

(26) In the light of the above discussion, it is held that since no specific trade was specified in the 'deed of conveyance' which was executed between the parties at a later point of time and which shall have an overriding effect over the unilateral conditions imposed in the 'allotment letter' the impugned action taken against the allottee or the petitioner, that the subject booth has been misused by using it as a 'jewellery shop', cannot sustain in law.

(27) Consequently, the writ petition is allowed and the impugned notice dated 30th November, 1983 (Annexure P-5) and orders dated 2nd May, 1984 (Annexure P-6), 31st October, 1989 (Annexure P-9), 17th January, 1990 (Annexure P-11) and 2nd February, 1990 (Annexure P-12) are hereby quashed.

(28) No orders as to costs.

R.N.R.

Before Adarsh Kumar Goel & S.D. Anand, JJ.

STATE OF HARYANA,—Appellant

versus

RAM KUMAR AND OTHERS,—Respondents

CrI. A. No. 655/DBA of 2000

28th May, 2008

Indian Penal Code, 1860—Ss. 304-B, 498-A—Evidence Act, 1872—Ss. 106 & 114—Suicide due to harassment—Death within seven years of marriage on account of circumstances other than normal— Minor discrepancies in evidence—Court has to adopt realistic approach in appreciating evidence without giving much significance to minor discrepancies— Even if evidence of a witness is found not acceptable partly, entire evidence cannot be rejected— Circumstantial evidence plays an important role—Presumption u/s 113-A of 1872 Act could be invoked if it was shown that deceased was subjected to harassment, even if such harassment was not related to demand of dowry.

Held, that the view taken by the trial Court is contrary to settled principles of appreciation of evidence. In appreciating evidence, the Court has to adopt realistic approach without giving much significance to minor discrepancies. Even if evidence of a witness is found not acceptable partly, the entire evidence cannot be rejected. The Court has to separate grain from the chaff.

(Para 12)

Further held, that the death was within seven years of marriage and death was on account of circumstances other than normal. Evidence of PW1 Singh Ram, PW5 Rohtash and PW6 Om Parkash leaves no manner of doubt that the deceased was subjected to harassment and it is the harassment which drove the deceased to commit suicide.

(Para 16)

Further held, that the approach adopted by the trial Court cannot be upheld. Where death takes place within seven years of marriage in a matrimonial home, it may be futile to look for direct evidence. Circumstantial evidence plays an important role. Section 106 of the Evidence Act has to be invoked. No member of the family even if he is a witness to the crime would depose against the other members. Neighbours are also generally reluctant to depose. Parents or other member of the family of the bride being away from the scene cannot give evidence. It does not mean that a crime should remain unpunished. No doubt, burden is on the prosecution but nature and amount of evidence to be led is not of the same degree as is required in other cases of circumstantial evidence. There is corresponding burden on the inmates of the house to give a cogent information as to how the crime was committed. The Court can also draw inference from undisputed facts by virtue of Section 114 of the Evidence Act, which empowers the Court to presume existence of a fact which it thinks, is likely to have happened.

(Para 10)

Further held, that in a case where offence under Section 304-B IPC was not made out, conviction under Section 306 IPC along with

Section 498-A IPC was permissible, if there was sufficient material to convict the accused under the said provisions. Though Section 304-B IPC requires proof of demand of dowry, Section 306 IPC and Section 498-A IPC were attracted even in absence of demand of dowry if cruelty in terms of Explanation to Section 498-A IPC was established. Presumption under Section 113-A of the Evidence Act could be invoked where death was within seven years of marriage if it was shown that the deceased was subjected to harassment, even if such harassment was not related to the demand of dowry.

(Para 20)

P.S. Sullar, D.A.G., Haryana *for the appellant*.

Ms. Puneeta Sethi, Advocate as *Amicus Curiae for the accused*.

JUDGMENT

ADARSH KUMAR GOEL, J.

(1) The State challenges acquittal of respondents Ram Kumar, Sumer Singh and Smt. Sarli of the charge under sections 304-B/498-A IPC for the death of Raj Bala *alias* Dhappa on 4th March, 1997.

(2) Case of the prosecution is that Raj Bala was married to Sumer Singh, accused about six years prior to the occurrence. The accused subjected her to harassment after one year of marriage and made demand of dowry, PW1 Singh Ram, father of the deceased learnt about the harassment and tried to meet the demand. The accused persons were not satisfied. PW1 Singh Ram brought his daughter to his own house and kept her for two to four months. Ultimately, with the intervention of respectables, the deceased was rehabilitated. On 3rd March, 1997, the complainant was informed that Raj Bala was missing from her matrimonial home. On 4th March, 1997, PW1 Singh Ram and other family members visited the house of the accused and came to know that dead body of Raj Bala was hanging with a tree, near the well, in the fields. Chainsukh, brother of the deceased made a statement Ex.PD at 11.50 AM to the effect that Raj Bala was married to Sumer Singh in the year 1992. No issue was born to her. She used to remain under

depression. She went to bring firewood on 3rd March, 1997 at 2 PM but did not return. On coming to the Village of the accused, they found the dead body hanging with a tree. Raj Bala had committed suicide as she could not deliver a child. On 5th March, 1997, Singh Ram PW1 moved an application Ex.PB that the police was not recording FIR and had taken signatures on blank papers and infact the accused committed dowry death of Raj Bala and police in collusion with them was not registering the case. FIR was registered on that basis and investigation was conducted. ASI Raj Singh went to the place of recovery of dead body and prepared inquest report. He sent the dead body for post mortem which was conducted by PW7 Dr. Rakesh Sharma. Viscera was sent for chemical examination. Cause of death was opined to be poison. After completion of investigation, the accused was sent up for trial.

(3) The prosecution examined ten witnesses and placed on record documents which will be referred to in the later part of the judgment.

(4) The accused denied the prosecution allegations and stated that the deceased was under depression and committed suicide on that account. She was never subjected to harassment.

(5) The trial court, after considering the evidence on record, held that the case of the prosecution was not proved beyond reasonable doubt and acquitted the accused.

(6) The reasons given by the trial court can be summed up as under :—

- (i) PW1 Singh Ram did not mention the date of death in application Ex.PB though in Court, he gave the date to be 3rd April, 1990. PW5 Rohtash deposed that marriage took place six years prior to the occurrence. PW6 Om Parkash, neighbour of PW1 Singh Ram did not give date of marriage. In view of contradictions, it could not be held that death was within seven years of marriage.
- (ii) Though, death was in circumstances other than normal, there was no reliable evidence about the circumstances

leading to her death. Chainsukh, brother of the deceased,—*vide* his statement Ex.PD stated that death was on account of deceased having not delivered a child. Chainsukh was not examined. Thus, evidence of PW1 Singh Ram, PW5 Rohtas and PW6 Om Parkash about harassment could not be accepted. No specific instance of harassment was mentioned. The version of harassment was not soon before the death. Suicide note Ex.PA was not proved.

(iii) There was delay in lodging of the FIR.

(iv) Cause of death was poison which was inconsistent with version of hanging.

(7) We have heard learned counsel for the parties and perused the record.

(8) Learned counsel for the State submitted that the trial court erred in holding that death was not proved to be within seven years and also in holding that harassment soon before death was not proved. The case of the prosecution was fully proved and in any case, from the version given by PW1 Singh Ram, PW5 Rohtas and PW6 Om Parkash, harassment soon before death was proved. The version of Chainsukh in Ex.PA was duly explained to have been given on misrepresentation and did not create any doubt about the veracity of version given by PW1 Singh Ram, PW5 Rohtas and PW6 Om Parkash. Suicide note Ex.PA also corroborated the said version.

(9) Learned counsel for the accused supported the view taken by the trial court and relied upon judgment of the Hon'ble Supreme Court in **Kishori Lal versus State of M.P. (1)**, wherein plea of suicide being on account of non-delivery of child was held to be reliable and it was held that no case was made out under Section 306 IPC.

(10) We find merit in the contentions raised on behalf of the appellant.

(1) 2007(3) RCR 385 : AIR 2007 S.C. 2457

(11) We are conscious of the fact that in appeal against acquittal, interference is permissible only if reasons given by the trial court are perverse. At the same time, where acquittal result in miscarriage of justice, the appellate Court will be justified in interfering with the acquittal. Reference may be made to judgment of the Hon'ble Supreme Court in **Main Pal versus State of Haryana (2)**.

(12) The view taken by the trial Court is contrary to settled principles of appreciation of evidence. In appreciating evidence, the Court has to adopt realistic approach without giving much significance to minor discrepancies. Even if evidence of a witness is found not acceptable partly, the entire evidence cannot be rejected. The Court has to separate grain from the chaff. These principles have been duly reiterated by the Hon'ble Supreme Court in **Shivaji Sahabrao Bobade versus State of Maharashtra, (3) Gangadhar Behera versus State of Orissa, (4) State of U.P. versus Hari Mohabn, (5) Bharwada Bhoginbhai Hirjibhai versus State of Gujarat, (6) and Kali Ram versus State of H.P., (7)**.

(13) We may now make a brief reference to the crucial evidence on record.

(14) PW1 Singh Ram deposed that marriage of Raj Bala took place with Sumer Singh on 3rd April, 1990. He gave sufficient dowry but after a year, the deceased was harassed by the accused. The deceased narrated harassment to him. He also met demands of the accused but harassment continued. The deceased came back to her parental home and stayed there for 6/7 months and with the intervention of respectables, she was rehabilitated on the assurance of the accused. On 3rd March, 1997, he learnt about the death of the deceased. He made an application Ex.PB. In cross-examination, nothing could be elicited which may create doubt about the veracity of version given by the said

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- (2) AIR 2004 S.C. 2158
 - (3) AIR 1973 S.C. 2622
 - (4) AIR 2002 S.C. 3633
 - (5) AIR 2001 S.C. 142
 - (6) AIR 1983 S.C. 753
 - (7) AIR 1973 S.C. 2773

witness. Mere fact that in court, date of death was mentioned to be 3rd April, 1990 and in FIR, it was mentioned that death was within six years, was not enough to hold that there were contradictions and, thus, death was not proved to be within seven years. From both the said versions, death is within seven years. There is no other version. There is, thus, no reason to hold that death was not within seven years.

(15) PW2 HC Daya Ram and PW3 Constable Satbir are formal witnesses. PW5 Rohtash supported the version given by PW1 Singh Ram. PW6 Om Parkash is the neighbour of Singh Ram PW1, who also supported the version given by Singh Ram PW1. PW7 Dr. Rakesh Sharma conducted post mortem on the dead body of Raj Bala. On 5th March, 1997, he found legature mark around the neck of the death body. He did not give any cause of death and on receipt of report of the Chemical Examiner, it was opined that death was due to consumption of Aluminum phosphide. Poisoning was sufficient to cause death in the ordinary course of nature. PW8 Nityanand Patwari prepared site plan. PW9 SI Raj Singh conducted investigation. PW10 HC Subhash Chander also partly joined investigation. According to Sumer Singh, the deceased might have committed suicide on account of depression for not bearing a child. Other accused also took identical plea. Death may be by poison and may or may not have been followed by hanging, it was in circumstances other than normal. This has not been denied by the accused also.

(16) Resume of above evidence shows that the death was within seven years of marriage and death was on account of circumstances other than normal. Evidence of PW1 Singh Ram, PW5 Rohtash and PW6 Om Parkash leaves no manner of doubt that the deceased was subjected to harassment and it is the harassment which drove the deceased to commit suicide. In letter Ex.PB, which was treated as FIR, Singh Ram PW1 gave the same version as he gave in Court and also mentioned that earlier, signatures were taken by misguiding and that the same were required for post mortem. This explained different version in Ex.PD.

(17) The approach adopted by the trial court cannot be upheld. Where death takes place within seven years of marriage in a matrimonial

home, it may be futile to look for direct evidence. Circumstantial evidence plays an important role. Section 106 of the Evidence Act has to be invoked. No member of the family even if he is a witness to the crime would depose against the other members. Neighbours are also generally reluctant to depose. Parents or other member of the family of the bride being away from the scene cannot give evidence. It does not mean that a crime should remain unpunished. No doubt, burden is on the prosecution but nature and amount of evidence to be led is not of the same degree as is required in other cases of circumstantial evidence. There is corresponding burden on the inmates of the house to give a cogent information as to how the crime was committed. The Court can also draw inference from undisputed facts by virtue of section 114 of the Evidence Act, which empowers the Court to presume existence of a fact which it thinks, is likely to have happened. These principles have been clearly laid down in **Trimukh Maroti Kirkan versus State of Maharashtra, (8)** paras 13 to 15, 18 and 22. Reference may also be made to judgment of the Hon'ble Supreme Court in **Sahebrao versus State of Maharashtra, (9)** In paras 12 and 15, reference to earlier case law was made :—

“12 In Pawan Kumar and others *versus* State of Haryana, (1998)3 SCC 309, this Court observed : 1998 AIR SCW 721, Para 18.

“.....cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A, IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty.....Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which would be construed to be such. 9. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband

(8) (2006) 10 S.C.C. 681

(9) AIR 2006 S.C. 2002

starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for bride.”

In *Gananath Pattnaik versus State of Orissa* (2002) 2 SCC 619, this Court specifically mentioned :

“The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. “Cruelty” for the purposes of constituting the offence under the aforesaid section need to be physical. Even mental torture or abnormal behavior may amount to cruelty and harassment in a given case.”

In *Mohd. Hoshan and another versus State of A.P.* (2002) 7 SCC 414, it was pointed out that : 2002 AIR SCW 3795, Para 6.

“The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty.....”

In *Ramesh Kumar versus State of Chhattisgarh* (2001) 9 SCC 618 para (22), this Court held as under : 2001 AIR SCW 4282, Para 22.

“Sections 498-A and 306, IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct

amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide.....”

Similarly, in *Hans Raj versus State of Haryana* (2004) 12 SCC 257 (in para 13), this Court opined that : 12 2004 AIR SCW 1283, Para 14.

“.....Under Section 113-A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word “cruelty” in Section 498-A, IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the order circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the workman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.....”

Once cruelty is proved, there is presumption of continuity, unless contrary is proved.

(18) The judgment relied upon by the learned counsel for the accused in *Kishori Lal* (*supra*) is distinguishable on facts. Therein,

death was admittedly beyond seven years of the marriage. All prosecution witnesses admitted that she was depressed on account of her failure to get a child.

(19) In **Amarjit Singh versus State of Punjab, (10)** this Court observed that when a bride is turned into a corpse, it is the family members living with her who have to explain the circumstances in which it happened.

(20) It is well settled that in a case where offence under section 304-B IPC was not made out, conviction under section 306 IPC alongwith section 498-A IPC was permissible, if there was sufficient material to convict the accused under the said provisions. Though Section 304-B IPC requires proof of demand of dowry, Section 306 IPC and Section 498-A IPC were attracted even in absence of demand of dowry if cruelty in terms of Explanation to section 498-A IPC was established. Presumption under section 113-A of the Evidence Act could be invoked where death was within seven years of marriage if it was shown that the deceased was subjected to harassment, even if such harassment was not related to the demand of dowry. Reference may be made to judgment of the Hon'ble Supreme Court in **Hira Lal versus State (Government of NCT), Delhi, (11)** wherein it was observed :—

“14. Section 306 IPC deals with abetment of suicide. The said provision reads as follows :—

306. *Abetment of suicide.* If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

15. It may be noted that though no charge was framed under Section 306 IPC, that is inconsequential in view of what

(10) 1969 (1) RCR 18

(11) AIR 2003 S.C. 2865

has been stated by a three-Judge Bench of this Court in *K. Prema S. Rao versus Yadla Srinivasa Rao* (2003(1) SCC 217).

16. On the facts of the case even though it is difficult to sustain the conviction under Section 304-B IPC, there are sufficient materials to convict the accused appellants in terms of Section 306 IPC along with Section 498-A IPC.”

In Shanti (Smt.) versus State of Haryana (12), it was observed by the Hon’ble Supreme Court :—

“6.....Under Section 304-B as already noted, it is the dowry death that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498-A and the husband or his relative would be liable for subjecting the woman to cruelty any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under Section 304-B can be convicted under Section 498-A without charge being there, if such a case is made out.....”

(21) In the present case, even taking a cautious view, in favour of accused, we are unable to uphold acquittal of husband of the deceased.

(22) In view of above, while upholding acquittal of Ram Kumar and Smt. Sarli, parents-in-law of the deceased by way of abundant caution, we set aside acquittal of Sumer Singh, husband of the deceased and convict him under sections 306 and 498 A IPC. He is sentenced to undergo RI for three years on both counts. The sentence will, however, be concurrent.

R.N.R.