

## **The State Of Andhra Pradesh vs Raj Gopal Asawa And Anr on 17 March, 2004**

**Equivalent citations: AIR 2004 SUPREME COURT 1933, 2004 (4) SCC 470, 2004 AIR SCW 1566, 2004 CRILR(SC MAH GUJ) 403, (2004) 3 JT 560 (SC), 2004 (3) SCALE 339, 2004 SCC(CRI) 1306, 2004 (2) SLT 793, 2004 CRI(AP)PR(SC) 309, 2004 ALL MR(CRI) 1469, 2004 CALCRILR 651, (2004) 18 ALLINDCAS 590 (SC), 2004 (3) ACE 323, (2004) 1 JCJR 127.2 (SC), 2004 CRILR(SC&MP) 403, (2004) 2 KHCACJ 481 (SC), (2004) 1 CGLJ 426, (2004) 1 DMC 586, (2004) 1 HINDULR 676, (2004) MATLR 333, (2004) 2 SUPREME 478, (2004) 2 ALLCRIR 1466, (2004) 3 SCALE 339, (2004) 2 RECCRIR 330, (2004) 2 CURCRIR 72, (2004) 2 BOMCR(CRI) 183, (2004) 49 ALLCRIC 414, (2004) 2 BLJ 643, (2004) 2 ALLCRILR 841, (2004) 2 CRIMES 9, (2004) SC CR R 905, (2004) 28 OCR 21, (2004) 20 INDLD 169, (2004) 3 CHANDCRIC 108, 2004 (1) ANDHLT(CRI) 363 SC, 2004 (1) ALD(CRL) 642, AIRONLINE 2004 SC 787**

**Author: Arijit Pasayat**

**Bench: Doraiswamy Raju, Arijit Pasayat**

CASE NO. :

Appeal (crl.) 384 of 1998

PETITIONER:

The State of Andhra Pradesh

RESPONDENT:

Raj Gopal Asawa and Anr.

DATE OF JUDGMENT: 17/03/2004

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

**J U D G M E N T ARIJIT PASAYAT, J.**

The State of Andhra Pradesh has questioned legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court holding respondents to be not guilty of the alleged offences for which the Trial Court had convicted them i.e. offences punishable under Section 304B and Section 498A of the Indian Penal Code 1860 (for short 'the IPC'). Three persons faced trial relating to the alleged suicidal death of one Mangala (hereinafter referred to as 'the deceased'). A-3 was her

husband, while A-1 and A-2 were her brother-in-law and mother-in-law respectively. During the pendency of the appeal before the High Court, A-2 expired and the appeal was held to be abated so far she was concerned.

Accusations which led to the trial were as follows:

The deceased and A-3 were married on 6.7.1989. Admittedly, the accused committed suicide at about 11.30 a.m. on the date of occurrence i.e. 2.4.1990. The accused persons took her to the hospital where she was declared to be dead. The Inspector of Police sent a complaint to the SHO to register a case. FIR was registered and investigation was undertaken. On completion of investigation, charge sheet was placed and the accused persons faced trial. They pleaded innocence. To further the prosecution version 10 witnesses were examined while to substantiate its plea of innocence, accused persons examined 12 witnesses. The Trial Court found that the evidence of PWs 2, 3, 4 and 6 about the demand of dowry made by A-1 and A-2 was cogent and credible. A-3 was held guilty as he extended tacit support, albeit indirectly. Placing reliance on the evidence of PWs 2, 3, 4 and 6 it was held that the demand of dowry has been clearly established. Though it was noticed that there was no direct evidence of A-3, the husband making any demand of dowry, his silence was construed to be an act of endorsing the demand and he was, as noted above, held guilty.

In the appeal before the High Court the primary stand taken was that there was no evidence to show about any agreement or demand for payment of dowry before the marriage. Even if any subsequent demand was made as alleged, that cannot bring in application of Section 304B IPC. It was further submitted that no grievance has been ever made before DW-1, the eldest member of the family of the accused persons about the alleged demand. It was the case of PWs 2, 3, 4 and 6 that any demand was made before the marriage. The High Court by the impugned judgment held that on the grounds urged by the accused persons, conviction cannot be maintained. With reference to a decision of the Andhra Pradesh High Court in Ayyala Rambabu v. State of Andhra Pradesh (1993 (1) ALT (CrL.) 73) it was held that to constitute "dowry", the demand should be made directly or indirectly, either at the time of marriage, or before the marriage or at any time after the marriage in connection with the marriage of the parties. If there was no agreement between the parties to give or take any property or valuable security or where the property or valuable security has been given or taken but thereafter further amounts are demanded after the marriage, such demands will not fall within the meaning of dowry. So far as A-3 is concerned, it was held that there was no evidence of his having ever demanded dowry.

Mr. G. Prabhakar, learned counsel for the State submitted that the legal position has not been properly appreciated by the High Court. The view taken that subsequent demand does not constitute dowry is clearly untenable. Further, the conclusion that the demand of dowry has not been established merely because no grievance was

made before the father-in-law (DW-1) cannot be a ground to discard the credible evidence of PWs 2, 3, 4 and 6.

In response, learned counsel for the accused- respondents submitted that the view taken by the High Court both on the interpretation of the term "dowry" and the factual aspects is correct. Further in order to attract application of Section 304B, there must be a proximity link of the demand with the alleged suicide. In the absence of any evidence in that regard, the conviction has been rightly set aside. Further, there being no demand of any dowry by the respondent (A-3), the judgment of the High Court so far as he is concerned, does not suffer from any infirmity.

Sections 304B and Section 498A read as follows:

"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 purpose of this sub- section 'dowry' shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 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."

"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.

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."

The term "dowry" has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') as under:-

"Section 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 any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr 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 in Section 30 of the Indian Penal Code (45 of 1860)."

Explanation to Section 304-B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is : what is the periphery of the dowry as defined therein ? The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given"

occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in Pawan Kumar and Ors. v. State of Haryana (1998 (3) SCC 309). The offence alleged against the respondents is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and

object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

"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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives. (3) Such cruelty or harassment was for, or in connection with any demand for dowry. (4) Such cruelty or harassment was soon before her death.

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The

expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

The above position was highlighted in *Hira Lal and Ors. v. State (Govt. of NCT), Delhi* (2003(8) SCC 80) and in *Vidhya Devi and Anr. v. State of Haryana* (JT 2004 (1) 609).

Their accusations have been clearly established so far as A-1 is concerned. The evidence of PWs 2, 3, 4 and 6 are clear, cogent and trustworthy. They have categorically spoken about the demand as made by A-1 and A-2. Therefore, the High Court was not justified in holding that no demand was made. Learned counsel for the accused-respondent submitted that there is no definite evidence about demand soon before the death. In view of the fact that the death occurred within the very few months of the marriage, and the evidence of PWs 2, 3, 4 and 6 that shortly before the deceased committed suicide, demand of dowry was made, the plea is untenable. The accusations clearly stand established so far as A-1, respondent no.1 is concerned. So far as accused A-3 is concerned, there is no evidence that he ever made any demand of dowry. The inference that he had extended tacit approval for the demand is based on mere surmises and conjectures without any material to substantiate it. Therefore, the acquittal so far he is concerned, does not call for any interference, though for reasons different from those indicated by the High Court.

In the ultimate result the appeal is allowed so far respondent no.1 - A-1 is concerned while it is dismissed so far as respondent no.2 - A-3 is concerned. Custodial sentence of 7 years would meet the end of justice for respondent no.1 - A-1. He shall surrender to custody to serve remainder of sentence. Bail bonds of respondent no.2 - A-3 be cancelled.

The appeal is allowed to the extent indicated.