Satish Shetty vs State Of Karnataka on 3 June, 2016

Equivalent citations: AIR 2016 SC 2689, 2016 (12) SCC 759, 2016 CRI. L. J. 3147, 2016 (3) AJR 203, 2016 (3) AKR 513, 2016 CRILR(SC MAH GUJ) 829, (2016) 3 RECCRIR 373, 2016 CRILR(SC&MP) 829, (2016) 2 GUJ LH 596, (2016) 3 KANT LJ 145, (2016) 3 CRIMES 48, (2016) 3 MAD LJ(CRI) 611, (2017) 1 MARRILJ 397, (2016) 64 OCR 791, (2016) 3 CURCRIR 56, (2016) 3 DLT(CRL) 138, (2016) 2 ALLCRIR 1840, (2016) 3 BOMCR(CRI) 299, (2016) 95 ALLCRIC 585, AIR 2016 SUPREME COURT 2689, AIR 2016 SC (CRIMINAL) 985, (2016) 3 CRILR(RAJ) 829, (2016) 5 SCALE 770, (2016) 2 UC 1318, (2016) 2 ALD(CRL) 247, (2016) 163 ALLINDCAS 109 (SC)

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Bench: Shiva Kirti Singh, Dipak Misra

Crl.A. No.1358 of 2008

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1358 of 2008

Satish Shetty ….Appellant

Versus

State of Karnataka ….Respondent

JUDGMENT

SHIVA KIRTI SINGH, J.

1. This appeal by special leave is directed against judgment and order dated 13.09.2007 passed by a Division Bench of High Court of Karnataka at Bangalore in Criminal Appeal No. 1409 of 2000 preferred by the State against judgment dated 16.09.2000 by First Additional Sessions Judge, D.K. Mangalore in SC No. 150/94 whereby the appellant and both his parents were acquitted for offences punishable under Sections 3, 4 and 6 of the Dowry Prohibition Act and under Sections 498-A and 304-B of the Indian Penal Code (IPC).

Page 1 By the impugned order High Court has reversed the judgment of acquittal in part. It has convicted the appellant, the husband of the victim lady, for the offence under Section 498-A with punishment of rigorous imprisonment (RI) of three years and a fine of Rs.5000/- with a default clause. The appellant has also been convicted for the offence under Section 306 of the IPC with RI for five years and a fine of Rs.10,000/-, again with a default clause. Both the sentences are to run concurrently. If realized, the fine amount is to be paid to PW-6 Gulabi, mother of the deceased, if she is alive.

2. Learned senior counsel Mr. P. Vishwanatha Shetty appearing for the appellant has raised three main contentions to assail the judgment and order under appeal. According to him, the judgment and order of acquittal was not a perverse judgment and required no interference by the High Court. Secondly, it is contended that in absence of any charge framed under Section 306 of IPC by the trial court the High Court should not have convicted the appellant under that Section. Lastly but not the least, is the contention that there is no evidence on record to justify the conviction of the appellant by the High Court for any of the charges.

3. Mr. V. N. Raghupathy learned counsel for the respondent has, on the other hand, strenuously refuted all the aforesaid three submissions and has placed reliance on the relevant materials on Page 2 record as well as the discussions made by the High Court in the impugned order to fully support that judgment and order reversing the acquittal of the appellant to the extent indicated above.

4. Before adverting to specific contentions for deciding the main issue whether the impugned judgment and order requires interference, it will be useful and relevant to take note of the factual matrix of this case. The story of the deceased young lady, aged about 25 years who was forced to commit suicide by the unfortunate situation and circumstances surrounding her life, resembles the tale of so many similar young ladies who end their life due to untold miseries and hardships faced by them within the confines of the four walls of their matrimonial home. All of them enter such home with hope of leading a long and blissful married life but this hope, invariably, does not last long, nor their life. In the present case the victim left behind a son then aged about ten months and she was also mothering a life of twenty weeks in her womb. The deceased Rekha @ Baby was married with the appellant on 5.06.1991 and immediately she began her stay in matrimonial home with her husband and in-laws and a son was also born to them who on the date of her death i.e. 19.11.1993 was aged about ten months. There is no dispute regarding her death and even as per the Unnatural Death Report (UDR) exhibit Ex.P.20, lodged by the appellant with the local police Page 3 station on 19.11.1993 at 9.45 a.m, she died of some poison which she had consumed allegedly because the appellant forbade her from going to her mother's place in the morning hours of 18.11.1993. As

described in the said report, the victim had consumed a poison which was kept for spray in the fields. She had been taken to hospital but expired there at around 8 a.m. As per version of the occurrence given by the appellant, the deceased and he were living a very happy life. He was satisfied with the money and gold given at the time of marriage as dowry and was apparently at a loss as to why the deceased consumed poison.

5. The records have been carefully noticed by the High Court and they reveal that the police/the investigating agency, soon after learning about the occurrence made a request to the Tehsildar (Executive Magistrate), PW-15 to conduct inquest proceedings under Section 174 of Criminal Procedure Code. The High Court has rightly condemned the Tehsildar's action in causing undue delay and holding the inquest two days later on 22.11.1993. It was after the inquest that the mother of the deceased, Gulabi, PW-6 lodged the complaint with the police on 22.11.1993 and on that basis police registered a Criminal Case No. 136/93 for offences under Section 498-A, 304-B of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. After investigation police submitted chargesheet against the husband of the Page 4 deceased and his parents only. Subsequently another relation was summoned as accused no. 4 under Section 319 of CrPC.

6. Dr. M.R. Shetty, PW-8 has proved the postmortem report. He has deposed that he conducted the autopsy on the deceased in the afternoon of 22.11.1993 along with another Doctor and found the following wounds on the dead body:

> 1. Transverse contusion across the lower part of the rt. Thigh 2" above the knee joint 2" in length.
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> 2. Haematoma 6" x 3" on the lower part of the left thigh with abrasion of different sizes on it;
>
> 3. Abrasion on the rt. Lumbar region 2-1/2";
>
> 4. Abrasion on the back of the rt. Thigh 2-1/2";
>
> 5. Multiple small abrasions on the rt. Hand of different sizes; and
>
> 6. Blood strained fluid from the nostrils.

He had found a twenty weeks embryo in the womb of the deceased. He deposed that as per subsequent chemical lab report of the viscera, the death was because of consumption of Organo phosphorous chemical. The Doctor has also deposed that the wounds were ante-mortem caused by hard and blunt object but they did not cause the death. The unnatural death of the victim within seven years of marriage is not in dispute.

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7. The High Court has scrutinized the deposition of mother of the deceased PW-6 and her two younger brothers PW-9 and PW-20 for coming to a finding that at the time of marriage they had to arrange money to meet the demand of the husband of the deceased for payment of dowry in cash and gold. The witnesses on this aspect were found trust-worthy and not indulging into exaggeration or false allegations. The trial court on the other hand went into unnecessary details to discuss this issue on the basis of capacity of the complainant to pay, source of money arranged by her and whether actually money had been paid at the professed place or not. Though there is difference in the amount but nonetheless in the UDR complaint in Ex.P20 the appellant has admitted of taking Rs.25,000/- as dowry. The High Court has rightly held that the trial court should not have gone into further details. The only relevant issue was initial payment of dowry and not its quantum. But this aspect need not be pursued further because the High Court has also, while relying on the evidence of the prosecution that one year after the marriage during her visit to her mother the deceased had informed that the accused were harassing her by making a demand for additional dowry of 20 sovereigns of gold and Rs.1,00,000/- for investment by the appellant in a wine shop, has held that such subsequent demand being Page 6 unrelated to marriage, need not be accepted as demand for dowry and therefore the offence under Section 304 of the IPC is not attracted. In this regard it was noticed that in Section 304 of the IPC as per the explanation, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

8. The High Court has considered the issue whether Section 498-A and 306 of the IPC are attracted or not and after extracting the relevant provisions as well as Section 113A of the Evidence Act, has held the appellant guilty of the offences under Section 498-A and 306 of the IPC. For that the High Court has relied upon relevant materials consisting of oral evidence available on record as well as documentary evidence in the forms of letters. Before discussing whether the High Court has committed any error of facts or law on this issue, it is useful to examine the first contention advanced on behalf of the appellant that the High Court should not have interfered with the acquittal of appellant.

9. As already noticed, on the issue whether the marriage was performed after demanding and accepting dowry, the High Court found the approach of the trial court totally erroneous. The findings were found to be vitiated on account of trial Judge ignoring the glaring facts emerging from deposition of PW-6, 9 and 20 as well as PW 13 Page 7 and 16 and also by ignoring the admission of the accused in the UDR complaint at Ex.P.20.

10. The High Court has further rightly held that the trial Judge failed to look for the relevant documents already available on the record and wrongly drew inference against the prosecution for not producing the statements of PW-6 and other relations of the deceased recorded by Taluka Executive Magistrate under Section 174 CrPC proceedings. Presently it is not disputed that those statements were/are available on record along with the inquest report. It is noted that such erroneous approach of the trial court had strong influence on its judgment rendering it perverse. In fact, had the trial court applied its mind to the scope of Section 174 of the CrPc as explained by this Court in the case of Pedda Narayana and others v. State of Andhra Pradesh1, such gross error could have been avoided because such statements do not have much legal weight as they are beyond the scope of inquest proceedings under Section 174 of CrPC.

11. On the basis of relevant facts the High Court appears to be justified in holding that there is good explanation for the delay in lodging the FIR on 22.11.1993 because PW-15 delayed the inquest proceedings without valid reasons leading to delay in the postmortem examination as well and only on knowledge of the injuries etc. the (1975) 4 SCC 153 = AIR 1975 SC 1252 Page 8 mother of the deceased gathered strength to lodge the FIR. When the deceased died leaving a son of ten months old the mother of the deceased had many other things to worry for, including cremation of the dead body and in such circumstances the High Court was justified in criticizing the trial court for its hyper technical approach in blaming the mother of the deceased for lodging a delayed complaint. It will be useful to remember that delay in lodging the FIR or complaint is not fatal in all cases. The Court must show some sensitivity in cases of present nature where the victim's closest relation - mother is a poor helpless lady. Even a well to do person may suffer a state of mental confusion when struck by such a tragedy. The prosecution in such cases is likely to be delayed further if the deceased has left behind children. The issues relating to their safety and custody often require higher priority. Occurrences of the present nature require lodging of criminal case against persons who are already in the category of relation by virtue of matrimonial ties through the deceased and it is not always easy to take a decision whether to lodge a criminal case against a relation or not. Hence in such cases the factum of delay has to be dealt with sympathetically keeping in mind the mental condition of the close relations of the victim. The trial court miserably failed on this count too.

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12. The evidence of PW-6 mother of the deceased is well supported by PW-7 Pratap, a cousin of the deceased who had visited the deceased during Dushera holidays, a month prior to her death. He found that the deceased was getting continuous ill-treatment by her husband. He has deposed to the extent that the deceased requested PW-7 not to disclose the ill-treatment to her mother because she would get upset. The letters contained in Ex P-7 dated 27.9.1993 and exhibit D-3 dated 28.10.1993 have been discussed by both the Courts below. We are in agreement with the views of the High Court that those letters written respectively by the deceased to her mother and by sister of the deceased to the deceased, do not help the defence at all. The trial court had clearly adopted a perverse approach in appreciating those letters as if they are in favour of the defence. Further, the correct and logical inferences from these documents were rejected by the trial court in paragraph 37 of the judgment by again resorting to adverse inference on the incorrect ground that statements of PW-6 and PW-9 recorded by the Tehsildar at the time of conducting inquest were not produced before the Court. As already noticed earlier, these statements formed part of the inquest report and were available on record.

13. In view of aforesaid discussions we find no merit in the first contention that the judgment and order of the acquittal was not Page 10 perverse or that it required no interference of the High Court. The views of the High Court on this issue are sound and we are in agreement that the judgment of the trial court suffered from such gross errors in approach and appreciation that it could not be saved on the principle that if two views are possible, there should be no interference with a judgment and order of acquittal.

14. So far as the second contention is concerned, the same needs to be noticed only for rejection. To be fair to the learned counsel, he has not dealt on this contention at any length nor has cited any judgment. The High Court on the other hand dealt with the issue of conviction under Section 306 of the IPC in absence of a charge under that head in detail in paragraphs 44 and 45. It has also noticed some judgments of the Karnataka High Court and this Court in paragraph 44. The issue is definitely not res integra in view of judgment of this Court in somewhat similar circumstances in the case of K. Prema S. Rao and another v. Yadla Srinivasa Rao and others 2. In that case the acquittal of the husband of the deceased under 304-B IPC was not reversed but this Court while upholding the conviction of the all the three accused under Section 498-A IPC, further convicted the husband of the victim under Section 306 IPC after discussing issues relating to absence of a charge under Section 306 IPC in a case of (2003) 1 SCC 217 Page 11 suicide when the relevant and material facts are already part of charge under Section 498-A and 304-B of the IPC. That judgment rendered by a Bench of Three Judges in somewhat identical facts, in our view leaves no scope for accepting the second contention on behalf of the appellant.

15. The last contention on behalf of the appellant that there is no evidence to justify the conviction of the appellant for any of the charges, indirectly stands negated by our discussions and findings in respect of the first contention itself. However to consider the legality of the view taken by the High Court we propose to deal with this issue further after taking note of the relevant provisions of law i.e. Sections 498-A and 306 of the IPC as well as Section 113A of the Evidence Act which are extracted below:

> "Section 498-A. 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.
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> Explanation.—For the purpose of this section, 'cruelty' means—
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> (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 Page 12 security or is on account of failure by her or any person related to her to meet such demand." Section 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.

Section 113-A. 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 of her husband.

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

16. On a plain reading of Section 498-A it transpires that if a married woman is subjected to cruelty by the husband or his relative, the offender is liable to be punished with the sentence indicated in the Section. But cruelty can be of different types and therefore what kind of cruelty would constitute offence has been defined under the explanation. As per first definition contained in clause (a) – it means a willful conduct of such a nature which is likely to drive the victim woman to commit suicide or to cause grave injuries to health and life, limb or health (mental or physical). The other definition of cruelty is in Page 13 clause (b) and is attracted when a woman is harassed with a view to coercing her or any of her relation to meet any unlawful demand for any property or valuable security or is on account of failure to meet such demand.

17. In the present case after noticing the injuries on the person of victim which is not at all explained by the appellant husband although in the fateful night he and the deceased slept together in the same room before she consumed poison, the High Court has come to a well considered finding in paragraph 42 of the impugned judgment that the deceased was being harassed both physically and mentally and in direct as well as indirect ways for non compliance with the demand of the accused for Rs.1,00,000/- for investment in his wine business. The High Court found that such harassment falls squarely under clause (b) of the explanation of Section 498-A of the IPC. We find no good reason to take a different view.

18. The High Court after recording the aforesaid finding proceeded to consider whether Section 306 of the IPC is also attracted against the appellant or not. Since the High Court had, on relevant material returned a finding of guilt under Section 498-A of the IPC, it found the circumstances of the case right and proper for resorting to Section 113A of the Evidence Act which permits raising of presumption as to abetment to suicide by a married woman. Such a statutory Page 14 presumption though discretionary, may be presumed by the Court in appropriate cases where the question of abetment of suicide by a woman is under consideration in respect of her husband or any of his relative and if the suicide has been committed within seven years of marriage, provided the husband or such relative had subjected her to cruelty.

19. Since the High Court had recorded a finding against the appellant of causing cruelty to the deceased for his conviction under Section 498-A, all the essential ingredients for raising of presumption under Section 113A of the Evidence Act were clearly made out. But the issue raised before us is whether the High Court was justified in resorting to exercise such a discretion as was available to it under Section 113A or not.

20. That the Court has a discretion in the matter of resorting to presumption is clear from the plain words used in that Section – "the Court may presume" (emphasis supplied). The law on this issue is

also well settled and therefore needs no elaborate discussion but at this stage the relevant case laws cited by learned senior counsel for the appellant need to be taken note of.

21. Reliance has been placed on behalf of appellant on the judgment of this Court in the case of Hans Raj v. State of Haryana3. In this (2004) 12 SCC 257 Page 15 case it was reiterated that Section 113A of the Evidence Act vests a discretion in the Court to raise such a presumption having regard to all the other circumstances of the case. On evidence and facts of that case it was found that the nature of cruelty proved in that case was not such as is likely to drive the women to commit suicide or to cause grievous injury etc. Reliance was also placed upon the case of Gangula Mohan Reddy v. State of Andhra Pradesh4. The facts of that case were entirely different and required interpretation of the term "abetment" as defined under Section 107 of the IPC. In that case the victim was a servant of the accused and the case did not require any examination of inter-dependence and inter-connectivity of Section 498A and 306 of the IPC or of Section 113A of the Evidence Act.

22. Reliance was also placed upon case of M. Mohan v. State5. The Court followed the general law with regard to ingredients of abetment in the context of Section 306 of the IPC and quashed the prosecution of some of the relations of the husband on the peculiar facts of the case which disclosed that there was no allegation of any dowry demand or instigation against those appellants although they were relatives of the husband. In the case of Mangat Ram v. State of Haryana6, this Court acquitted the appellant who was husband of the deceased for the offences under Sections 498-A and 306 of the IPC on (2010) 1 SCC 750 (2011) 3 SCC 626 (2014) 12 SCC 595 Page 16 the ground that the prosecution had not succeeded in establishing the offences. The accused had merely left the deceased wife in the matrimonial home in the company of his parents while proceeding to report for duty as a constable to another place. This Court held that such action would not amount to abetment to commit suicide.

23. The aforesaid case laws do not lay down any proposition of law which may warrant interference with the views of the High Court in the impugned judgment. In the case of Narayanamurthy v. State of Karnataka7 the law was reiterated that if on appreciation of evidence two views are possible then the appellate court should not interfere with the judgment of acquittal in favour of the accused. There is no quarrel with the said proposition. The High Court was aware of such legal principle and keeping the same in mind, it has discussed the evidence for coming to a conclusion that the findings of the trial court leading to acquittal were fully unwarranted and it is not a case where two views are possible. Hence the High Court proceeded to convict the appellant for the offences under Sections 498-A and 306 of the IPC.

24. Once the prosecution succeeds in establishing the component of cruelty leading to conviction under Section 498A, in our view only in a rare case, the Court can refuse to invoke the presumption of abetment, if other requirements of Section 113A of the Evidence Act (2008) 16 SCC 512 Page 17 stand satisfied. This proposition is amply supported by the view taken by the three-Judge Bench of this Court in the case of K. Prema S. Rao and Anr. (Supra). Further, the High Court has given good reasons on the basis of facts brought on record through evidence for exercising the discretion of invoking the presumption under Section 113A of the Evidence Act and thereafter it has discussed in detail the explanations given by the appellant in the initial version by way of Unnatural Death

Report as well as the later explanations. The High Court found the later explanations unacceptable and the initial explanation that the deceased committed suicide because she was not permitted to go to her mother's place does not inspire confidence and has rightly been rejected by the High Court. Only for such a trivial matter, a hale and hearty young woman having a ten months old son and a pregnancy of twenty weeks is not at all expected to take her life. The appellant not only gave absolutely no explanation for the injuries on the person of the deceased, rather he chose to conceal them by keeping mum. Clearly the appellant failed to rebut the presumptions raised against him under Section 113A of the Evidence Act. Having gone through the relevant facts and the reasonings of the trial court we are not persuaded to take a different view.

25. In the result the appeal must fail. We order accordingly. As a consequence, the bail bonds of the appellant are cancelled. He be Page 18 taken into custody forthwith to serve out the remaining part of the sentence as per law.

.....J. [DIPAK MISRA] .....J. [SHIVA KIRTI SINGH]
New Delhi.

June 03, 2016.

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