPC. Even if it is so as contended by learned counsel for the respondent, considering the fact that the appellant has already suffered custody of about 6 months, we do not consider it necessary to go into that question. The appeal is allowed. The conviction as recorded is set aside. The bail bonds executed by the appellant for release on bail pursuant to the order dated 14.1.2002 shall stand discharged.

<sup>1</sup>(AIR 1991 SC 1142)

<sup>2</sup>2008(10) JT 589