

State vs Avnish Kumar on 20 December, 2024

IN THE COURT OF SUSHANT CHANGOTRA
ADDITIONAL SESSIONS JUDGE (FTC)
EAST DISTRICT, DELHI

Session Case No.: 4/2016
State Vs Avnish Kumar
FIR No. 60/12
U/s 498A/406/109/304B of IPC
PS Geeta Colony

CNR No.: DLET01-000316-2016
Date of Institution : 09.02.2016
Date of Judgment reserved on 20.12.2024
Date of Judgment : 20.12.2024

Brief Details Of The Case

Offence complained of or proved : 498A/406/109/304B of IPC
Name of the accused : Avnish Kumar
S/o Sh. Dauji Ram
R/o Vill Kutila Kayakpur,
Thana Dehat Kotwali,
District Etah, U.P.
Plea of the accused : Pleaded not guilty
Final order : Acquitted.

FIR No. 60/12
PS Geeta Colony

State Vs Avnish Kumar
JUDGMENT

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1. In the present case, accused Avnish is facing trial for commission of offences u/s 498-A/304-B of IPC and in the alternative u/s 302 IPC.
2. The brief facts leading to the initiation of criminal proceedings against the accused are as follows:-
 - (a) On 12.02.2012, DD No. 41B was registered at the police station Geeta Colony. On 13.02.2012, Sh. D.S. Pandir, SDM Preet Vihar recorded statement of Smt. Priyanka and forwarded the same to SHO Gazipur for further necessary legal action.

(b) In her statement, Smt. Priyanka W/o Avnish Kumar stated that she had got married with Avnish Kumar on 08.06.2011 and their marriage was performed as per Hindu rituals as per consent of her parents. Her husband Avnish started suspecting her of being characterless. Avnish used to consume alcohol and give physical beatings to her. On 12.02.2012, Avnish was in intoxicated condition and he abused her and also gave beatings to her. Therefore, on the same day at about 4:30 PM she consumed acid out of anger. Subsequently, she was got admitted in LBS Hospital for medical treatment. The complainant Priyanka also stated that her husband used to pressurize her for bringing dowry in the form of money, car, watch and gold chain from her parents namely Smt. Sarla and Sh. Amar Singh. She PS Geeta Colony State Vs Avnish Kumar Page no. 2 of 31 requested that her husband should stop demanding dowry and stop beating her.

(c) SI Sanjeev Kumar collected MLC of injured Smt. Priyanka bearing no. No. 1377/12 and the doctor had opined that she had history of 'Ingestion of some unknown poisonous substance'. The nature of injuries was referred as under

observation. On the basis of statement of Smt. Priyanka recorded by SDM and the above-said MLC offences u/s 498A, 406 and 109 of IPC were disclosed and the FIR was registered.

(d) During investigation, the wedding invitation card and one photograph of marriage of complainant with accused were obtained. The IO found that the injured had been admitted in General Surgery Department of Safdarjang Hospital on 05.06.2012 and she remained admitted in said hospital till 17.07.2012. Thereafter, she got treatment from RML Hospital. Subsequently, during the course of her treatment she died on 09.08.2012 and her funeral was performed in village Kutila Layakpur, PS Kotwali, Distt. Etah, UP.

(e) The post-mortem examination of injured could not be conducted as the hospital had not been informed about the previous MLC of injured. IO collected death certificate of injured Priyanka and also obtained opinion about the cause of her death from RML Hospital. As per opinion of doctor victim Priyanka had died on account of consumption of acid. The empty bottle from which she drank acid could not be recovered.

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(f) On 11.09.2015 on the basis of secret information Avanish was arrested from the bridge of Hindon River. IO prepared his arrest memo. The accused was remanded to judicial custody. Section 304-B IPC was added and chargesheet was filed against the accused Avnish.

3. The court of Ld. Metropolitan Magistrate took cognizance of the offences. After completion of necessary legal formalities u/s 207 Cr.P.C the case file was committed to the Court of Sessions. Pursuant to order of Ld. District & Sessions Judge, East, the matter was fixed for hearing on point of charge. Vide order dated 15.03.2016 charge u/s 498-A/304-B of IPC and in the alternative u/s 302

IPC was framed by the ld. Predecessor of this court against the accused to which he pleaded not guilty and claimed trial.

4. In order to establish its case, prosecution examined 16 witnesses. A brief account of the depositions made by the witnesses of prosecution is reproduced herein below:-

Evidence of Public Witnesses:

Examination in chief-

5. PW-3 Smt. Sarla i.e. mother of deceased deposed that she had three daughters and Priyanka was her youngest daughter. Priyanka was married with accused in the year 2011 and she had given dowry articles in the said marriage. After her marriage, Priyanka remained at her matrimonial house i.e. at PS Geeta Colony State Vs Avnish Kumar Page no. 4 of 31 Village Kuthala Laikpur, District Etah, UP. After 5-6 months of marriage, accused alongwith her daughter Priyanka started living in Delhi.

She further deposed that she used to regularly talk to Priyanka on telephone, but she never complained against accused Avnish regarding harassment for demand of dowry and rather she used to tell her that she was happy with accused Avnish.

In the year 2012 she and her husband were informed that Priyanka had consumed something. She alongwith her husband came to Delhi and went to the hospital. She talked to her daughter Priyanka and asked her about the reason for consuming acid. In reply, her daughter told her that she had consumed 'tezab' / acid in anger and even on that occasion Priyanka did not make any complaint against accused. She also deposed that police interrogated her and she told all the facts to police.

Cross-examination-

PW-3 Sarla was cross-examined by ld. Addl. PP for the State and she admitted that the marriage between her daughter with accused Avnish took place on 08.06.2011. She denied the suggestions of the ld. Addl. PP that her daughter used to complain against Avnish that he used to accuse her of being characterless and would also give beatings to her and make demand of money for purchasing car, watch and gold chain etc. She also denied that PS Geeta Colony State Vs Avnish Kumar Page no. 5 of 31 police had recorded her statement Mark PW3/A or the fact that her daughter consumed acid because of harassment and demand of money by accused Avnish.

Examination in Chief-

6. PW-4 Amar Singh i.e. father of deceased Priyanka also deposed that deceased Priyanka was her youngest daughter and her marriage was solemnized with accused on 08.06.2011. He stated that he had given dowry articles according to his capacity in the marriage. Accused was resident of village Kuthala Lyankpur, District Etah, UP and after marriage his daughter Priyanka remained with accused there. After about 5-6 months of marriage, accused and his daughter started living in Delhi.

During their stay in Delhi, her daughter used to talk to him and his wife on telephone. His daughter was brought to Delhi about one and half month prior to the incident. On 12.02.2012 his son in law Pappu i.e. accused informed him telephonically that Priyanka had consumed 'Tezab'. Then, he alongwith his wife went to LBS Hospital. His daughter was medically treated for a period of 6 months after the accident and during treatment his daughter Priyanka had expired on 09.08.2012.

He also deposed that on 13.02.2012 he handed over marriage card and photograph of marriage of his daughter Priyanka to police and the same were taken into possession vide seizure memo Ex.PW4/A. He identified the said photograph and marriage card i.e. Ex.P1 and Ex. P2.

PS Geeta Colony State Vs Avnish Kumar Page no. 6 of 31 In his examination in chief, he stated that his daughter never complained against accused on account of harassment, demand of dowry or misbehaviour to him or his wife and rather she was happy with accused.

Cross-examination-

PW-4 Amar Singh was cross-examined by ld. Addl. PP for the State and he denied the suggestions of the ld. Addl. PP that her daughter used to complain against Avnish to her mother telephonically to the extent that accused used to accuse her of being characterless and used to give beatings to her and make demand of money for purchasing car, watch and gold chain etc. He also denied that police had recorded his statements Mark PW4/B and PW4/C or the fact that his daughter consumed acid because of harassment and demand of money by accused Avnish.

7. PW-10 Sh. Richpal deposed that accused Avnish was a permanent resident of his village. Accused used to work as driver in Delhi and he got married with Priyanka. On 09.08.2012 during her treatment Priyanka expired in Delhi and her dead body was brought to native place of accused where she was cremated. Evidence of SDMs:

8. PW-8 Sh. Kumar Chanchal i.e. SDM deposed that he was working as Sub Registrar (Birth and Death) department, New Delhi Municipal Council, Mandir Marg, New Delhi. As per the register of Birth and Death, Ms. Priyanka female aged about 21 years, wife of Avnish Kumar expired on 09.08.2012 at 9 am at PS Geeta Colony State Vs Avnish Kumar Page no. 7 of 31 RML Hospital. He proved entry no. 1206 in this regard i.e. Ex. PW8/A and death certificate Ex. PW8/B.

9. PW-11 Sh. D.S. Pundir i.e. SDM, Preet Vihar deposed that on 13.02.2012 on receipt of information he reached LBS Hospital and came to know about admission of a lady namely Priyanka w/o Sh. Avnish. SI Sanjeev Kumar made enquiries from the said lady in his presence. He recorded her statement in his handwriting i.e. Ex.PW7/A and he also read over the said statement to her. He further deposed that above- mentioned statement was attested by SI Sanjeev Kumar and it was also signed by Priyanka at point B. Thereafter, he forwarded the said statement to SHO Ghazipur for further necessary and lawful action.

Medical Evidence:

10. PW-1 Dr. Omkar Singh Tomar deposed that on 12.02.2012 at 06.00 pm Priyanka W/o Kamlesh Kumar aged 21 years was brought by accused with alleged history of ingestion of some unknown poisonous substance. The patient was referred to S.R. Medicine for detailed examination. He proved his report Ex. PW1/A in this regard.

11. PW-2 Dr. Sandeep Mittal deposed that on 11.09.2015 he had examined accused Avnish and prepared his MLC Ex. PW2/A.

12. PW-14 Dr. Yogesh Kushwaha deposed that Dr. Ajender Malik had given opinion on MLC Ex. PW1/A. As per PS Geeta Colony State Vs Avnish Kumar Page no. 8 of 31 said MLC the patient was brought in EM-1 (Emergency Medicine 1) and was admitted under medicine department on 12.02.2012 and was discharged on 16.02.2012 with stable condition with diagnosis of corrosive poisoning. He identified the signature and handwriting of Dr. Ajender Malik on MLC Ex.PW14/A. He also stated that the patient was medically treated by Dr. Ajender Malik under his supervision.

13. PW-15 Dr. Siddharth Yadav, Associate Professor, Safdarjang Hospital deposed that on 26.05.2012 feeding Jejunostomy was performed in his unit on patient Priyanka as she was a follow up case of corrosive poisoning and had developed esophageal stricture i.e. narrowing of esophagus. Therefore, a tube was placed in the Jejunum i.e. small bowel directly to help in feeding. He identified signature of Dr. Piyush Sharma on OPD document dated 19.06.2012 i.e. Ex.PW15/A. He further deposed that thereafter the patient came in the OPD of Safdarjung Hospital from 05.06.2012 to 17.07.2012 for follow up. Initially the patient had gained weight and it was reflected in the OPD document dated 05.06.2012 i.e. Ex.PW15/B. Later on the weight of the patient deteriorated and she was unable to walk. He advised protein powder and medicines to the patient vide OPD document dated 26.06.2012 i.e. Ex.PW15/C. He also proved one follow up document of OPD dated 31.07.2012 i.e. Ex.PW15/D.

14. PW-16 Sh. Jitender Kumar i.e. Medical Report Technician, RML Hospital proved the OPD details of patient PS Geeta Colony State Vs Avnish Kumar Page no. 9 of 31 Priyanka i.e. Ex. PW16/A. He deposed that as per record, during treatment the patient had expired on the same day. He proved the copy of order dated 10.03.2015 Ex. PW16/B. A letter dated 08.07.2015 i.e. Ex. PW13/A was handed over to Insp. Sarabjeet Kaur regarding final report of cause of death. He identified signature of Sh. Surender Singh, MRO, RML Hospital on the said letter. He also deposed that as per letter Ex. PW13/A Dr. Hansraj had given notings regarding patient in Cr. No. 35611/12 and the said noting had already been destroyed vide order marked PW16/B. Evidence of Police Witnesses:

15. PW-5 ASI Yogita i.e. Duty Officer deposed that on 13.02.2012 at about 12:10 pm SI Sanjiv Kumar handed over a rukka to her on the basis of which she recorded FIR No. 60/12 under Section 498- A/406/109/304-B IPC i.e. Ex. PW- 5/A. He proved her endorsement on rukka i.e. Ex. PW5/C and certificate u/s 65-B of Indian Evidence Act issued by SHO of PS Gazipur i.e. Ex. PW-5/B.

16. PW-6 Ct. Dharamveer Yadav i.e. DD Writer deposed that on 12.02.2012 at about 6.35 pm information was received from duty constable Amit Kumar of LBS Hospital

that one lady Priyanka was admitted in the hospital in intoxicated condition ('Jehreela Padarth Khakar'). He recorded this information vide DD No.41B i.e. Ex. PW 6/A (OSR).

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17. PW-9 HC Jai Govind deposed that on 11.09.2015, he alongwith Insp. Sarabjeet Kaur went to Murga Mandi, Ghazipur Main Gate. IO Insp. Sarabjeet Kaur received a secret information that accused Avnish Kumar was present under the bridge of Hindon River near Khoda Colony, NH-24, Indirapuram, Ghaziabad. He alongwith IO Insp. Sarabjeet Kaur and the secret informer reached there and at the instance of secret informer accused Avnish was arrested vide arrest memo Ex. PW9/A. Personal search of accused was also conducted vide memo Ex. PW9/B. IO also recorded disclosure statement of accused.

18. PW-12 Retd. SI Narayan Dev deposed that on 27.1.2014 investigation of this case was assigned to him. During investigation, he recorded statement of father of deceased Priyanka u/s 161 Cr.P.C. He also went to the village of accused Avnish Kumar i.e. husband of deceased Priyanka to enquire about the death of Priyanka but accused was not found there. On 15.02.2015, Sh. Ravi Gautam i.e. brother of accused Avnish Kumar handed over death certificate of Priyanka which was seized vide memo Ex.PW12/A. He identified the said certificate i.e. Mark PW12/A. Evidence of Investigating Officers:

19. PW-7 Insp. Sanjeev Kumar i.e. 1st IO deposed that on 12.02.2012 on receipt of DD No. 41-B, he reached LBS Hospital and found that Smt. Priyanka w/o Avnish Kumar was admitted in the hospital vide MLC No. 1377/12. He made PS Geeta Colony State Vs Avnish Kumar Page no. 11 of 31 enquiry from Priyanka and it was revealed that she had got married with accused Avnish on 08.06.2011 and she also alleged about cruelty and harassment against her husband on account of demand of dowry and other allegations. He informed the above-

mentioned facts to SDM, Preet Vihar. The parents of injured Priyanka were also present in the hospital and he also made enquiry from them. He returned to PS and apprised about all the facts to the SHO and DD Number no. 41-B was kept pending. On the next day, he reached LBS Hospital and SDM, Preet Vihar also came there. SDM made enquiries from Priyanka and recorded her statement Ex. PW7/A which was attested by him. On the above-said statement, SDM recommended SHO to take action. He took statement of Priyanka to PS and prepared rukka on the basis of said statement i.e. Ex. PW7/B. He handed over the said rukka to Duty Officer and thereafter he proceeded to the place of incident. He reached H.No. A-1/61, Harijan Basti, Rajbir Colony, Kondli, Delhi and met owner of the house namely Shriram who informed him that Priyanka and her husband were residing there as tenants. Their room was locked and no one was found present there. He made enquiries from the owner of house who told him that a quarrel had taken place between husband and wife on 12.02.2012, but he was not aware about the cause of dispute. He recorded his statement and

returned back to the hospital.

PS Geeta Colony State Vs Avnish Kumar Page no. 12 of 31 He further deposed that he also made enquiries from parents of Priyanka and recorded their statements. Injured Priyanka also produced her wedding card and photographs of marriage which were taken into police possession vide seizure memo Ex. PW4/A. He identified the photograph Ex. P-1 and wedding card Ex. P-2. He recorded supplementary statement of Priyanka Ex. 7/C. He tried to trace Avnish Kumar, but he was not found present in hospital or at his house. He further deposed that on 20.04.2012, he made a request to CMO, LBS Hospital vide his application Ex. PW7/D for opinion regarding nature of injuries on the MLC and collected the MLC with opinion.

20. PW-13 Inspector Sarabjeet Kaur i.e. 2 nd IO deposed that on 24.06.2015, investigation of this case was assigned to her. On perusal of the documents it was revealed that there was no document on record regarding the cause of death of deceased Priyanka. Therefore, vide request letter diary No. 7755 dated 24.06.2015 she made a request for final opinion regarding cause of death of deceased. She received a letter Ex. PW13/A from Medical Record Officer dated 08.07.2015 vide which comments of concerned Dr. Hansraj HOD Medicine of Dr. RML Hospital was received by her. As per said letter the patient was admitted as a non-MLC patient vide CR no. 35611/12 and therefore her postmortem was not mandatory after her death. She further stated that as per record the cause of death was Corrosive Poisoning PS Geeta Colony State Vs Avnish Kumar Page no. 13 of 31 with Esophageal Stricture with Aspiration Pneumonitis with Cardio Pulmonary arrest.

She further deposed that on 11.09.2015 she received secret information about the presence of accused Avnish near Khora Colony, Hindon Pulia, NH-24. On receipt of this information, she alongwith Ct. Jai Govind proceeded to the spot along with secret informer. On the identification of secret informer, accused Avnish was arrested vide arrest memo Ex.PW9/A. She also recorded disclosure statement of accused i.e. ExPW13/B. During investigation, section 304-B IPC was added. She also recorded statement of witnesses and on completion of investigation, she filed charge-sheet. She identified accused in the court.

Statement of Accused U/s 313 Cr. PC

21. In his statement recorded under section 313 Cr.P.C accused Avnish Kumar denied all the incriminating evidence. He took a plea that he has been falsely implicated in this case and he never demanded dowry in his marriage or at any point of time. He also stated that he never gave beatings to his wife. Accused opted not to lead defence evidence.

Arguments:

22. I have heard the final arguments advanced by ld. Addl. Public Prosecutor for the State as well as by ld. Defence counsel.

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23. Ld. Addl. PP for the State has argued that oral evidence accompanied with medical evidence has clearly established the guilt of accused. Hence, accused may be convicted for the offences charged against him.

24. On the other hand, the Ld. defence counsel has vehemently argued that accused has been falsely implicated. The parents of deceased did not support the case of prosecution. There are serious contradictions in the prosecution evidence. Therefore, he argued that accused may be given the benefit of doubt and may be acquitted accordingly.

Appreciation of Evidence vis-a-vis Allegations of Commission of Offences by Accused:

25. I have considered the submissions and combed through evidence on record very carefully.

26. The accused is facing trial with respect to charges u/s 304-B IPC (in the alternative u/s 302 IPC) and 498-A IPC. First of all, I shall deal with the allegations with respect to commission of offence u/s 304-B IPC.

27. The provision enshrined in section 304-B IPC is as follows:

"Section 304-B of IPC: 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 PS Geeta Colony State Vs Avnish Kumar Page no. 15 of 31 "dowry death", and such husband or relative shall be deemed to have caused her death.

(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."

28. Before advertiring to the appreciation of evidence on record, it is necessary to note that Section 304B IPC is distinct from the other penal provisions of the Code in as much as it shifts the burden upon the accused to dislodge the 'presumption' that such person had caused the dowry death of the victim. In other words, Section 304B IPC read with Section 113B of Indian Evidence Act raises a presumption as to commission of dowry death of a women if it is 'shown' that soon before her death, such women was subjected by accused to cruelty or harassment for, or in connection with, any demand for dowry. The aforesaid burden casted upon the accused is not only onerous but also lowers the standard of proof required from the prosecution to prove the commission of offence of dowry death.

29. While dealing with the aforesaid issue of 'presumption' and 'burden of proof' in a case of dowry death, the Hon'ble Supreme Court, while discussing the thorough jurisdiction on the subject, in case titled Sher Singh @ Partapa vs State Of Haryana AIR 2015 SC CRI 481 observed as under :-

"9. Death can be accidental, suicidal or homicidal. The first type is a tragedy and no criminal complexion is conjured up, unless statutorily so devised, as in Section 304A; but even there the culpable act is that of the person actually causing the death. It seems to us that Section 304B of the IPC, inasmuch as it also takes PS Geeta Colony State Vs Avnish Kumar Page no. 16 of 31 within its contemplation "the death of a woman otherwise than under normal circumstances", endeavours to cover murders masquerading as accidents. Justifiably, the suicidal death of a married woman who was meted out with cruelty by her husband, where her demise occurred within seven years of marriage in connection with a dowry demand should lead to prosecution and punishment under Sections 304B and/or 306 of the IPC. However, if the perfidious harassment and cruelty by the husband is conclusively proved by him to have had no causal connection with his cruel behaviour based on a dowry demand, these provisions are not attracted as held in Bhagwan Das v. Kartar Singh (2007) 11 SCC 205, although some reservation may remain regarding the reach of Section 306.

13 In Section 113A of the Evidence Act Parliament has, in the case of a wife's suicide, "presumed" the guilt of the husband and the members of his family. Significantly, in Section 113B which pointedly refers to dowry deaths, Parliament has again employed the word "presume". However, in substantially similar circumstances, in the event of a wife's unnatural death, Parliament has in Section 304B "deemed" the guilt of the husband and the members of his family. The Concise Oxford Dictionary defines the word "presume" as:

supposed to be true, take for granted; whereas "deem" as: regard, consider; and whereas "show" as: point out and prove. The Black's Law Dictionary (5th Edition) defines the word "show" as- to make apparent or clear by the evidence, to prove; "deemed" as- to hold, consider, adjudge, believe, condemn, determine, construed as if true; "presume" as- to believe or accept on probable evidence; and "Presumption", in Black's, "is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted." The Concise Dictionary of Law, Oxford Paperbacks has this comprehensive yet succinct definition of burden of proof which is worthy of reproduction:

"Burden of Proof: The duty of a party to litigation to prove a fact or facts in issue. Generally the burden of proof falls upon the party who substantially asserts the truth of a particular fact (the prosecution or the plaintiff). A distinction is drawn between the persuasive PS Geeta Colony State Vs Avnish Kumar Page no. 17 of 31 (or legal) burden, which is carried by the party who as a matter of law will lose the case if he fails to prove the fact in issue; and the evidential burden (burden of adducing evidence or burden of going forward), which is the duty of showing that there is sufficient evidence to raise an issue fit for the consideration of the trier of fact as to the existence or non-existence of a fact in issue.

The normal rule is that a defendant is presumed to be innocent until he is proved guilty; it is therefore the duty of the prosecution to prove its case by establishing both

the actus reus of the crime and the mens rea. It must first satisfy the evidential burden to show that its allegations have something to support them. If it cannot satisfy this burden, the defence may submit or the judge may direct that there is no case to answer, and the judge must direct the jury to acquit. The prosecution may sometimes rely on presumptions of fact to satisfy the evidential burden of proof (e.g. the fact that a woman was subjected to violence during sexual intercourse will normally raise a presumption to support a charge of rape and prove that she did not consent). If, however, the prosecution has established a basis for its case, it must then continue to satisfy the persuasive burden by proving its case beyond reasonable doubt (see proof beyond reasonable doubt). It is the duty of the judge to tell the jury clearly that the prosecution must prove its case and that it must prove it beyond reasonable doubt; if he does not give this clear direction, the defendant is entitled to be acquitted.

14 As is already noted above, Section 113B of the Evidence Act and Section 304B of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word 'deemed' in Section 304B to distinguish this provision from the others. In actuality, however, it is well nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word 'shown' is used as synonymous to 'prove' and the word 'presume' as freely interchangeable with the word 'deemed'. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word 'deem' to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, PS Geeta Colony State Vs Avnish Kumar Page no. 18 of 31 it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in State of Travancore-Cochin v. Shanmuga Vilas Cashewnut Factory AIR 1953 SC 333 and State of Tamil Nadu v. Arooran Sugars Limited (1997) 1 SCC 326, requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word 'deemed' so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word 'shown' in Section 304B of the IPC as to, in fact, connote 'prove'. In other words, it is for the prosecution to prove that a 'dowry death' has occurred, namely, (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured, (ii) within seven years of a marriage, (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband, (iv) in connection with any demand for dowry and (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry. We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced

by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word 'deemed' was that only preponderance of evidence PS Geeta Colony State Vs Avnish Kumar Page no. 19 of 31 would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113B of the Evidence Act and Section 304B of the IPC, in our opinion, is to counter what is commonly encountered - the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in Court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to Common Law systems, and beyond the contemplation of the Cr.P.C.

17..... Therefore, the burden of proof weighs on the husband to prove his innocence by dislodging his deemed culpability, and that this has to be preceded only by the prosecution proving the presence of three factors, viz. (i) the death of a woman in abnormal circumstances

(ii) within seven years of her marriage, and (iii) and that the death had a live link with cruelty connected with any demand of dowry. The other facet is that the husband has indeed a heavy burden cast on his shoulders in that his deemed culpability would have to be displaced and overturned beyond reasonable doubt.

...

It is also important to highlight that Section 304B does not require the accused to give evidence against himself but casts the onerous burden to dislodge his deemed guilt beyond reasonable doubt. In our opinion, it would not be appropriate to lessen the husband's onus to that of preponderance of probability as that would annihilate the deemed guilt expressed in Section 304B, and such a curial interpretation would defeat and neutralise the intentions and purposes of Parliament. A scenario which readily comes to mind is where dowry demands have indubitably been made by the accused husband, where in an agitated state of mind, the wife had decided to leave her matrimonial home, and where while travelling by bus to her parents' home she sustained fatal burn injuries in an accident/collision PS Geeta Colony State Vs Avnish Kumar Page no. 20 of 31 which that bus encountered. Surely, if the husband proved that he played no role whatsoever in the accident, he could not be deemed to have caused his wife's death. It needs to be immediately clarified that if the wife had taken her life by jumping in front of a bus or before a train, the husband would have no defence. Examples can be legion, and hence we shall abjure from going any further. All that needs to be said is that if the husband proves facts which portray, beyond reasonable doubt, that he could not have caused the death of his wife by burns or bodily injury or not involved in any manner in her death in abnormal circumstances, he would not be culpable under Section 304B.

19 We must consider, lastly, whether the prosecution has successfully 'shown' that the deceased was subjected to cruelty which was connected with dowry demands. We may usefully reiterate here that

keeping in perspective the use of "shown" instead of "proved" the onus would stand satisfied on the anvil of preponderance of evidence.

30. In light of the aforementioned principle of law, the prosecution had to show / prove that:-

- (a) that the death of a woman was caused in abnormal circumstances by her having been burned or having been bodily injured;
- (b) within seven years of a marriage;
- (c) and that she was subjected to cruelty or harassment by her husband or any relative of her husband;
- (d) in connection with any demand for dowry; and
- (e) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

31. At first, the prosecution had to prove that Ms. Priyanka had not died a natural death and also the fact that she PS Geeta Colony State Vs Avnish Kumar Page no. 21 of 31 had consumed acid on account of harassment meted out to her by accused in connection with demand of dowry. The prosecution intended to rely upon statements of both the parents of deceased as well as the statement of deceased recorded by SDM to show/ prove the factum of cruelty / harassment meted by accused to deceased Priyanka on account of demand of dowry.

32. The parents of deceased i.e. PW-3 Smt. Sarla Devi and PW-4 Sh. Amar Singh deposed that marriage of accused Avnish and their daughter Priyana took place on 08.06.2011. However, both of them turned hostile and did not support the case of prosecution vis-a-vis the other essential ingredients as referred above.

33. In their examinations in chief, both PW-3 and PW-4 stated that their daughter never complained about harassment meted out to her by accused Avnish on account of demand of dowry. PW-4 Sh. Amar Singh also stated that her daughter was happy with accused Avnish and she never complained against him. Both the above-mentioned witnesses further deposed that their daughter had consumed acid due to anger. They also deposed that even at that time their daughter did not make any complaint against the accused Avnish.

34. In their cross-examinations conducted by ld. Addl. PP for the State, both the above-mentioned witnesses denied the suggestions that accused Avnish used to make demand of dowry i.e. more money for purchasing car, watch and gold chain etc or PS Geeta Colony State Vs Avnish Kumar Page no. 22 of 31 the fact that their daughter had committed suicide due to aforementioned demands of dowry made by accused Avnish. In her cross-examination, PW-3 Smt. Sarla Devi stated that she used to reside with her daughter Priyanka at Delhi during her treatment and she was treated properly by accused Avnish.

35. Thus, depositions of both the above-mentioned witnesses i.e. parents of deceased did not come to aid of prosecution for establishing the allegations against the accused.

36. The prosecution has also proved the statement of deceased Ex. PW7/A. Section 32 of The Indian Evidence Act- deals with statements which can be treated as dying declaration. It is as follows:

Section 32 - Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :

(1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.....

Illustrations

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or The question is, whether A was killed by B under PS Geeta Colony State Vs Avnish Kumar Page no. 23 of 31 such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration are relevant facts.

37. Before the statement of deceased Ex. PW7/A can be construed as dying declaration, the prosecution had to show that the death of deceased Priyanka was not due to natural causes and it was rather homicidal, suicidal or it was in abnormal circumstances.

38. In Manjunath vs. State Of Karnataka, Crl. A. No. 866/2011 decided on 06.11.2023, it has been held that, "(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide." Therefore, it was imperative for the prosecution to establish that Priyanka had not died a natural death.

39. The prosecution has proved death certificate of Priyanka Ex. PW8/B and thereby established that she had died on 09.08.2012 at about 9 PM. The prosecution could not prove the postmortem examination report of deceased as her postmortem examination was not conducted. In order to

establish the cause of death of Ms. Priyanka, IO collected a letter Ex. PW13/A issued by Medical Record Officer of RML Hospital which contained reference of comments of Dr. Hansraj, HOD, Medicine. As per said letter, the aforementioned Dr. Hansraj had commented that, "This PS Geeta Colony State Vs Avnish Kumar Page no. 24 of 31 patient was admitted as non-MLC patient vide C. R. no. 35611/12 and therefore, her postmortem was not mandatory after her death. The cause of death was Corrosive poisoning with Esophageal Stricture with Aspiration Pneumonitis with Cardio Pulmonary Arrest as per records."

40. However, neither the aforementioned doctor i.e. Dr. Hansraj could be examined nor the record on the basis of which he had opined about the cause of death was proved. The perusal of ordersheets show that on 23.08.2023 Retd. Dr. Hansraj, former HOD of RML Hospital appeared in the court after repeated issuance of summons to various authorities. However, on that occasion he submitted that, "The patient Priyanka was admitted vide CR no. 35611/12 at RML Hospital, but the records of patient had been destroyed as per order dated 10.03.2012." Thereupon, summons were issued to MRO of RML Hospital to produce record of CR no. 35611/12 of patient Priyanka, if the same was available either in the form of hard copy or soft copy or in any other manner. Consequently, on 19.01.2024 Sh. Jitender Kumar, Medical Report Technician, RML Hospital appeared and he was examined as PW-16.

41. In his deposition, PW-16 Jitender Kumar stated that OPD case sheets and registration book, patient medical report and medico legal register which were 3/10 years old had been destroyed by the order of Sh. Chandreshkhar, Dy.

PS Geeta Colony State Vs Avnish Kumar Page no. 25 of 31 Director (Admin), Ministry of Health and Family Welfare, RML Hospital dated 10.03.2015 and therefore the record relating to treatment of Ms. Priyanka had been destroyed. He tendered the copy of said order i.e. Mark PW16/B.

42. Thereafter, vide detailed order 30.05.2024 once again, it was observed that since as per letter dated 08.07.2015 i.e. Ex. PW13/A, the IO had herself sought opinion by writing an application, therefore, there was possibility of availability / preservation of record and fresh notice was issued to MRO, RML Hospital. Consequently, Sh. Jitender Kumar, MRT once again appeared as he was deputed by M. S. of RML Hospital. He again stated that as per letter Ex. PW13/A, Dr. Hansraj had made noting regarding patient in C. R. no. 35611/12 and the said noting had already been destroyed vide order already marked PW16/B.

43. Therefore, despite best efforts to trace Dr. Hansraj and the record prepared by him on the basis of which it is alleged that he had opined about the cause of death of Ms. Priyanka, neither the witness i.e. Dr. Hansraj could be traced nor the record on the basis of which he had opined about the cause of death was available.

44. Thus, in absence of deposition of the expert who gave opinion and the medical documents on the basis of which such opinion was given, mere tendering of the PS Geeta Colony State Vs Avnish Kumar Page no. 26 of 31 letter Ex. PW13/A containing details of the report given by a doctor regarding cause of death cannot amount to proof of the opinion regarding the cause of death of Ms.

Priyanka.

45. The prosecution has proved MLC of deceased Priyanka i.e. Ex. PW1/A, OPD records of deceased Priyanka i.e. OPD slips dated 19.06.2012-Ex. PW15/A, OPD slip dated 05.06.2012 - Ex. PW15/B, OPD slip dated 26.06.2012

- Ex. PW15/C and OPD slip dated 31.07.2012 - Ex. PW15/D. The aforementioned documents only established that the deceased Priyanka was treated for ingesting some corrosive substance. As per OPD slips Ex. PW15/A to Ex. PW15/D the patient i.e. deceased Priyanka was only given OPD treatment. As per OPD slip dated 26.05.2012 Ex. PW15/B her condition was noted as 'healthy' and there is also a noting that 'she had gained weight and strength'. The said OPD slips also show that she was only visiting the OPD after the gaps of one months. Therefore, the said documents do not in any manner establish that death of Smt. Priyanka was result of ingestion of corrosive substance.

46. Thus, in view of the aforementioned discussion, it has to be concluded that prosecution has not been able to establish the actual cause of death of deceased Priyanka. In absence thereof it cannot be assumed that she had died as a result of ingestion of corrosive substance. In absence of any expert opinion regarding the actual cause of PS Geeta Colony State Vs Avnish Kumar Page no. 27 of 31 her death, the possibility of her having died a natural death cannot be ruled out.

47. In Ravasaheb @ Ravasabgouda etc Vs. State of Karnataka 2023 Livelaw (SC) 225, the Hon'ble Supreme Court reiterated the settled proposition of law i.e. "To entitle a person to benefit of doubt arising from a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him."

Thus, in view of the aforementioned discussion, accused Avnish is entitled to benefit of doubt.

48. Since the prosecution has not been able to establish that Smt. Priyanka had died a homicidal or suicidal death or it was in abnormal circumstances, therefore, her statement Ex. PW7/A cannot be termed as a dying declaration.

49. It is also pertinent to note that even otherwise the aforementioned dying declaration is not free from suspicious circumstances. It is the case of prosecution that Ms. Priyanka was admitted in hospital on 12.02.2012 on account of having consumed acid. PW-14 Dr. Yogesh Kushwaha of LBS Hospital deposed that she had ulcers in her mouth. The remaining OPD slips also show that she had injuries in her esophagus pipe. Therefore, in such circumstances the possibility of her throat and larynx getting damaged/ injured cannot be ruled out.

PS Geeta Colony State Vs Avnish Kumar Page no. 28 of 31

50. In the aforementioned circumstances, it was important and necessary for the investigating officer as well as the SDM to have taken the opinion of the treating doctor regarding the fitness and conscious state of her condition before recording her statement, but the perusal of statement Ex. PW7/A shows that neither any medical opinion was taken nor the doctor was present near the

patient at the time when her statement Ex. PW7/A was being recorded.

51. In his cross-examination, the 1st IO i.e. Insp. Sanjeev Kumar deposed that he informed the SDM that the patient was doing well and he again contacted the SDM on the next day. As per IO the SDM made inquiries from Priyanka and recorded her statement Ex. PW7/A which was attested by her, however, PW-11 Sh. D. S. Pundir, the then SDM deposed that the IO SI Sanjeev Kumar had made inquiries from the lady in his presence and he merely recorded the facts which were narrated by her. Therefore, the testimonies of the IO PW-7 Insp. Sanjeev Kumar and PW-11 Sh. D. S. Pundir are contradictory vis-a-vis the person who had inquired from the deceased.

52. It is further required to be noted that Insp. Sanjeev Kumar stated that he had inquired from Smt. Priyanka on 12.02.2012 itself, but he did not record her statement. He further stated that parents of victim were also present at hospital and 3/4 other persons were also present PS Geeta Colony State Vs Avnish Kumar Page no. 29 of 31 near the deceased when her statement Ex. PW7/A was recorded. The aforementioned fact also shows that there could have been a possibility of tutoring of injured Priyanka before her statement Ex. PW7/A could be recorded.

53. In Govind Singh Vs. State of M.P. (Cr.A. No. 485 of 2011), the Hon'ble Court held that, "Admissibility and reliability could be usefully summed up as under:

"21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination. 21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence."

Therefore, in view of the aforementioned facts and the proposition of law, the said statement Ex. PW7/A cannot be considered totally free from suspicion. As mentioned above, there is no other evidence to establish the alleged facts of the prosecution story.

54. Thus, at first it has to be said that the prosecution has failed to establish the very fundamental aspect of its case i.e. Smt. Priyanka had died a homicidal / suicidal or abnormal death. Further it has also failed to lead cogent evidence to establish beyond reasonable doubt that the accused had committed the offences u/s 304-B and 498-A of IPC respectively.

PS Geeta Colony State Vs Avnish Kumar Page no. 30 of 31 Conclusion:

55. In view of the aforementioned discussion, it has to be concluded that prosecution has failed to prove beyond reasonable doubt that accused Avnish had committed offences U/s 304-B and in the alternative u/s 302 IPC and u/s 498-A of IPC. Hence, accused Avnish is given the benefit of doubt

and is acquitted of all the charges levelled against him.

56. Accused has already furnished bail bonds and surety bonds u/s 437-A Cr. PC.

57. File be consigned to record room after due compliance.

Announced in open Court on 20.12.2024 (Sushant Changotra) ASJ (FTC) / East KKD Court/ Delhi
SUSHANT CHANGOTRA CHANGOTRA Date: 2024.12.24 15:57:51 +0530 PS Geeta Colony State Vs
Avnish Kumar Page no. 31 of 31