# Reema Aggarwal vs Anupam And Ors on 8 January, 2004

## Author: Arijit Pasayat

## Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  25 of 2004

PETITIONER:
Reema Aggarwal

RESPONDENT:
Anupam and Ors.

DATE OF JUDGMENT: 08/01/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Crl.) No. 3169 of 2003 ARIJIT PASAYAT, J.

Leave granted.

Parties to a marriage tying nuptial knot are supposed to bring about the union of souls. It creates a new relationship of love, affection, care and concern between the husband and wife. According to Hindu Vedic philosophy it is sanskar a sacrament; one of the sixteen important sacraments essential to be taken during one's lifetime. There may be physical union as a result of marriage for procreation to perpetuate the lineal progeny for ensuring spiritual salvation and performance of religious rites, but what is essentially contemplated is union of two souls. Marriage is considered to be a junction of three important duties i.e. social, religious and spiritual. A question of intricate complexity arises in this appeal where factual scenario has very little role to play.

Filtering out unnecessary details, the factual position is as follows:

> On 13.7.1998 information was received from Tagore Hospital, Jalandhar that Reema Aggarwal the appellant had been admitted on having consumed poisonous substance. On reaching hospital, ASI Charanjit Singh obtained opinion of the doctor regarding her fitness to make a statement. Appellant stated before Investigating Officer that she was married to Anupam the respondent no.1 on 25.1.1998 and after the marriage, she was harassed by her husband-respondent no.1, mother-in-law, father-in-law and brother-in-law (respondents 2, 3 and 4) respectively for not bringing sufficient and more dowry. It was also disclosed that it was the second marriage of both the appellant and respondent no.1. On the date of incident at about 5.00 p.m. all the four

accused persons forced her to take something to put an end her life and forcibly put some acidic substance in her mouth. She started vomiting and was taken to the hospital in an unconscious state. The first information report was registered accordingly and on completion of investigation the charge sheet was placed and charges were framed for offences punishable under Sections 307 and 498-A of the Indian Penal Code, 1860 (for short the 'IPC'). Accused persons pleaded innocence. Seven witnesses were examined to further the prosecution version.

Before the trial Court the accused persons put the plea that charge under Section 498-A was thoroughly misconceived as both Sections 304-B and 498-A IPC pre-suppose valid marriage of the alleged victim-woman with the offender- husband. It was required to be shown that the victim-woman was the legally married wife of the accused. Since it was admitted that the appellant had married during the lifetime of the wife of respondent no.1, what happened to his first marriage remained a mystery. Prosecution has failed to establish that it stood dissolved legally. Prosecution having failed to bring any material record in that regard, Section 498-A had no application. Reliance was placed on a decision of the Madhya Pradesh High Court in Ramnarayan & Ors. v. State of M.P. (1998 (3) Crimes 147 M.P.) The Trial Court held that the accusations, so far as Section 307 is concerned, were not established and in view of the legal position highlighted by the accused persons vis-`-vis Section 498-A the charge in that regard was also not established. Accordingly the accused persons were acquitted.

The State of Punjab filed an application for grant of leave to appeal which was disposed of by the Division Bench of the Punjab and Haryana High Court with the following order:

"We have heard the learned counsel for the appellant and with his assistance, have gone through the finding recorded by the learned trial Court. In our considered opinion, the finding recorded by the learned trial Court cannot be held to be erroneous or that there was no perverse appreciation of evidence. Leave to appeal declined. Appeal is also dismissed."

In view of the dismissal of the State's application for grant of leave, criminal revision application which was filed by the appellant before the High Court was dismissed with the following orders:-

"Vide our separate order of even date in Crl. Misc. No. 580 MA of 2002, we have not granted permission to the State to file the appeal. In these circumstances, there is no merit in this criminal revision which is hereby dismissed."

In support of the appeal, learned counsel for the appellant submitted that the High Court was not justified to dispose of the application for grant of leave as well as the revision filed by the appellant by such cryptic orders. Important questions of law are involved. In fact, various High Courts have taken view different from the one taken by the Madhya Pradesh High Court in Vungarala

Yedukondalu v. State of Andhra Pradesh (1988 Crl.L.J. 1538 (DB)) and State of Karnataka v. Shivaraj (2000 Crl.L.J 2741). The Andhra Pradesh High Court and the Karnataka High Court have taken different view. According to him the expressions "husband" and "woman" appearing in Section 498-A IPC are to be read in a manner so as to give full effect to the purpose for which Section 498-A was brought into the statute. The restricted meaning as given by the Madhya Pradesh High Court in Ramnarayan case (supra) does not reflect the correct position of law. On the other hand, contrary view expressed by the Karnataka and Andhra Pradesh High Courts reflect the correct view.

In response, learned counsel for the respondents submitted that to constitute a marriage in the eye of law it has first to be established that the same was a valid marriage. Strong reliance was placed on Bhaurao Shankar Lokhande and Anr. v. The State of Maharashtra and Anr. (AIR 1965 SC 1564) in that context. Reference was also made to Sections 5(i), 11 and 16 of Hindu Marriage Act, 1955 (for short the 'Marriage Act') to contend that the stipulations of conditions of valid marriage, the circumstances in which the marriage becomes void and the protection given to children of void and voidable marriage respectively makes the position clear that wherever the legislature wanted to provide for contingencies flowing from void or voidable marriages, it has specifically done so. It is latently evident from Section 16 of the Marriage Act. There is no such indication in Section 498-A IPC. The language used is "husband or relative of the husband". Marriage is a legal union of one man and woman as husband and wife and cannot extend to a woman whose marriage is void and not a valid marriage in the eye of law.

The marriages contracted between Hindus are now statutorily made monogamous. A sanctity has been attributed to the first marriage as being that which was contracted from a sense of duty and not merely for personal gratification. When the fact of celebration of marriage is established it will be presumed in the absence of evidence to the contrary that all the rites and ceremonies to constitute a valid marriage have been gone through. As was said as long as 1869 "when once you get to this, namely, that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law". (See Inderun Valungypooly v. Ramaswamy (1869 (13) MIA 141.) So also where a man and woman have been proved to have lived together as husband and wife, the law will presume, until contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. (See Sastry Velaider v. Sembicutty (1881 (6) AC

364) following De Thoren v. Attorney General (1876 (1) AC

686) and Piers v. Piers (L.R.(2) H.L.C. 331). Where a marriage is accepted as valid by relations, friends and others for a long time it cannot be declared as invalid. In Lokhande's case (supra), it was observed by this Court "The bare fact that man and woman live as husband and wife it does not at any rate normally give them the status of husband and wife even though they may hold themselves before the society as husband and wife and the society treats them as husband and wife". These observations were cited with approval in Surjit Kaur v. Garja Singh and Ors. (AIR 1994 SC

135). At first blush, it would seem that these observations run counter to the long catena of decisions noted above. But on closer examination of the facts of those cases it is clear that this Court did not

differ from the views expressed in the earlier cases. In Lokhande's case (supra), this Court was dealing with a case of prosecution for bigamy. The prosecution had contended that second marriage was gandharva form of marriage and no ceremonies were necessary and, therefore, did not allege or prove that any customary ceremonies were performed. In that background, it was held that even in the case of gandharva marriages, ceremonies were required to be performed. To constitute bigamy under Section 494 IPC, the second marriage had to be a valid marriage duly solemnized and as it was not so solemnized it was not a marriage at all in the eye of law and was therefore invalid. The essential ingredient constituting the offence of Bigamy is the "marrying" again during the lifetime of husband or wife in contrast to the ingredients of Section 498A which, among other things, envisage subjecting the woman concerned to cruelty. The thrust is mainly "marrying" in Section 494 IPC as against subjecting of the woman to cruelty in Section 498A. Likewise, the thrust of the offence under Section 304B is also the "Dowry Death". Consequently, the evil sought to be curbed are distinct and separate from the persons committing the offending acts and there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married but also any one who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabitate and exercise authority as such husband over another woman. As the prosecution had set up a plea of gandharva marriage and had failed to prove the performance of ceremonies, it was not open to fall back upon the presumption of a valid marriage. It was further held that there was no such presumption if the man was already married. In Surjit Singh's case (supra) the stand was that the marriage was in Karewa form. This Court held that under the custom of Karewa marriage, the widow could marry the brother or a relation of the husband. But in that case the man was a stranger. Further even under that form of marriage certain ceremonies were required to be performed which were not proved. Dealing with the contention relating to presumption, reference was made to Lokhande's case (supra). As the parties had set up a particular form of marriage which turned out to be invalid due to absence of proof of having undergone the necessary ceremonies related to such form of marriage, the presumption of long cohabitation could not be invoked.

The presumption may not be available in a case, for example, where the man was already married or there was any insurmountable obstacle to the marriage, but presumption arises if there is strong evidence by documents and conduct. Above position has been highlighted in Mayne's Hindu Law and Usage.

The question as to who would be covered by the expression 'husband' for attracting Section 498A does present problems. Etymologically, in terms of the definition of "husband" and "marriage" as given in the various Law Lexicons and dictionaries the existence of a valid marriage may appear to be a sine qua non for applying a penal provision. In Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. (AIR 1988 SC 644) a woman claimed maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). This Court applied the provision of the Marriage Act and pointed out that same was a law which held the field after 1955, when it was enacted and Section 5 lays down that for a lawful marriage the necessary condition that neither party should have a spouse living at the time of the marriage is essential and marriage in contravention of this condition therefore is null and void. The concept of marriage to constitute the relationship of 'husband' and 'wife' may require strict interpretation where claims for civil rights,

right to property etc. may follow or flow and a liberal approach and different perception cannot be an anatheme when the question of curbing a social evil is concerned.

The question of origin of dowry or dos has been the subject of study by theoreticians. Mayne says that it was a contribution by the wife's family, or by the wife herself, intended to assist the husband in bearing the expenses of the conjugal household (Mayne on "Early History of Institution" page 319). While dos or dowry previously belonged to husband, his right over it being unrestricted, all the property of the wife not included in the dowry was called her "paraphra" and was her absolute property over which her husband had no control. (See Banerjee on 'Marriage and Stridhan' 345) In Pratibha Rani v. Suraj Kumar and Anr. (AIR 1985 SC 628) after tracing out the history of stridhan it was held that wife is the absolute owner of such property under Section 27 of the Marriage Act. Property presented to the husband and wife at or about the time of marriage belongs to them jointly.

The Dowry Prohibition Act, 1961 (in short the 'Dowry Act') was introduced to combat the ever-increasing menace of dowry. The avowed object is prohibition on giving and taking of dowry. Section 2 defines "dowry". Section 4 provides the penalty for demanding "dowry", while Section 5 is a significant provision making agreement for giving or taking dowry to be void. Section 6 is another provision which reflects statutory concern for prevention of dowry, be it taking or giving. It is provided therein that pending transfer of the dowry, the person who received the dowry holds it in trust for benefit of the woman. Amendment to Section 2 by Amendment Act 43 of 1986 has made the provision clear and demand made after the marriage is a part of dowry, in view of addition of words "at or before or after the marriage". (See State of H.P. v. Nikku Ram (AIR 1996 SC

67).

The definition of the term 'dowry' under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become 'dowry' punishable under the Dowry Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage."

Section 4 of the Dowry Act aims at discouraging the very "demand" of "dowry" as a 'consideration for the marriage' between the parties thereto and lays down that if any person after the commencement of the Act, "demands", directly or indirectly, from the parents or guardians of a 'bride' or 'bridegroom', as the case may be, any 'dowry' he shall be punishable with imprisonment or with fine or within both. Thus, it would be seen that Section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under Section 3 of the Act punishable with higher imprisonment and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

The definition of the expression 'dowry' contained in Section 2 of the Dowry Act cannot be confined merely to be 'demand' of money, property or valuable security' made at or after the performance of

marriage. The legislature has in its wisdom while providing for the definition of 'dowry' emphasized that any money, property or valuable security given, as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognized claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression "dowry" under the Dowry Act has to be interpreted in the sense which the statute wishes to attribute to it. The definition given in the statute is the determinative factor. The Dowry Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Dowry Act.

Aryan Hindus recognised 8 forms of marriage, out of which four were approved, namely, Brahma, Daiva, Arsha and Prajapatya. The dis-approved forms of marriages were Gandharva, Asura, Rakshasa and Paisacha. In the Brahma form of marriage, some amounts had to be spent by father/guardian, as the case may be, to go ultimately to the spouses. The origin of dowry may be traced to this amount either in cash or kind.

The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature

'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.

In Chief Justice of A.P. v. L.V.A. Dixitulu (1979 (2) SCC 34), this Court observed:

> "The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke).
>
> Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.
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> In Kehar Singh v. State (Delhi Admn.) (AIR 1988 SC 1883), this Court held:

"....But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as out paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

In District Mining Officer v. Tata Iron & Steel Co. (JT 2001 (6) SC 183), this Court stated:

"The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of thing, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for the words chosen to communicate such indefinite referents are bound to be in many cases, lacking in charity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed".

The suppression of mischief rule made immortal in Heydon's case (3 Co Rep 7a 76 ER 637) can be pressed into service. With a view to suppress the mischief which would have surfaced had the literal rule been allowed to cover the field, the Heydon's Rule has been applied by this Court in a number of cases, e.g. Bengal Immunity Co. Ltd., v. State of Bihar and Ors. (AIR 1955 SC 661), Goodyear India Ltd. v. State of Haryana and Anr. (AIR 1990 SC 781), P.E.K. Kalliani Amma and Ors. v. K. Devi and Ors. (AIR 1996 SC 1963) and Ameer Trading Corporation Ltd., v. Shapporji Data Processing Ltd. (2003 (8) Supreme 634).

The judgments of High Courts taking a view contrary to the one expressed above, cannot be considered to lay down the correct position of law.

In Reserve Bank of India etc. etc. v. Peerless General Finance and Investment Co. Ltd. and others etc. etc. (1987 (1) SCC 424) while dealing with the question of interpretation of a statute, this Court observed:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statue is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

In Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155 (CA), Lord Denning, advised a purposive approach to the interpretation of a word used in a statute and observed:

> "The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.....A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in this texture of it, they would have straightened it out? He must then do so as they would have doe. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(underlined for emphasis) These aspects were highlighted by this Court in S. Gopal Reddy v. State of A.P. (1996 (4) SCC 596).

Whether the offences are made out is a matter of trial. The High Court was not justified in summarily rejecting the application for grant of leave. It has a duty to indicate reasons when it refuses to grant leave. Any casual or summary disposal would not be proper. (See State of Punjab v. Bhag Singh (2003 (8) Supreme 611). In the circumstances, we set aside the impugned order of the High Court and remit the matter back to the High Court for hearing the matter on merits as

according to us points involved require adjudication by the High Court. The appeal is allowed to the extent indicated.