

Kaliyaperumal And Anr vs State Of Tamil Nadu on 27 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 3828, 2004 (9) SCC 157, 2003 AIR SCW 4387, 2003 (5) SLT 11, 2004 SCC(CRI) 1417, 2003 (6) SCALE 707, 2003 CRIAPPR(SC) 497, 2003 (7) ACE 737, 2003 CALCRILR 1016, (2003) 7 JT 392 (SC), 2003 (9) SRJ 123, (2003) 10 ALLINDCAS 60 (SC), (2003) MAD LJ(CRI) 732, 2003 ALL MR(CRI) 2398, (2004) 2 MADLW(CRI) 617, 2004 (1) UJ (SC) 3, 2003 (2) BLJR 1851, (2003) 2 HINDULR 369, (2003) 47 ALLCRIC 839, (2003) 4 ALLCRILR 256, (2003) 2 UC 1365, 2003 CHANDLR(CIV&CRI) 607, (2003) 10 INDLD 452, (2003) 3 CRIMES 374, (2003) 26 OCR 407, (2003) 3 RAJ CRI C 733, (2003) 4 RECCRIR 226, (2003) 3 CURCRIR 168, (2003) 6 SUPREME 101, (2003) 3 ALLCRIR 2858, (2003) 6 SCALE 707, (2004) 1 GCD 119 (SC), 2003 (2) ANDHLT(CRI) 337 SC, 2003 (2) ALD(CRL) 682, (2003) 2 ANDHLT(CRI) 337

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Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO. :

Appeal (crl.) 1358 of 2002

PETITIONER:

Kaliyaperumal and Anr.

RESPONDENT:

Vs.

State of Tamil Nadu

DATE OF JUDGMENT: 27/08/2003

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

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

The appellants who were found guilty of offences punishable under Section 304B and Section 498A of the Indian Penal Code, 1860 (for short 'IPC') by the Assistant Sessions Judge, Nagapattinam,

unsuccessfully challenged the conviction before the Madras High Court. By the impugned judgment the High Court only reduced the sentence from nine years to seven years for the offence punishable under Section 304B IPC but confirmed the sentence five years as imposed in respect of offences punishable under Section 498A, on the allegation that Devasena (hereinafter referred to as 'the deceased') committed suicide because of the cruelty and tortures perpetuated by the appellants who were her father-in-law and mother-in-law respectively along with husband Ashok Kumar (since acquitted).

Synoptical resumption of factual position is as follows:

The marriage between the deceased and Ashok Kumar was solemnized on 27.1.1989. At the time of the marriage, it was a condition stipulated by the accused persons that along with other articles, 15 sovereigns of jewels and a cash of Rs.10,000/- was to be paid. Though the parents of the deceased (PWs 3 and 4) agreed to meet the demands, they could only arrange 12 sovereigns of jewels and cash of Rs.7,000/- and gave it to the accused persons at the time of marriage. They agreed to give the balance as early as practicable. Ashok Kumar was working abroad. Whenever he left India, he used to take his wife and leave her with her parents i.e. PWs 3 and 4. Since the balance jewellery and cash were not given as agreed, the accused persons continued to make demand therefor. Deceased was insulted, humiliated and tortured. When they became unbearable, the deceased came out of the matrimonial home. The appellant no.1 Kaliyaperumal took her back and beat her with chappel in a public street. This was witnessed by PW-5. On hearing about the incident, PWs. 3 and 4 went to the house of appellant no.1. Here again they were insulted and abused by appellant no.1. On 9.12.1992, PW.3 received the information that their daughter (deceased) had committed suicide. Both PWs. 3 and 4 came to the house of appellant no.1. At that time the village Administrative Officer (PW.1) was present. On the basis of the statement given by PW.3, Ex.P1 was prepared by PW1 and sent to the police station. PW.9 received the report and a case was registered. Intimation was sent to the RDO to conduct inquest. He came to the spot and obtained statements from the accused-appellants, parents of the deceased and other witnesses. Thereafter he sent Ex.P8 report to PW.11 D.S.P. for further action. The enquiry of RDO revealed that the death was due to dowry torture. PW.11 took up further investigation. On completion of investigation, charge sheet was filed. During trial, thirteen witnesses were examined. Accused person pleaded false implication. As noted above, the appellants were convicted while the husband of the deceased was acquitted. The conviction and sentences imposed were challenged before the Madras High Court. By the impugned judgment, as noted above, the conviction was maintained but the sentence was reduced in respect of offence under Section 304B.

In support of the appeal, learned counsel for the appellants submitted that Section 304B has no application because there was no evidence to show that soon before deceased committed suicide, there was any cruelty or torture. According to him Section 113B of the Indian Evidence Act, 1872 (for short 'Evidence Act') has no

application because the prosecution has failed to prove that "soon before her death" the victim was subjected to such cruelty or harassed in action with demand for dowry. It was also submitted that both the Trial Court and the High Court have relied on inadmissible evidence. The RDO who submitted the report was not examined and therefore, letters claimed to have been written by the husband of the deceased accused Ashok Kumar could not have considered. The RDO was not examined and PW12 an Assistant in the office was examined to show that the report was given by the RDO. The evidence of PWs 3 and 4 were attacked on the ground of exaggerations. It was submitted that on the selfsame evidence accused Ashok Kumar the husband was acquitted, there is no reason for convicting the present appellants. In response, learned counsel for the State has submitted that the High Court has analysed the evidence minutely and has come to the conclusion that the prosecution has been able to bring home the accusations against the accused persons. Section 304B IPC deals with dowry death which reads as follows:

"304B. 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."

The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B IPC and Section 113B 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 113B reads as follows:-

"113B: 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 113B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304B IPC and the wording in the presumptive Section 113B 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 113B 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 304B 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 113B of the Evidence Act and Section 304B 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 113B of the Evidence Act and Section 304B 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 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B 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.

Further question is whether a case under Section 498A has been made out, even if accusations under Section 304B fail. Section 498A reads as follows:

"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."

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act have been inserted in the respective statutes by Criminal Law

(Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" 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)."

As was observed by this Court in Satvir Singh and Ors. vs. State of Punjab and Anr. (2001 (8) SCC 633), "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is causedor occurs otherwise than under normal circumstances" as expressed in Section 304B IPC. Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

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

It may be noted that though no charge was framed under Section 306 IPC that is inconsequential in view of what has been stated by a three-judge Bench of this Court in K. Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors. (2003 (1) SCC 217).

When the factual scenario is considered in the background of the aforesaid principles the inevitable conclusion is that the appellant- Kaliyaperumal has been rightly convicted for offence punishable under Section 304B and Section 498A. As the High Court has awarded the minimum punishment prescribed no interference with the sentences is called for. So far as appellant no.2 Muthulakshmi is concerned, there is inadequacy of material to attract culpability under Section 304B. But Section 498A IPC is clearly attracted to her case. Therefore, the appeal is allowed so far as her conviction under Section 304B IPC is concerned, but stands dismissed so far as it relates to offence punishable under Section 498A IPC.

The appeal is allowed to the extent indicated above so far as accused Muthulakshmi is concerned, but fails so far as accused-appellant Kaliyaperumal is concerned.