

NOORJAHAN

v.

STATE REP. BY D.S.P.

(Criminal Appeal No. 706 of 2008)

APRIL 23, 2008

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

Penal Code 1860:

s.498A – Dowry death – Dowry demand by husband and his relatives subjecting wife to cruelty – Death of wife due to strangulation – Incident witnessed by prosecution witness – Conviction of all the accused u/ss 498A and 302 respectively – Husband's aunt also convicted u/s 498A – Upheld by High Court – Challenge to, by aunt – Held: There was no evidence to show that aunt made any demand or was present when dowry demand was made – Hence, her conviction order set aside.

s. 498A – Object of – Held: Is to combat the menace of dowry death and cruelty.

According to the prosecution case, A1 was married to the deceased-wife. After the marriage, A1 and his relatives, ill treated the deceased on account of dowry demand. On the fateful day, the husband and his brother strangulated the deceased with rope and his sisters caught hold of both the arms. The close relative of the mother of the deceased witnessed the incident. The incident took place within one year of the marriage. FIR was lodged. Investigations were carried out. All the accused were convicted and sentenced u/s 302 and 498A IPC. Accused-A7, who was the aunt of the husband was also convicted and sentenced u/s 498A IPC. High Court upheld her order of conviction. Hence, the present appeal by A-7.

Allowing the appeal, the Court

A HELD: 1.1 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. Section 498-A and
B Section 113-B include in their amplitude past events of
cruelty. Period of operation of Section 113-B is seven
years, presumption arises when a woman committed
suicide within a period of seven years from the date of
marriage. Consequences of cruelty which are likely to
drive a woman to commit suicide or to cause grave injury
C or danger to life, limb or health, whether mental or physical
of the woman is required to be established in order to
bring home the application of Section 498A. Cruelty has
been defined in the Explanation for the purpose of Section
498A. Sections 304B and 498A, IPC cannot be held to be
D 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'.
[Paras 8, 9 and 11] [908-F, G, H; 909-A, G, H; 910-A, B]

E 2. With regard to the appellant-A-7, PW-1, mother of
deceased stated that when she went to the place of her
daughter, appellant was present alongwith A-1 and A-2.
The said A-1 demanded jewels and presentation of
Rs.5,000/- for Ramzan. She accepted that she told A-1 and
F A-2 that she will send the same within a week. The next
statement of A-7 that two months' time will be sufficient
for offering the presentation is very significant. In other
words, she did not make any demand for dowry. That
aspect has been accepted by PW-1. Significantly, in her
G cross examination PW 7 admitted that appellant is
residing at Coimbatore for the last 35 years; and that while
she went to the house of her daughter, she (appellant)
was not present. Therefore, there is no evidence to show
that appellant was either present when the demand was
made or she herself made any demand. Thus, the
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prosecution failed to establish the accusations against the appellant. Therefore, her conviction cannot be maintained and is set aside. [Paras 13 and 14] [910-F, H; 911-A, B] A

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 706 of 2008. B

From the final Judgment and Order dated 22.03.2007 of the High Court of Madras in Criminal Appeal (MD) No. 283 of 2004

K. Ragendra Chowdhary, V. Ramasubramanian for the Appellant. C

V.G. Pragasam, S.J. Aristotle and Prabhu Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by D

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court dismissing the appeal of the appellant and upholding the conviction for offence punishable under Section 498-A of the Indian Penal Code, 1860 (in short the 'IPC') recorded and imposed by the learned District and Sessions Judge, Karur in S.C. No.1/2004. Several persons who had faced trial had preferred the appeal. Accused Nos.1 to 5 and 7 i.e. present appellant were found guilty of offence punishable under Section 498-A IPC. Accused Nos.1 to 5 were found guilty under Section 302 IPC. E F

3. In appeal it was held that A-1 and A-2 were guilty of offence punishable under Section 302 IPC and, therefore, their conviction as recorded by the trial Court was affirmed. Conviction of A-3, A-4 and A-5 for offence punishable under Section 302 IPC was set aside. In respect of offence punishable under Section 498-A the conviction in respect of A-1 to A-5 and A-7 was confirmed. Appellant is A-7. G

4. Background facts as projected by prosecution in a H

A nutshell are as follows:

The marriage between A-1 and Syed Ali Fathima (hereinafter referred to as the deceased) took place on 22.4.2001. A-2 is the brother of A-1. A-3 and A-4 are the sisters of A-1 and A-5 is the mother and A-6 is the father of A-1. A-7 is the aunt of A-1. PW-1 is the mother of the deceased. At the time of marriage, PW-1 paid Rs.5,000/- and three sovereigns of gold jewels and after a period of two months, A-1 went over to Mumbai seeking for a job. All the other accused ill treated the deceased stating that the dowry demand was not met. Prior to the occurrence, A-1 came from Mumbai. PW-1 was summoned. At that time, there was a demand from A-1, A-2 and A-7, the appellant that 10 sovereigns of gold and a sum of Rs.5,000/- towards "Seervarisal" for Ramzan must be paid immediately. A-7, the appellant, who was present at that time informed PW-1 that she can pay the said demand within a period of two months.

PW-2 is closely related to PW-1. On 6.3.2002 he came to Pallapatti and went to the house of PW-1. PW-2 was informed by PW-1 that there was a dowry demand from the side of the accused. A marriage was scheduled to take place in the house of a neighbour which is next to the house of A-1 and hence on 8.3.2002, PW-2 came there between 11.00 a.m. and 12 noon. He was chatting with the said neighbour. Since PW-2 knew that there was a dowry demand, he decided to meet the deceased in her house for that purpose. When he was just getting down through the stair case, he was able to see the house of the deceased Fathima. A window was open through which he was able to see within 10 feet. At that time, A-1 and A-2 strangulated the deceased Fathima with a rope and A-3 and A-4 caught hold of both the arms. On seeing this, PW-2 was shocked. When he was witnessing the occurrence, A-2 saw PW-2. Immediately, PW-2 went over to the place of PW-1. But he could not meet anybody and he went over to his native place, Salem and returned on 9.3.2002.

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When PW-1 went to the house of the accused, the wife of A-2 locked from inside and informed that the deceased Fathima was upstairs. When PW-1 went upstairs, she found only the dead body of her daughter and PW-1 was able to see a ligature mark around the neck of the deceased. PW-1 immediately came back and informed the relatives and proceeded to the Police Station. PW-13 the Sub Inspector of Police was on duty on the day of occurrence. PW-1 gave a complaint at about 1700 hrs which is marked as Ex.P-1 on the strength of which a case came to be registered in Crime No. 49/2002 under Section 174 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Ex.P-11, the FIR was dispatched to the Court. On receipt of the copy of the FIR, PW-14 the Deputy Superintendent of Police took up investigation, proceeded to the scene of occurrence, made inspection and prepared Ex.P-2 the observation Mahazar and Ex.P-12 the rough sketch. He also sent a copy of the FIR to PW-10, the Revenue Divisional Officer. PW-10, the Revenue Divisional Officer, on receipt of the copy of the FIR proceeded on the place and also conducted inquest on the dead body in the presence of witnesses and prepared Ex.P-9, the Inquest Report, wherein he opined that it was not a case of suicide but it was the death by homicide. He also made enquiries from the witnesses including the accused. Following the same, the dead body was subjected to post mortem by PW-9, the doctor attached to the Government Head Quarters Hospital, Karur, who opined that the deceased appeared to have died of asphyxia due to strangulation about 24-36 hours prior to autopsy.

Originally, the case was registered under Section 174 of the Code. Later it was converted into one under Section 498-A and 302 IPC and the express FIR (Ex.P-13) was dispatched to the Court.

Pending investigation, A-1 to A-6 were arrested. A-2 came forward to give confessional statement voluntarily and the same was recorded by PW-13, the Deputy Superintendent of Police in the presence of witness, pursuant to which A-2 has produced M.O.1-Nylon rope which was recovered under a recovery

A Mahazar, Ex.P-1.

On completion of the investigation, the Investigating Officer filed the report. The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges leveled against the accused, the prosecution examined 16 witnesses and relied upon 13 exhibits and 3 material objects. On completion of evidence on the side of the prosecution, the accused were questioned under Section 313 of the Code as to the incriminating circumstances found in the evidence of the prosecution witnesses which they denied as false. The accused examined three witnesses who were all Medical Officers through whom 5 exhibits were also marked.

The accused persons pleaded innocence and, therefore, trial was held and conviction was recorded and sentence imposed as noted above.

5. In support of the appeal, learned counsel for the appellant submitted that there was no evidence so far as the present appellant is concerned to show that any demand for dowry was made by her. The witnesses had not stated that she was present when the demand was made. Therefore, it is submitted that the trial Court and the High Court erred in directing her conviction.

6. In response, learned counsel for the respondent-State supported the judgment of the trial Court and the appellate Court.

7. Section 498-A appears in Chapter XX-A IPC.

8. Substantive Section 498-A IPC and presumptive Section 113-B of the Indian Evidence Act, 1872 (in short the 'Evidence Act') have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983 and by the Dowry Prohibition (Amendment) Act, 1986 respectively.

9. Section 498-A of IPC and Section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-B 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.

A

10. Section 498A reads 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.

B

Explanation – For the purpose of this section ‘cruelty’ means –

C

(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

D

(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.”

E

“113B: Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

F

Explanation – For the purposes of this section ‘dowry death’ shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

G

11. 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 is required to be established in order to bring home the application

H

A 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
B 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'.

C 12. The object for which Section 498-A IPC was introduced
is amply reflected in the Statement of Objects and Reasons while
enacting the Criminal Law (Amendment) Act 46 of 1983. As
clearly stated therein the increase in the number of dowry deaths
is a matter of serious concern. The extent of the evil has been
D commented upon by the Joint Committee of the Houses to
examine the work of the Dowry Prohibition Act, 1961. In some
cases, cruelty of the husband and the relatives of the husband
which culminate in suicide by or murder of the helpless woman
concerned, constitute only a small fraction involving such cruelty.
E Therefore, it was proposed to amend IPC, the Code of Criminal
Procedure, 1973 and the Evidence Act suitably to deal effectively
not only with cases of dowry deaths but also cases of cruelty to
married women by the husband, in-laws and relatives. The
avowed object is to combat the menace of dowry death and
F cruelty.

13. So far as the present appellant is concerned, the
evidence is inadequate to show that she was party to any
demand for dowry. In fact, PW-1 stated that when she went to
the place of her daughter appellant was present alongwith A-1
G and A-2. The said A-1 demanded jewels and presentation of
Rs.5,000/- for Ramzan. She accepted that she told A-1 and A-2
that she will send the same within a week. The next statement
of this witness is very significant. She (appellant) told that two
months' time will be sufficient for offering the presentation. In
H other words, she did not make any demand for dowry. That

aspect has been accepted by PW-1. Significantly, this witness in her cross examination had admitted that appellant is residing at Coimbatore for the last 35 years. She has categorically admitted that while she went to the house of her daughter, she (appellant) was not present. Therefore, there is no evidence to show that appellant was either present when the demand was made or she herself made any demand.

14. Above being the position, the prosecution has failed to establish the accusations against the appellant. Therefore, her conviction cannot be maintained and is set aside. She was released on bail by order dated 22.2.2008. In view of the order of acquittal, bail bonds shall stand discharged.

15. The appeal is allowed.

N.J. ☺

Appeal allowed