

A

ASHOK KUMAR
v.
STATE OF N.C.T. OF DELHI AND ORS.

JUNE 12, 2007

B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Evidence Act, 1872:

C

s.113B—Presumption under, is relatable to death occurring within 7 years of marriage—On facts, marriage was solemnized more than 10 years before the death of wife—Hence, High Court's order convicting accused not sustainable—Penal Code, 1860—ss.304B and 498A.

D

The present appeal is filed by accused-husband against the High Court's order upholding conviction under ss. 498-A and 304-B IPC.

Allowing the appeal, the Court

E

HELD : The conviction of the appellant cannot be maintained. The co-accused persons were acquitted of all the charges as evidence was not sufficient to substantiate the accusation. Additionally burden has been put on the accused-appellant to show as to under what circumstances the death was caused. The presumption in such matters is relateable to a death occurring within seven years of marriage. Admittedly, the marriage in the present case was solemnized more than 10 years before the date of occurrence. That being the position, the order of the High Court is not sustainable and the same is set aside. The appellant is entitled to acquittal. [999-A, B, C]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 552 of 2002.

G

From the Judgment and Order dated 15.10.2001 of the High Court of Delhi at New Delhi in Criminal Appeal No. 414 of 1997.

Anu Mohla for the Appellant.

Ashok Bhan, S. Wasim A. Qadri and D.S. Mahra for the Respondent.

H

The Judgment of the Court was delivered by

A

DR. ARIJIT PASAYAT, J. Having heard the learned counsel for the respondent-State, we find that the conviction of the appellant cannot be maintained. It is to be noted that the co-accused persons were acquitted of all the charges as evidence was not sufficient to substantiate the accusation. Additionally burden has been put on the accused-appellant to show as to under what circumstances the death was caused. The presumption in such matters is relateable to a death occurring within seven years of marriage. Admittedly, the marriage in the present case was solemnised more than 10 years before the date of occurrence. That being the position, the order of the High Court is not sustainable and the same is set aside. The appellant is entitled to acquittal. The bail bonds of the accused executed for the purpose of bail in terms of the order dated 15.07.2002 shall stand discharged.

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The appeal is allowed.

D.G.

Appeal allowed.

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