

Pawan Kumar & Ors vs State Of Haryana on 9 February, 1998

Equivalent citations: (1998) 1 ANDHLT(CRI) 245, AIR 1998 SUPREME COURT 958, 1998 (3) SCC 309, 1998 AIR SCW 721, (1998) 1 JT 565 (SC), 1998 CRILR(SC MAH GUJ) 216, 1998 CRILR(SC&MP) 216, 1998 (1) SCALE 486, 1998 CRIAPPR(SC) 112, 1998 CALCRILR 190, 1998 SCC(CRI) 740, 1998 (2) BLJR 1002, 1998 BLJR 2 1002, 1998 (2) ADSC 1, (1998) 1 SCR 746 (SC), 1998 (1) JT 565, (1997) 21 ALLCRIR 508, (1999) CRILT 191, (1998) 1 CRIMES 164, (1998) 1 SUPREME 505, (1998) 2 MADLW(CRI) 427, (1998) MAD LJ(CRI) 361, (1998) MATLR 318, (1998) 1 RAJ LW 151, (1998) 3 SCJ 480, (1998) 36 ALLCRIC 480, (1998) 1 ALLCRILR 699, 1998 CHANDLR(CIV&CRI) 51, (1998) 1 CURCRIR 265, (1998) 1 DMC 165, (1998) 1 EASTCRIC 833, (1998) 1 MARRILJ 557, (1998) 1 RECCRIR 758, (1998) 1 SCALE 486, 1998 (1) ANDHLT(CRI) 245 SC

Author: A.P.Misra

Bench: Chief Justice, A.P. Misra

PETITIONER:

PAWAN KUMAR & ORS.

Vs.

RESPONDENT:

STATE OF HARYANA

DATE OF JUDGMENT:

09/02/1998

BENCH:

CJI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

THE 29TH DAY OF FEBRUARY, 1998 Present :

Hon'ble the Chief Justice Hon'ble Mr. Justice A.P.Misra U.R.Lalit, Sr. Adv., Manoj Swarup and Sudhir Walia, Advs. with him for the appellants.

Prem Malhotre and Altaf Hussain, Advs. for the Respondent J U D G M E N T The following Judgment of the Court was delivered:

A.P.MISRA, J.

For more than a century, inspite of tall words of respect for women, there has been an onslaught on their liberties through 'bride burning' and 'dowry deaths'. This has caused anxiety to the legislators, judiciary and law enforcing agencies, who have attempted to resurrect them from this social choke. There have been series of legislations in this regard, without much effect. This led to the passing of Dowry Prohibition Act in 1961. Inspite of this, large number of 'brides burning' and dowry deaths continued. To meet this, stringent measures were brought in the Indian Penal Code and the Evidence Act through amendments. It seems, sections of society are still boldly pursuing this chronic action to fulfil their greedy desire. Inspite of stringent legislations, such persons are still indulging in these unlawful activities, not because of any shortcomings in law but under the protective principle of criminal jurisprudence of benefit of doubt. Often, innocent persons are also trapped or brought in with ulterior motives. This places an arduous duty on the Court to separate such individuals from the offenders. Hence the Courts have to deal such cases with circumvention, sift through the evidence with caution, scrutinise the circumstances with utmost care. The present matter is one such where similar questions have been raised, including question of interpretation of the stringent law.

The three appellants were convicted for offence under Sections 306, 498-A and 304-B IPC. Appellant No. 1 is the deceased's husband, No. 2 the father-in-law, and No, 3 the mother-in-law respectively. The trial court convicted and sentenced appellant No.1 for offence under section 304-B for 10 years and a fine Rs. 500/-, under section 306 for 7 years and a fine of Rs. 200/- and under section 498-A for 2 years and a fine of Rs. 200/-. Appellant Nos. 2 and 3 were convicted and sentenced under section 304-B for 7 years with a fine of Rs. 500/-, under section 306 for 7 years with a fine of Rs. 200/- and under section 498-A IPC for 2 years with a fine of Rs. 200/-. The sentences were ordered to run concurrently. The High Court maintained the convictions but reduced the sentence from 10 years to 7 years so far appellant No. 1 is concerned.

The brief facts of the case are :

Urmil (deceased) and appellant No.1 were married on 29th May, 1985. Appellant No.1 was working at Lucknow and had later shifted to Sonapat (Haryana). According

to the prosecution case, within a few days of the marriage Urmil returned home and complained regarding demands of dowry for a refrigerator, scooter etc. by appellants. These demands were reiterated on subsequent visits. On account of non-fulfilment of these demands, the deceased was allegedly tortured and harassed. These alleged actions ultimately contributed towards a suicidal death. It is not in dispute that she died of burn injuries on 18th May, 1987.

In April 1987, Tara Chand, maternal uncle of the deceased died. Urmil (deceased) and Appellant No.1 went to Shahdara (Delhi) to offer condolences. From there, Appellant No.1 returned and Urmil went to her sister's place in Delhi. On 17th May, 1987, when Appellant No. 1 went to the deceased's sister's place to bring Urmil (the deceased) back to Sonapat, some quarrel took place between them. Regardless, Appellant No. 1 brought back the deceased to Sonapat. The very next day i.e. on the 18th May, 1987, according to the appellants, at 9.30 a.m. Joginder Pal, (neighbour of the appellant) came to appellant No.2 and informed him that smoke was coming out from the room on the first floor of the house. When they reached there, they found Urmil lying dead on the floor with burn injuries. The room was full of smoke. Later, the parents of the deceased arrived and a post mortem examination was conducted on the body of the deceased. The doctor found that the cause of death was shock and asphyxia as a result of severe burns which were ante-mortem and were sufficient to cause death in the ordinary course of life.

Learned counsel for the appellants vehemently argued with vehemence that even if all the evidence on record was taken into consideration, no offence could be made out. No clear finding of suicide had been recorded and in any case essential ingredients of Section 304-B of IPC were lacking. The evidence against appellants No.2&3 was flimsy, and in any case their conviction could not be sustained. Further, there was no evidence that soon before her death, the deceased was subjected to cruelty or harassment for or in connection with any demand of dowry. There was neither any demand of dowry nor was there any agreement at the time of marriage, which is an essential ingredient to constitute an offence under dowry death in terms of definition of 'dowry' as given under Section 2 of the Dowry Prohibition Act, 1961 (hereinafter referred to as 'the 1961 Act'). Unless there is an agreement for dowry, at the time of marriage or in connection with marriage, it would not qualify to be a dowry within such definition, hence no offence under Section 304-B I.P.C. Merely expressing the grouse of asking for fridge or TV would not by itself constitute to be a dowry within the said definition in the absence of any agreement. Further, before applying the demand clause under Section 304-B the evidence has to be within the scope of criminal jurisprudence, i.e. to prove guilt beyond all reasonable doubt. It cannot be based merely on suspicion, conjectures and surmises.

Let us see Section 304 I.P.C. The ingredients necessary for the application of Section 304-B are :-

[a] When the death of a woman is caused by any burns or bodily injury, or [b] occurs otherwise than under normal circumstances. [c] and the aforesaid two facts springs within 7 years of girl's marriage.

[d] and soon before her death, she was subjected to cruelty or harassment by her husband or his relative.

[e] this is in connection with the demand of dowry. If these conditions exist, it would constitute a dowry death; and the husband and/or his relatives shall be deemed to have caused her death. In the present case, it is not in dispute that the deceased Urmil died of burn injuries, that she died otherwise than under normal circumstances, and that the death was within a period of 7 years of marriage. The only consideration has to be : whether she was subjected to any cruelty or harassment by the appellants soon before her death, and whether the same was for or in connection with any demand of dowry. In support of prosecution case, Smt. Misro Devi, mother of the deceased, PW-4 Trishala Devi, sister of the deceased, PW-5 Prem Chand Jain, father of the deceased, PW-6 Ram Gopal, brother-in-law of the deceased, husband of PW-5, PW-7 were examined. On perusal of the evidence of PW-4 we find that the mother of the deceased deposed that within four days following the marriage, her daughter deceased Urmil came back to her and told her that her parents-in-law and husband were subjecting her to taunts for not bringing a scooter and refrigerator as dowry at the time of marriage. She somehow pacified her daughter to return. Urmil came back after two months and again told her mother that her husband in-laws were continuously taunting her daily, maltreating her and calling her ugly for not bringing the aforesaid goods as dowry. Admittedly, these taunts were uttered in view of the lesser dowry brought by her. Even after giving birth to a son, when she came back she again narrated the continued maltreatment poured on her by the accused. She also deposed that Urmil wrote some letters from Sonapat to her at Calcutta and Hansi, but after going through them she tore them up. Her letters also referred to the same maltreatment and torture. Similarly, PW-6, the father of the deceased also referred to the similar complaints made to him by Urmil. He also deposed that she used to tell him that her husband and in-laws were maltreating and harassing her on account of not meeting the demand of a scooter and a fridge. The father again expressed his inability to meet this demand. Hence her father sent her back after pacifying her. Similar is the deposition of PW-5, the sister of the deceased and PW-7, the brother-in-law of the deceased.

The afore referred to evidence, according to the learned counsel for the appellant, may merely be an expression of the desire to acquire a fridge, scooter etc. and that by itself cannot be construed as an offence as this would not come within the definition of 'dowry' under Section 2 of the Dowry Prohibition Act, 1961 read with Section 304-B and 498 I.P.C. It is necessary to refer the afore referred provisions.

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

"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 dowry or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Section 304-B(1) with Explanation of IPC is as also quoted.

"304-B Dowry death - (i) 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 (18 of 1961).

Section 498-A is also quoted hereunder :

"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 purposes 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 aforesaid 1961 Act was enacted to provide an effective check to dowry deaths which were continuing despite the then prevailing laws. The object of the Bill was to prohibit the evil practice of giving and taking of dowry. This objective was not achieved hence drastic amendments were brought in by amending various provisions of the said Act and the related provisions under the Indian Penal Code and the Evidence Act. Earlier, the definition of `dowry' which was limited to the time at or before the marriage was extended to the period even after the marriage by means of Act

43 of 1986 w.e.f. November 19, 1986. Similarly, Section 304-B was introduced by means of the same amending Act and Section 498-A was introduced by Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). Various other amendments were brought in bringing more stringent provisions in the aforesaid 1961 Act in order to stem the onslaught on the life of a married woman.

It is true, as argued by learned counsel for the appellants, that in criminal jurisprudence benefit of doubt is extendable to the accused. But that benefit of doubt would arise in the context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws. Since the cause of death to a married woman was to occur not in normal circumstances but as a 'dowry death', for which the evidence was not to easily available, as it is mostly confined to within four walls of a house, namely husband's house, where all likely accused reside. Hence the aforesaid amendments brought in the concept of deemed 'dowry death' by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. Of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of 'deemed dowry death'.

Explanation to section 304-B refers to dowry "as having the same meaning as in Section 2 of the 1961 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 a period subsequent to the marriage.

When words in statute are referable to more than one meaning, the established rule of construction is found in Heydon's case (1584) 76 E.R. 639 also approved by this Court in Bengal Immunity Co. Ltd. V. State of Bihar & Ors., AIR 1955 SC 661 (674). The rule is to consider four aspects while construing an Act :

[a] when was the law prior to the law which is sought to be interpreted;

[b] when was the mischief or defect for which new law is made;

[c] what is the remedy the law now provides; and [d] what is the reason of the remedy.

The Court must adopt that construction which, "suppresses the mischief and advances the remedy."

Applying this principle, it is clear that the earlier law was not sufficient to check dowry deaths hence aforesaid stringent provisions were brought in, so that persons committing such inhuman crimes on married women should not escape, as evidence of a direct nature is not readily available except of the circumstantial kind. Hence it is

that interpretation which suppresses the mischief, subserves the objective and advances the remedy, which would be acceptable. Objective is that men committing such crimes should not escape punishment. Hence stringent provisions were brought in by shifting the burden onto the accused by bringing in the deemed clause. As aforesaid, the definition of 'dowry' was amended with effect from 19th November, 1986, to include a period even after the marriage.

The offence alleged against appellants 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 1961 Act. It was argued on behalf of the appellants that mere demand of scooter or fridge would not be a demand for dowry. We find from the evidence on record that within a few days after the marriage, the deceased was tortured, maltreated and harassed for not bringing the aforesaid articles in marriage. Hence the demand is in connection with marriage. The argument that here 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 1961 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 appellant seeks, 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 - Penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry.

Reverting to the present case, the evidences of the aforesaid PWs are very clear. After few days of the marriage, there was demand of scooter and fridge, which when not being met lead to repetitive taunts and maltreatment. Such demands cannot be said to be not in connection with the marriage. Hence the evidence qualifies to be demand for dowry in connection with the marriage and in the circumstances of the case constitutes to be a case falling within the definition of 'dowry' under Section 2 of 1961 Act and Section 304-B IPC.

The next question is, whether there was any cruelty or harassment by the deceased's husband or any relative and that too it was soon before her death. The argument put in is that neither there is any physical injury nor any evidence of cruelty from any neighbours or other independent persons; hence there is no cruelty or harassment. In our considered opinion, cruelty nor harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Section 304-B and 498-A IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty. In view of Explanation (a) the argument is, before it constitutes to be a cruelty there has to be wilful conduct. Again wilful conduct means, conduct wilfully done may be inferred by direct or indirect evidence which could be construed to be such. We find, in the present case, on account of not satisfying the demand of the aforesaid goods, right from the next day, she was repeatedly taunted, maltreated and mentally tortured by calling her ugly etc. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. There was a quarrel a day before her death. This by itself, in our considered opinion, would constitute to be a wilful act to be a cruelty both within the meaning of Section 498-A and Section 304-B IPC.

The argument, that There is no evidence of any cruelty or harassment soon before her death, is also not correct. We find both from the evidence of her sister, Trachala Devi PW-5 and her brother-in-law, Ram Gopal PW-7, that the deceased on 14th May, 1987 came to Shahdara (Delhi) to mourn the death of her maternal uncle and by evening on the same day instead of returning to her husband's place came to her sister's house. She remained there for few days. Both deposed that she told them that her husband was maltreating her in view of dowry demand, and that not being satisfied was harassing her. When on 17th May, 1987 the husband came to take her back, she was reluctant but Trishala Devi brought her down and sent her with her husband. Though she went with the husband but with the last painful words that "it would be difficult now to see her face in the future". On the very next day, on 19th May, one day after she arrived at her husband's place, the unfortunate death of Urmil took place. She died admittedly on account of total burn of her body. Admittedly the incident of quarrel as deposed was only a day before her death. There is direct evidence that on 17th May itself, there was quarrel at the house of her sister with the deceased and her husband. The quarrel between the deceased and her husband was tried to be explained as some other quarrel which should not constitute to be a quarrel in connection with the marriage. We find that Section 8-A of the aforesaid 1961 Act which came into force w.e.f. 2nd October, 1985 for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing an offence is made. Similarly, under Explanation to Section 113-B of the Indian Evidence Act, which was also brought in by the aforesaid Act No. 43 of 1986, there is presumption that such death is on account of dowry death. Thus the burden, if at all, was on the accused to prove otherwise.

The aforesaid evidence would, on the facts and circumstances of the case, bring to an inescapable conclusion that the aforesaid quarrel referred to by PWs 5 & 7 a day before actual death of the deceased, cumulatively with other evidence constitute to be cruelty and harassment in connection with marriage and that too at her own sister's place which has direct co-relation with the preceding evidence of repeated demand of dowry, to be a case covered both under Section 304-B and 498-A IPC. However, it was open to the accused to prove otherwise or dispel by means of evidence to destroy that deeming clause. But we find he has not been able to do so. Such burden is placed on the accused with a purpose. Evidence also concludes harassment to the deceased within the meaning of Section 498-A Explanation

(b), as she was repeatedly coerced for not meeting the demands leading to her mental torture and agony which ultimately led her to commit suicide.

In the present case, we find that both the courts below found that inspite of thorough cross-examination, there is no deviation on this issue. In fact, it has been pointed out by the learned counsel for the respondent that on the question of cruelty and torture, there is no cross-examination though there is some on other points. The courts below have rightly believed the testimonies of the PWs and we do not find that there is anything for us to deviate from the same. On the other hand, the evidence of the defence is of perfunctory nature, not enough to dispel the burden cast.

A faint submission was also made that it would not be a case of abetment of suicide under Section 306 IPC. Reference to Section 107 IPC was also made where abetment should fall under any of the three heads. Reliance is placed on the first head. We find that the first head provides "instigates any person to do that thing". There is no doubt in the present case there is repeated demand from the husband's side from the girl and her parents for the various articles as aforesaid and on failure, the girl was tortured, harassed by words and deeds, amounting to cruelty. As we have held above and one day before the fateful day, the husband saturated the mental agony and cruelty by quarrelling with the wife (deceased) even at her sister's place, leaving no option which led the deceased to commit suicide. This mental state is further clear by the following words which she spoke to her sister, "it would be difficult now to see her face in the future". In our opinion all this would constitute to be an act which would be an abetment for the commission of the suicide by the girl. The husband, in the present case, has not led any cogent evidence or brought any circumstance to dislodge the aforesaid inference. Of course benefit of doubt to the accused would be available provided there is supportive evidence on the record. Hence, for creating doubt or granting benefit of doubt, the evidence was to be such which may lead to such doubt. We do not find that present is a case where any benefit of doubt results at least against the husband. There is direct evidence, as stated by the aforesaid witnesses PWs 5 & 7 that soon before her death she was subjected to cruelty by the husband. However, we find in so far appellant Nos. 2 & 3, father-in-law and the mother-in-law, are concerned, the evidence is of a general nature. No convincing evidence has been led that the deceased was subjected to cruelty by appellant Nos.2 &

3. Before holding that appellant Nos. 2 & 3 had committed the offence, it had to be found that they are responsible for subjecting her to cruelty or harassment, soon before her death. We find in this case evidence is only confined to the husband and not against appellant Nos. 2 & 3. Hence on the evidence on record, so far as appellant Nos. 2 & 3 are concerned, we extend to them the benefit of doubt and acquit them.

Hence, for the aforesaid reasons, we partly allow the appeal. Convictions and sentences of appellant No.1 are maintained but the convictions and sentences of the appellant Nos. 2 & 3 are set aside. Accordingly, appellant No.1, namely Pawan Kumar is sentenced to 7 years' rigorous imprisonment with a fine of Rs. 500/-, in default of payment of fine for further rigorous imprisonment for 6 months under Section 304-B IPC, 4 years' rigorous imprisonment and to pay a fine of Rs 200/-, in default payment of fine further rigorous imprisonment for 3 months, under Section 306 IPC, and sentence for 2 years' rigorous imprisonment and to pay fine for Rs.200/-, and in default of payment of fine further rigorous imprisonment for three months, under Section 498-A IPC. All the sentences would run concurrently. The other appellants, namely appellants Nos. 2 & 3 are hereby acquitted. They are on bail. They need not surrender to their bail bonds. Their bail bonds are hereby discharged.

The appeal is allowed in part.