

K. Prema S. Rao And Anr vs Yadla Srinivasa Rao And Ors on 25 October, 2002

Equivalent citations: AIR 2003 SUPREME COURT 11, 2003 (1) SCC 217, 2002 AIR SCW 4391, 2003 CALCRILR 371, 2003 ALL MR(CRI) 334, 2003 CRIAPPR(SC) 1, 2003 SCC(CRI) 271, 2002 (4) LRI 918, 2002 (8) SCALE 153, (2002) 8 JT 502 (SC), (2003) 1 CGLJ 85, 2002 (8) JT 502, 2002 (6) SLT 168, (2003) 2 ALLINDCAS 250 (SC), 2002 (10) SRJ 326, 2003 (1) UJ (SC) 101, 2003 BLJR 1 568, (2003) SC CR R 509, (2003) 2 ALLCRIR 1374, (2002) 4 CURCRIR 286, (2002) 2 DMC 776, (2002) 8 SCALE 153, (2003) 1 EASTCRIC 168, (2003) 1 HINDULR 83, (2003) 1 MADLW(CRI) 191, (2003) 1 MARRILJ 5, (2003) MATLR 243, (2003) 25 OCR 532, (2003) 2 RAJ LW 200, (2002) 4 RECCRIR 697, (2002) 7 SUPREME 405, (2003) 1 UC 441, (2003) 1 BLJ 733, (2003) 1 CRIMES 62, 2002 (2) ANDHLT(CRI) 355 SC, 2002 (2) ALD(CRL) 871, (2002) 2 ANDHLT(CRI) 355

Bench: M.B. Shah, K.G. Balakrishnan, D.M. Dharmadhikari

CASE NO.:

Appeal (crl.) 1457 of 1995

PETITIONER:

K. PREMA S. RAO AND ANR.

RESPONDENT:

YADLA SRINIVASA RAO AND ORS.

DATE OF JUDGMENT: 25/10/2002

BENCH:

M.B. SHAH & K.G. BALAKRISHNAN & D.M. DHARMADHIKARI

JUDGMENT:

JUDGMENT 2002 Supp(3) SCR 339 The Judgment of the Court was delivered by DHARMADHIKARI, J. "Frailty thy name is woman", that is how in one his plays Shakespeare described one of the female characters in his play. This description is more and more in evidence particularly in rural Indian society where married women, who are unable to muster courage to fight against cruelty and harassment meted out to them by their spouses and family members, find no escape other than ending their own life.

The deceased Krishna Kumari second daughter of PW1 was married to Yadla Srinivasa Rao (hereinafter referred to as accused No.1), on 26.6.1998. Accused No. 1 was employed as Branch Post Master in the village where the spouses lived jointly with the parents of accused No.1.

At the time of marriage father of the deceased, who was a teacher, gave a cash dowry of Rupees fifteen thousand and jewels worth fifteen thousand besides gift of five acres of land and a house site in the course of marriage ritual described as "Pasupukumkuma". It is explained that this gift of land was in the nature of 'Stridhana' given to the bride by the father for her maintenance.

After three or four months of the marriage accused No.1, husband of the deceased started demanding in from the deceased execution of a deed in his favour of the land and house site gifted to her. Refusal on the part of the deceased to meet the demand was the cause of her continuous harassment. Taking advantage of his position as the Post Master in the village, accused No.1 never delivered mail sent to the deceased by her father and her sister Nagamani. Her younger sister after passing tenth class examination had to appear for Polytechnic Entrance Test. As a part of harassment of the deceased, accused No.1 did not deliver the Entrance Card received from Kakatiya University addressed to the younger sister of the deceased which resulted in the former losing the admission to the test.

The deceased somehow was able to lay her hands on the letters addressed to her and which had been concealed by accused No. 1. On finding those letters, she handed over the same to her father. This incident led to extreme point of harassment. Accused No. 1 and his parents, accused Nos. 2-3, drove the deceased out from their house with stern warning to her to restore those letters. This incident of cruelty was so grave and unbearable that she committed suicide by consuming a poisonous insecticide Endo- Sulphan on 22.10.1989. PW4, who had witnessed the incident of the deceased having been driven out of the house the previous day, also saw accused No.1 taking deceased to the hospital at Madhira. PW4 informed about it to father (PW1) of the deceased who rushed to the house of the accused to find Krishna Kumari, dead. The father then lodged a First Information Report, Ex. P1 within eight hours on the same day.

All the three accused were charged in Session Case No. 157 of 1999 by the Court of Assistant Sessions judge, Nuzvid for offence of dowry death under Section 304B, IPC and in the alternative under Section 498A, IPC for cruelty and harassment of such magnitude as to drive the deceased to commit suicide. The prosecution examined the parents of the deceased of PW 1-2. PW3-4 were examined who had seen the deceased being driven out of the house and taken back only on their persuasion.

The trial court by judgment dated 19.8.1991 accepted the evidence led by the prosecution of alleged cruel treatment and harassment of the deceased which drove her to commit suicide. It, however, held that on the evidence only offence under Section 498A, IPC is made out. It acquitted them of the offence under Section 304B, IPC. The three accused on their conviction for offence under Section 498A were sentenced to rigorous imprisonment for two years and a fine of Rs. 500 each. In default of payment of fine, they were sentenced to two months simple imprisonment each.

The appellants i.e. parents of the deceased filed Criminal Revision No. 564/91 in the High Court of Andhra Pradesh against the acquittal of the accused under Section 304B, IPC. The accused preferred Criminal Appeal No. 1291/99 before the High Court of Andhra Pradesh assailing their conviction and sentences.

The learned Single Judge of the High Court of Andhra Pradesh decided the revision preferred by the parents of the deceased and the appeal preferred by the accused by a common Judgment dated 24.8.1994 which is the subject matter of these two separate criminal appeals preferred by the parents of the deceased and the State of Andhra Pradesh.

The learned Single Judge of the High Court of Andhra Pradesh dismissed the Criminal Revision filed by the parents of the deceased and confirmed the verdict of the trial court that the accused are liable to conviction and sentences only under Section 498, IPC and not under Section 304B, IPC.

By the same common judgment the High Court allowed the appeal preferred by accused Nos. 2-3 (Parents of accused No.1) and acquitted them of the alleged offences.

Against the common judgment of the High Court, State of Andhra Pradesh has preferred Criminal Appeal Nos. 1458-59 of 1995 challenging the acquittal of accused Nos. 2-3 and the parents of the deceased have preferred connected Criminal Appeal No. 1457 of 1995 seeking conviction of all the accused under Section 304B of the IPC.

The High Court in its common judgment passed in Criminal Appeal and Criminal Revision before it after appreciating the evidence led against accused Nos. 2-3, has found that the allegation against them of their participation with accused No.1 in driving out the deceased from their house was for the first time made by PW-1 father of the deceased only in his deposition in the Court. At no earlier point of time either in the first information report Ex.P1 or in the statements made under Section 161 of Cr.P.C. to the police, such allegation was made against accused No.2 and accused No.3. Apart from the oral testimony of PW1 (the father of the deceased) there is no other evidence on record to prove that the two accused Nos. 2-3 joined accused No.1 in harassing or cruelly treating the deceased. On appreciation of the evidence the conclusion drawn by the High Court in favour of accused No.2 and accused No.3 is reasonable and does not justify interference by us in their acquittal. Consequently, we uphold the acquittal of accused Nos. 2-3 and dismiss the two appeals preferred by the State of Andhra Pradesh which are filed to seek their conviction.

We now take up for consideration Criminal Appeal No. 1457 of 1995, preferred by the parents of the deceased seeking conviction of accused No.1 for offence under section 304B of the Indian Penal Code. In its common Judgment after appreciating the evidence on record, the conclusion reached by the High Court that the accused No. 1 cannot be convicted under section 304B, IPC appears to be legally sound. There is no evidence against accused No. 1 that at the time of marriage there was any demand or settlement for giving dowry in cash or by way of transfer of property. The father of the deceased PW1 has not stated that cash, ornaments and the land were given at the time of marriage pursuant to any demand of dowry by the parents of the husband. He merely states that according to the custom of the community declaration was made of gift of five acres of land to the deceased as her "Stridhana" called in the community as pasunukumkuma. As promised and declared in the ritual at the time of marriage the land was transferred in the name of the wife. The couple lived happily thereafter. It is only 2-3 months thereafter that the husband started harassing the wife to force her to transfer the land to him. This harassment of cruel treatment to pressurize her to transfer the land cannot be said to be 'in connection with any alleged dowry demand.' For the purpose of Section

304B, IPC the legislature has borrowed the definition of 'dowry' from Section 2 of the Dowry Prohibition Act of 1961. The relevant provisions of the Penal Code, Dowry Prohibition Act and Evidence Act are quoted hereunder:

304-B. 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 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.

*Explanation - For the purposes of this sub-section "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(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."

Section 2 of the Dowry Prohibition Act, 1961 defines "dowry" as under :

2. Definition of "dowry"-In this Act, "dowry" means any property or valuable security given or agreed to be given 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 an other person.

At or before or any time after the marriage in connection with the marriage of said parties, but does not include Dower or Mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I-For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression 'valuable security' has the same meaning as in section 30 of the Indian Penal Code.

Section 113B of Evidence Act raises a presumption against the accused and reads: 113-B 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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such a person had caused the dowry death.

Explanation - For the purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code."

The legal position firmly established is that 'suicidal death' of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused.....or occurs otherwise than under normal circumstances" as used in Section 304B of the Indian Penal Code. See *Satvir Singh v. State of Punjab*, [2000] 8 SCC 663, The evidence which has been found acceptable by the courts below against accused No. 1 is that the cruel treatment and harassment of the deceased by him led her to commit suicide which was a death "otherwise than under normal circumstances". To attract the provisions of Section 304B IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment 'in connection with the demand for dowry'. There is no evidence on record to show that the land was demanded as dowry. It was given by the father to the deceased in marriage ritual as *pasupukumuma*. The harassment or cruelty meted out to the deceased by the husband after the marriage to force her to transfer the land in his name was 'not in connection with any demand for dowry.' One of the main ingredients of the offence of "demand of dowry"

being absent in this case, the High Court cannot be said to have committed any error in acquitting accused No. 1 for offence under Section 304B, IPC.

We however, find that the same evidence on record which was held reliable to convict accused No. 1 for offence of 'cruelty' under section 498A, IPC, clearly makes out a case for his conviction for offence of abetting suicide under Section 306, IPC read with section 113 A of the Evidence Act. Section 498A makes cruelty by husband to wife as a punishable offence. The word "cruelty" is defined in the Explanation appended to the said Section. Section 498A with Explanation thereunder reads thus:

Section 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."

[underlining for emphasis] Clause (a) of the Explanation under Section 498A, IPC defines cruelty to mean a 'wilful conduct of the husband of such nature as is likely to drive the woman to commit suicide.' In the instant case, the accused pressurised and harassed the deceased to part with the land received by her from her father as "Stridhana." As a method adopted for harassment the Postal Mail of her relatives sent to her was suppressed by the husband who was in a position to do so being a Branch Post Master in the village. When the letters were discovered by the wife and she handed them over to her father (PW1) she was driven out of the house. This cruel conduct of the husband led the wife to commit suicide. The trial court and the High Court were, therefore, perfectly justified on this evidence to hold accused No. 1 guilty of the offence of 'cruelty' under Section 498A. As a result of such cruel treatment the wife was driven to commit suicide.

Thus offence of abetment of committing suicide punishable under Section 306, IPC is clearly made out against accused No. 1 and for that purpose presumption under Section 113 A of the Evidence Act can be raised against him. Section 306, IPC reads thus:

"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."

113A. Presumption as to abetment of suicide by a married woman - When the question is whether the 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, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative or her husband.

Explanation - For the purposes of this section, "cruelty; shall have the same meaning as in section 498A of the Indian Penal Code."

[emphasis applied] Both the Courts below have found the husband guilty of cruel treatment of his wife and as a result the wife committed suicide within seven years of their marriage. On such evidence the presumption which arises under Section 113A of the Evidence Act is that the husband abetted suicide. The word "cruelty" as mentioned in the Explanation below Section 113 A of the Evidence Act has been given the same meaning as contained in the Explanation below Section 498A IPC. On the facts found, 'the wilful' conduct of the husband in forcing the deceased to part with her land which she had received in marriage as "stridhana" and for that purpose concealing her postal mail was so cruel that she was driven to commit suicide. A case of conviction and sentence of accused No. 1 under Section 306, IPC has thus clearly been made out even though his acquittal for commission of the offence of 'dowry death' punishable under Section 304B, IPC is not found liable to be disturbed.

The learned counsel for the accused has argued that in the absence of a charge framed against the accused under Section 306 IPC, the accused cannot be convicted under the said Section.

From the record we find that although a charge specifically under Section 306 IPC was not framed but all facts and ingredients constituting that offence were mentioned in the Statement of Charges framed under section 498A and Section 304B of IPC. The statement of charge framed by the trial courts reads thus:

"That on or about the 22nd day of October, 1989, at your house at Tunikipadu of Gampalagudem Mandal Yedla Krishna Kumari, wife of A-1 of you and daughter-in-law of A2 and A-3 among you, committed suicide by consuming poison, and that you all subjected her to such cruelty and harassment as did drive her to commit suicide, with the object of extracting Ac. 5-00 of land as dowry to A-1 and thereby committed an offence punishable under Section 304-B of the Indian Penal Code and within the cognizance of this Court.

OR ALTERNATIVELY That, prior to the 22nd day of October, 1989; at your house at Tunikipadu, you subjected Yedla Krishna Kumari, wife of A-1 among you and daughter-in-law of A-2 and A-3 among you, to such cruelty and harassment as did drive the said Krishna Kumari to commit suicide, and thereby committed an offence punishable under Section 498-A of the Indian Penal Code and within the cognizance of this Court."

[emphasis applied] Mere omission or defect in framing charge does not disable the Criminal Court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal procedure has ample provisions to meet a situation like the one before us. From the Statement of Charge framed under Section 304B and in the alternative Section 498A, IPC (as quoted above) it is clear that all facts and ingredients for framing charge for offence under Section 306, IPC existed in the case. The mere omission on the part of the trial Judge to mention of Section 306, IPC with 498A, IPC does not preclude the Court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498A of IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 of Cr.P.C. take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence. Section 221 of Cr. P.C. needs reproduction:-

"221. Where it is doubtful what offence has been committed-(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged. In the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (12), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

The provision of sub-section (2) of Section 221 read with sub-section (1) of the said Section can be taken aid of in convicting and sentencing the accused No. 1 of offence of abetment of suicide under Section 306 of IPC along with or instead of Section 498A of IPC.

Section 215 allows criminal court to ignore any error in stating either the offence or the particulars required to be stated in the charge, if the accused was not, in fact, misled by such error or omission in framing the charge and it has not occasioned a failure of justice. See Section 215 of Cr. P.C. which reads:-

"215. Effect of errors - No error in stating, either the offence or the particulars required to be stated in the charge, and no commission to state the offence or those particulars, shall be regarded any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

As provided in Section 215 of Cr.P.C. commission to frame charge under Section 306 IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the trial court for framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306, IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304B which is punishable with minimum sentence of seven years rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A, IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498A, IPC.

It may be mentioned that against confirmation of this conviction by the High Court under section 498A, IPC, the accused No. 1 has not preferred any special leave to appeal to this Court. The facts found proved for his conviction and sentence under Section 498A, IPC, cannot now be questioned by the accused. Our conclusion, therefore, is that same facts and evidence on which accused No. 1 was charged under Section 498A and Section 304B, the accused can be convicted and sentenced under Section 306 IPC. We find no legal or procedural impediment in doing so.

The legislature has by amending the Penal Code and Evidence Act made Penal Law more strident for dealing with and punishing offences against married women. Such

strident laws would have a deterrent effect on the offenders only if they are so stringently implemented by the law courts to achieve the legislative intent. On the facts found and the offence proved to have been committed leading to suicidal death of the wife, imprisonment of two years with fine of Rs. 500 is too light a sentence. For offence under Section 306 IPC the sentence may extend to ten years. In this case the husband is found to have harassed his wife to such an extent as to drive her to commit suicide. Sentence of five years would, in our opinion, be a proper sentence for the crime with the amount of fine increased to Rs. 20,000 to be paid as compensation to the parents of the deceased. On non- payment of fine the accused No. 1 shall suffer further sentence of one year.

We, thus, allow Criminal Appeal No. 1457 of 1995 preferred by the parents of the deceased. We maintain the conviction and sentence of accused No. 1 under Section 498A, IPC. The accused No. 1 is also convicted under Section 306, IPC and sentenced to five years rigorous imprisonment with a fine of Rs. 20,000 to be paid as compensation to the parents of the deceased. In the event of non-payment of fine, accused No. 1 shall suffer imprisonment for a further period of one year. The sentences imposed under Section 498A, IPC and under Section 306, IPC shall run concurrently.

Connected Criminal Appeal Nos. 1458-59 of 1985 preferred by the State against acquittal of accused Nos. 2 & 3 are dismissed.