A SURESH KUMAR SINGH
V.
STATE OF U.P.
Criminal Appeal No. 939 of 2009

MAY 06, 2009

B **[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]**

Penal Code, 1860 – ss.304B and 498A – Conviction by courts below – On appeal, held: The death of woman did not take place within 7 years of marriage – Nothing to show that C *cruelty was inflicted upon the deceased soon before death – Presumption u/s.113A or u/s.113B cannot be raised – Appellant cannot be held guilty u/s.304B – However, he was rightly convicted u/s.498A – Sentence imposed on that count is maintained – Evidence Act, 1872 – S.113A, 113B.*

D **The trial court convicted the appellant under Sections 304B and 498A IPC for committing murder of his wife. High Court upheld the order of conviction.**

In appeal to this Court, defence of appellant was that E **there was no evidence to show that the deceased was subjected to cruelty soon before her death.**

Partly allowing the appeal, the Court

HELD: 1. One of the ingredients of Section 304B IPC F **is marriage within a period of seven years preceding the death. No such requirement finds place in Section 498A thereof. From the evidence of brother of deceased, P.W.1, it appears that he had talked of only one incident in respect whereof his evidence was admissible in law, that** G **is, when the deceased came back to her parental home six months after 'Gauna' ceremony, she had informed him that if he did not give a ring and a chain, the accused persons might kill her. It is also not in dispute that the matter rested at that as he talked to the appellant in that**

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behalf, whereafter he came and took her away. The matter was therefore settled. There was nothing to show that any cruelty or harassment was meted out on that ground thereafter. So far as the other incident disclosed by him is concerned, it was one which he had heard from his wife and other female members of the family. It was, thus, hearsay, as they were not examined. [Paras 16, 17] [1078-C-F]

2. In order to attract s.304B IPC, it is imperative on the part of the prosecution to establish that the cruelty or harassment was meted out to the deceased 'soon before her death'. There cannot be any doubt that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fix period can be indicated therefor. It, however, must undergo the test known as 'proximity test'. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim. Some harassment which had taken place one year prior to the death without something more, could not have been considered to be a cruelty which had been inflicted soon before the death of the deceased. It does not satisfy the proximity test. As the death had not taken place within a period of seven years and there is no evidence that any cruelty has been inflicted upon the deceased soon before her death neither the presumption in terms of Section 113B of the Evidence Act could have been drawn nor it could be concluded that the appellant is guilty of commission of offence under Section 304B. The appellant was rightly found guilty of commission of offence under Section 498A IPC. Sentence imposed on him on that count is, therefore, maintained. [Paras 19, 21, 22, 23, 24] [1079-C-D; 1082-G-H; 1083-B-C]

Satvir Singh and Ors. v. State of Punjab and Anr. (2001) 8 SCC 633; *Harjit Singh v. State of Punjab* (2006) 1 SCC 463; *Thakkan Jha & Ors. v. State of Bihar* (2004) 13 SCC 348; *Baldev Singh v. State of Punjab* (2008) 13 SCC 233; *Kamesh*

A *Panjiyar Alias Kamlesh Panjiyar v. State of Bihar* (2005) 2 SCC 388; *Ram Badan Sharma v. State of Bihar* (2006) 10 SCC 115; *Devi Lal v. State of Rajasthan* 2007 (12) SCALE 265; *State of Rajasthan v. Jaggu Ram* 2008 (1) SCALE 22 – relied on.

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Case Law Reference

(2001) 8 SCC 633	**relied on**	**Para 19**
(2006) 1 SCC 463	**relied on**	**Para 19**
C **(2004) 13 SCC 348**	**relied on**	**Para 19**
(2008) 13 SCC 233	**relied on**	**Para 19**
(2005) 2 SCC 388	**relied on**	**Para 19**
(2006) 10 SCC 115	**relied on**	**Para 19**
D **2007 (12) SCALE 265**	**relied on**	**Para 19**
2008 (1) SCALE 22	**relied on**	**Para 19**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal E No. 939 of 2009

From the Judgment and Order dated 05.03.2008 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Criminal Appeal No. 186 of 1996

F Naveen Kumar Singh, Prakash Jha, Rohit Aggarwal, Vishal Arun, for the Appellant.

Pramod Swarup, Manoj Kumar Dwivedi, Gunnam Venkateswara Rao, for the Respondent.

The Judgment of the Court was delivered by

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S.B. SINHA, J.

1. Leave granted.

2. Application of the term 'soon before her death' occurring H in Section 304B of the Indian Penal Code ("IPC" for short) in the

facts and circumstances of the present case is the question involved herein. A

3. Asha Devi (the deceased) was married to the appellant. The date of their marriage, however, is in dispute viz. whether the same had taken place in the year 1983 or in the year 1987. Asha Devi was found dead on 8.12.1993 having suffered extensive burn injuries. B

4. On or about 8.12.1993 at about 5.10 p.m., a First Information Report ("FIR" for +9short) was lodged against the appellant and his family members by Ajmer Singh (P.W.1.), brother of the deceased, inter alia alleging: C

> "I, Ajmer Singh s/o Ranbahadur Singh R/o Nigohi, P.S. Deeh Janpad Raebareli, my elder sister Asha Devi was married in 1987 with Suresh Kumar Singh s/o Manbodh Singh at village Budhwar, P.S. Deeh, Janpad Raebareli. D After marriage my brother in law, his younger brother and sister Kusuma were harassing her and asking for dowry. My brother in law demanded Rs.5000/- at the time of marriage of his sister. This was told by my sister and gave the money. Thereafter demand for more money, ring and E chain was made, in this regard she was burnt year ago. I had got her treated and had asked her to live today on 8.12.1993 at about 12'O clock. One unknown person who is her neighbour came to my house and informed that your sister has been done to death and her dead body is lying F and are preparing to cremate her. I reached the site and saw my sister who was lying burnt and dead. I believe that Suresh Singh, Zilajeet Singh S/o Manbodh Singh and their elder sister Kusuma D/o Manbodh Singh S/o Budhwar, P.S. Deeh, Distt. Raebareli have burnt and killed my sister. G Therefore, you are requested to lodge report and prosecute."

5. We may furthermore notice the injuries found by the Autopsy Surgeon in his post mortem examination on the body of the deceased, which are as under: H

A "I to III degree burn on front and back of skull, neck, front and side of whole chest with upper part of abdomen, let axilla and whole arm and back of shoulder and scapular region, with exholate and pus coming out from right elbow region. Total burn about 40%.

B In the opinion of the doctor, the cause of death is shock as a result of ante mortem burn injuries.

6. The Investigating Officer filed a charge sheet. Cognizance was taken under Section 304B and Section 498A C of the IPC.

The prosecution in support of its case examined four witnesses.

7. The contention raised on behalf of the appellant were: D (1) that the death of the deceased occurred by way of an accident; (2) the marriage having taken place in the year 1983 that is not within a period of seven years from the date of her death, Sections 498A and 304B of the IPC were not applicable.

8. By reason of a judgment and order dated 30.4.1996, E the learned trial judge while acquitting Smt. Kusuma Devi and Zila Jeet Singh convicted the appellant under Section 304B and 498A of the IPC and sentenced him to undergo rigorous imprisonment for seven years for the offence under Section 304B IPC and to undergo three years rigorous imprisonment F and a fine of Rs.2000/- for the offence under Section 498A IPC inter alia holding:

(i) The marriage had taken place in the year 1987.

(ii) The prosecution has not been able to prove demand G of dowry from the family members of the deceased.

(iii) Appellant had made an attempt to cause burn injuries to her one year prior to the date of occurrence.

9. An appeal preferred thereagainst by the appellant has H been dismissed by reason of the impugned judgment.

10. Mr. Naveen Kumar Singh, learned counsel appearing on behalf of the appellant inter alia would submit:

(i) that the trial court and consequently the High Court committed a serious error in passing the impugned judgments insofar as they failed to take into consideration that sufficient evidence had been brought on record to show that marriage took place in the year 1983 and not in the year 1987 and, thus, no presumption as envisaged in Section 113A or Section 113B of the Indian Evidence Act, 1972 could have been invoked.

(ii) No evidence having been adduced to show that the deceased was subjected to any cruelty soon before her death, the impugned judgments are unsustainable.

11. Mr. Pramod Swarup, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

(i) In view of the concurrent findings of fact arrived at by the two courts below, no interference therewith by this Court is warranted.

(ii) The term 'soon before her death' do not envisage any fixed term and appropriate meaning should be assigned thereto having regard to the facts and circumstances of each case.

(iii) As demand of dowry had been made and an attempt was also made to cause burn injuries to her one year prior to the incident in question, the impugned judgments are unassailable.

12. Before adverting to the legal contentions raised herein, we may notice the deposition of the first informant – Ajmer Singh. According to him, the marriage took place sometime in April – May 1987. Dowry demands of the family of the appellant could not be fulfilled at that time. One month after the marriage, she

A came back to her maternal home and told her mother and other female members that the appellant and his family members had demanded a chain and a ring and also assaulted her. Six months thereafter allegedly while 'Gauna' ceremony was being performed, he was informed by the deceased that they should B give her a ring and a chain as otherwise the appellant would kill her. He was informed by daughter of 'Maiku' who was married in the village of appellant that one year before the death of the deceased, accused persons had burnt her. She had brought the deceased and got her treated by Dr. Chedi Singh. Accused C persons did not provide her any treatment and the deceased had a big wound. After healing she sent the deceased back with the cousin of appellant and thereafter the deceased was in the house of her husband for six months.

In his cross-examination, however, he accepted that the D appellant was married only to Asha Devi alone. He denied the suggestion that the marriage took place 14 years prior thereto. In answer to a question as to the name of Shiv Kumari was entered in the voter list of 1988 as the wife of the appellant, he stated as under:

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> "I do not know how the name of Shiv Kumari is entered in the voter list of 1988 as the wife of Suresh Kumar Singh. I do not know that Shiv Kumari w/o Suresh Kumar Singh was elected as member of village Sabha."

F He did not have any document to show that he had made arrangements for treatment of his sister.

He was examined on 16.8.1995.

Indisputably, on or about 5.9.1995, an application was filed G by him for correction of his statement, which reads as under-

> "It is submitted that on 16.08.95 statement of Applicant Ajmer Singh S/o Ran Bahadur Singh, R/o Village Nigohi, P.S. Deeh, District Raibareilly was recorded. In Para 3 at Page 4 of the statement it has been written that, "In our H place the name of girl is changed soon after coming to her

in-laws house, after marriage", whereas actually Applicant had deposed that, "At our place the name of girl is not changed soon after coming to her in-laws house after marriage." Hence, in the interest of justice, the amendment of the same to this effect is necessary.

Hence, it is prayed that in the statement "is not changed" shall be read in place of "is changed".

Thus, he had accepted in his first deposition that a custom with regard to change of the name of the bride by her in-laws prevails in his community.

13. Indisputably, in the voter's list of 1983, the name of wife of appellant was shown as Raj Kumari. There appears to be a controversy in regard to existence of a custom of changing the name of the bride by her husband's family. P.W.1, who is elder brother of the deceased even could not point out as to in which month the marriage had taken place. When the defence had raised a contention with regard to the date of marriage, it was obligatory on the part of the prosecution to prove the same in order to take the benefit of the provisions contained in Section 113A and 113B of the Indian Evidence Act as also the provisions of Section 498A and 304B of the IPC. Before a person is found guilty of commission of an offence, the court must arrive at a firm conclusion that the ingredients thereof had been proved. For the said purpose whereas on the one hand the object of the Parliament in inserting the said provisions must be borne in mind; a satisfaction must also be arrived at that the conditions precedent therefor has been fulfilled.

A voter's list is a public document. It is issued under the authority of the Election Commission. The voter's list published as on 1st January 1988 showed that Suresh Kumar Singh and Shiv Kumari were husband and wife and were resident of House No. 85. Their names along with one Ishraj Kumari were shown at Serial Nos. 273, 274 and 275. The husband's name of Shiv Kumari is shown as that of the appellant. The voter's list was in relation to the residents of Dostpur, Budhwara. It is in the

A aforementioned background, the court should have considered the purported application for amendment of statement filed by Ajmer Singh on 5.9.1995. On what basis such an amendment was directed is not borne out from the records. The learned Sessions Judge, however, relied thereupon to hold that the B marriage had taken place in the year 1987.

14. Keeping in view the menace of dowry deaths, the Parliament in the year 1983 inserted Section 498A of the IPC and Section 113A of the Indian Evidence Act by Act No. 46 of 1983 and in the year 1986 inserted Section 304B of the IPC C and Section 113B of the Indian Evidence Act by Act No. 43 of 1986. Although Section 304B of the IPC came into force with effect from 19th November 1986, Section 113B of the Indian Evidence Act came into force with effect from 5.1.1986.

D 15. The learned trial judge as also the High Court invoked Section 113B of the Indian Evidence Act, which reads as under:

> **"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 E 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.
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> Explanation.-For the purposes of this section "dowry F death" shall have the same meaning as in section 304B, of the Indian Penal Code (45 of 1860)]."

The definition of 'dowry death' is incorporated by reference to Section 304B of the IPC, which reads as under:

> G **"304B. Dowry death.-** (1) 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 H 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. A

Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). B

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Explanation appended to Section 304B defines dowry to C have the same meaning as contained in Section 2 of the Dowry Prohibition Act, 1961, which reads as under:

"2. Definition of 'dowry'.- In this Act, "dowry" means any property or valuable security given or agreed to be given D either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any E other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim F Personal Law (Shariat) applied."

We may also notice the provisions of Section 498A of the IPC, which reads as under:-

"498A. Husband or relative of husband of a woman G 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.

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A 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
B (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 properly or valuable security or is on account of failure by her
C or any person related to her to meet such demand."

16. One of the ingredients of Section 304B of the IPC is marriage within a period of seven years preceding the death. No such requirement finds place in Section 498A thereof.

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17. From the evidence of P.W.1, it appears that he had talked of only one incident in respect whereof his evidence was admissible in law, that is, when the deceased came back to her parental home six months after 'Gauna' ceremony, she had informed him that if he did not give a ring and a chain, the
E accused persons might kill her. It is also not in dispute that the matter rested at that as he talked to the appellant in that behalf, whereafter he came and took her away. The matter was therefore settled. There was nothing to show that any cruelty or harassment was meted out on that ground thereafter.

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So far as the other incident disclosed by him is concerned, it was one which he had heard from his wife and other female members of the family. It was, thus, hearsay, as they were not examined.

G 18. It is in the aforementioned context, we may consider the effect of the term "soon before death".

Section 304B of the Code provides for a penal offence. It has the following ingredients:

H (i) The death of a woman must have been caused by

burns or bodily injury or otherwise than under normal circumstances; A

(ii) Such death must have occurred within seven years from the date of the marriage'

(iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and B

(iv) Such cruelty or harassment must be in connection with the demand of dowry.

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19. The harassment which is said to have been caused in connection with the demand of dowry other than the incident in question, as noticed hereinbefore, was one year prior to the incident.

Would a gap of one year would answer the description of D term "soon before her death" is the question. We may, at the outset, notice some case laws operating in the field.

In *Satvir Singh and Ors. vs. State of Punjab and Anr.* [(2001) 8 SCC 633], this Court held:

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"22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period F either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to G emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed

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A between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, B whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

{See also *Harjit Singh vs. State of Punjab* [(2006) 1 SCC 463]}

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Indisputably, in order to attract the said provision, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased 'soon before her death'. There cannot be any doubt or dispute D that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fix period can be indicated therefor. It, however, must undergo the test known as 'proximity test'. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim.

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A similar question came up for consideration in *Thakkan Jha & Ors. vs. State of Bihar* [(2004) 13 SCC 348], wherein this Court held:

"This is so because the expression used in the relevant F provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be G said that the term "soon before" is synonymous with the term "immediately before". This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the H courts, depending upon the facts and circumstances of

each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link. A

{See also *Baldev Singh vs. State of Punjab* [(2008) 13 SCC 233]} B

Yet again in *Kamesh Panjiyar Alias Kamlesh Panjiyar vs. State of Bihar* [(2005) 2 SCC 388], this Court held:

"The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test." C D E F

This Court in *Ram Badan Sharma vs. State of Bihar* [(2006) 10 SCC 115] wherein one of us was a Member, held:

"35. There are three main ingredients of this offence: (a) that, there is a demand of dowry and harassment by the accused on that count; (b) that, the deceased died; and (c) that, the death is under unnatural circumstances within seven years of the marriage. When these factors were proved by reliable and cogent evidence, then the G H

A presumption of dowry death under Section 113B of the Evidence Act clearly arose. The aforementioned ingredients necessarily attract Section 304B IPC. Section 304B is a special provision which was inserted by an amendment of 1986 to deal with a large number of dowry
B deaths taking place in the country. In the instant case, if the circumstances of the case are analyzed on the touchstone of Section 304B IPC, all the three basic ingredients of Section 304B I.P.C. are present in the instant case. There has been persistent demand of dowry and
C harassment, humiliation and physical violence and beating by the husband and her in-laws. The deceased died under unnatural circumstances within seven years of the marriage."

{See also *Devi Lal vs. State of* Rajasthan [2007 (12)
D SCALE 265 (para 20), and *State of Rajasthan vs. Jaggu Ram* [2008 (1) SCALE 22 (para 11)]}

20. The Law Commission submitted its 91st Report on "Dowry Deaths and Law Reforms: Amending Hindu Marriage Act, 1955, the Indian Penal Code, 1860 and the Indian Evidence
E Act, 1872" wherein it was emphasized that there had been an alarming increase in the number of cases in which married woman die in circumstances which, to say the least, are highly suspicious. Those deaths popularly came to be associated with dowry and that is why it was given the term 'dowry death"

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21. Some harassment which had taken place one year prior to the death without something more, in our opinion, could not have been considered to be a cruelty which had been inflicted soon before the death of the deceased. It does not satisfy the
G proximity test.

22. As the death, in our opinion, had not taken place within a period of seven years and there is no evidence that any cruelty has been inflicted upon the deceased soon before her death neither the presumption in terms of Section 113B of the Indian
H Evidence Act could have been drawn nor it could be concluded

that the appellant is guilty of commission of offence under Section 304B. A

23. In view of our finding that the death did not take place within seven years from the date of marriage, no presumption could have been raised either under Section 113A or under Section 113B of the Indian Evidence Act. B

24. We, however, are satisfied that the appellant has rightly been found guilty of commission of offence under Section 498A of the IPC. Sentence imposed on him on that count is, therefore, maintained. C

25. For the aforementioned reasons, the appeal is allowed in part and subject to the aforesaid findings.

D.G. Appeal partly allowed.