

Murali Vs. State of Kerala

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Court : Kerala

Decided On : Nov-07-2005

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Judge : R. Basant, J.

Acts : Evidence Act - Sections 3, 4, 13B, 43, 105, 106 and 113B; [Indian Penal Code \(IPC\), 1860](#) - Sections 84, 302, 304B, 489A, 498 and 498A; [Dowry Prohibition Act, 1961](#) - Sections 2; Code of Criminal Procedure (CrPC) - Sections 357(3); [Constitution of India](#) - Article 142

Appeal No. : Crl. A. No. 378 of 2003

Appellant : Murali

Respondent : State of Kerala

Advocate for Def. : C.P. Saji, Public Prosecutor

Advocate for Pet/Ap. : V. Chitambaresh, As Amicus Curiae

Judgement :

R. Basant, J.

1. The appellant, a prisoner in custody, has preferred this appeal through prison authorities to assail the verdict of guilty, conviction and sentence imposed on him

under Sections 498A and 304B I.P.C. He was sentenced to undergo R.I. for a period of three years under Section 498A and to undergo R.I. for a period of 10 years under Section 304B I.P.C. there was a further direction to pay a compensation of Rs. 50,000/- which was to be released to his only daughter under Section 357(3) Cr.P.C. and in default to undergo R.I. for a further period of three years. The substantive sentences of imprisonment were directed to run concurrently.

2. Initially the appellant faced indictment for the offences under Sections 489A and 302 I.P.C. After the commencement of the trial, the learned Sessions Judge altered the charge and included the charge under Section 304B I.P.C. After giving all reasonable opportunity to the accused consequent to the amendment of charge by recalling the witnesses etc., the trial proceeded. Before the court below as also before this Court the accused did not engage a counsel of his own and counsel were appointed on State Brief to assist the appellant. The appellant appears to be fortunate in that he has received good legal assistance. The learned Sessions Judge in the judgment has mentioned that exemplary assistance was rendered to the appellant by counsel Miss. Merline George. I must pay similar compliments to Sri. V. Chithambareesh, a fairly senior counsel, who, at the request of the court, had rendered assistance to the appellant. On behalf of the State also the learned Public Prosecutor Sri. C.P. Saji has rendered great assistance to the Court.

3. The crux of the allegations against the appellant is that he was guilty of matrimonial cruelty against the deceased, his wife. The marriage between the two took place on 12.2.1995. One girl child was born in such wedlock. It is the case of the prosecution that the appellant was guilty of continuous and incessant cruelty against his wife. He was allegedly suspicious of his wife. He allegedly harassed his wife by frequent demands for amounts, which the prosecution describes to be demands for dowry. The unfortunate wife met her death on the night of 8.6.1998. Furidan, an insecticide/poison had found its way to the stomach of the deceased and that was identified to be the killer.

4. The prosecution initially alleged that the said poisonous substance was administered by the appellant to his wife. She was misled, with contumacious

intent, to consume the poison, it was alleged. Later after amendment of the charge, it was further and alternatively alleged that the appellant had, at any rate, committed the offence punishable under Section 304B I.P.C. He had sent his wife to her parental home insisting that she should come back with an amount of Rs. 2,000/- She had taken refuge in her parental home. But the accused summoned her to return immediately, when his parents went to an Ayurvedic hospital to take some treatment there. On 8.6.1998, the date prior to the date of her death, she was thus constrained to leave the safety of her parental home and return along with the accused to her matrimonial home. On that night the accused came home only by midnight after the other occupants of the house had gone to sleep. After the accused returned, by about 2.45 a.m. the deceased was found in a precarious condition, having already consumed poison; 'or the poison having found its way already' into the system of the deceased.

5. Investigation commenced on the basis of Ext.P1 F.I. statement lodged by PW1, the unfortunate father of the deceased. It culminated with the final report submitted by PW14, Deputy Superintendent of Police. Cognizance was taken. The case was committed to the court of Sessions. The accused denied the offences alleged against him. Thereupon the prosecution examined PWs.1 to 16 and proved Exts.PI to P21. Mos. 1 to 5 were also marked.

6. PW1, as stated earlier, is the father of the deceased. Ext.P1 is the F.I. statement lodged by him at 8 a.m. on 9.6.98, the death having allegedly taken place at 4 a.m. earlier on that day. F.I.R., Ext.P1 (a), was registered by PW13 on the basis of Ext.P1. PW2 is the brother of the deceased. PW7 is a cousin of the deceased and PW12 is the sister of the deceased. They (PWs. 1, 2, 7 and 12) are examined by the prosecution to prove the alleged cruelty perpetrated against the deceased by the appellant. PW3 is a neighbour examined by the prosecution to suggest that he had sold Furidan, the poison, which took away the life of the deceased, to the appellant two months prior to the date of death. The obvious attempt was to suggest that the accused had administered such poison to the deceased. PWs. 4 and 5 are the father and brother of the accused. They predictably turned hostile to the prosecution. Exts.P2 to P4 case diary contradictions were marked in an attempt to discredit them. PW6 is a neighbour to

whom the accused had allegedly made an extra judicial confession suggesting his guilt for the death. But that witness did not support the prosecution case. Ext.P5 case diary contradiction was marked in an attempt to discredit PW6. PW8 is an attester to Ext.P6 recovery mahazar under which MO1 tiffin box in the house of the accused was recovered long after the alleged crime. I find no importance to that piece of evidence now. PW9 conducted the postmortem examination. He proved Ext.P7 postmortem certificate, Ext.P8 chemical examiner's report and Ext.P9 final opinion rendered after receiving Ext.P8. PW10 is the Tahsildar, who conducted the inquest on the body of the deceased. Ext.P10 is the inquest report. PW11, Village Officer, had prepared Ext.P11 plan, which has no crucial significance now. Pws. 13 to 16 are police officials, who had various roles to play in the registration of the crime, its investigation and the filing of the final report. Ext.P12 is the scene mahazar. Ext.P13 is a prescription issued by DW1, Psychiatrist, who had allegedly examined the accused on 10.4.1998 and 21.5.1998. This was available in the shirt pocket of the accused, which was found available at the scene of the crime. Exts.P14, P20 and P21 are the property list and the reports submitted by the Investigating Officer to Court. Ext.P15 is the forwarding note, to procure Ext.P16 chemical examiner's report. Exts.P17 to 19 are reports submitted by the Investigating Officer to court. MO1, as stated earlier, is the tiffin box in which, according to the alleged confession of the accused, the fatal poison mixed in water was allegedly placed by him for consumption by the deceased. MOs. 2 to 5 are clothes which the deceased, was wearing at the time of her death.

7. The accused took up a defence of total denial. According to him, he was not guilty of any cruelty to the deceased. He further contended that he was suffering from psychiatric ailment. His child was also suffering from some serious ailment - fits, it is suggested. The deceased and the accused were leading a happy life. But the deceased was dissatisfied with her plight in life, considering the ailments of the appellant and the child. It was suggested that the accused was not in any way responsible for the death of the deceased. She must have committed suicide, dissatisfied with her plight in life, it was suggested.

8. There was, of course, a further suggestion that the accused was suffering from some mental ailment. The case of mental illness was built on Ext.P1 3

prescription. The accused examined DW1, the doctor, who issued Ext.P13 prescription. Exts.D1 to D3 case diary contradictions were marked in the course of examination of PWs.1, 2 and 12 in an attempt to discredit them.

9. On the above evidence, the learned Sessions Judge, on an anxious consideration of all the relevant inputs, came to the conclusion that the charge under Section 302 I.P.C. has not been established. However, the learned Sessions Judge found that the charges under Sections 498A and 304B I.P.C. have been established satisfactorily. Accordingly, the learned Sessions Judge proceeded to pass the impugned judgment.

10. Detailed arguments have been advanced before me by the learned Counsel for the appellant and the learned Prosecutor. The learned Counsel for the appellant firstly contends that the court below erred grossly in placing reliance on the interested testimony of PWs. 2, 7 and 12. They being interested no reliance should have been placed and their testimony must have been discarded, contends the learned Counsel.

11. Secondly the learned Counsel contends that the ingredients of the offence punishable under Section 498A I.P.C. have not been established at all. The learned Counsel for the appellant thirdly contends that the ingredients of the offence punishable under Section 304B I.P.C. have not at any rate been established. Fourthly the learned Counsel submits that the indications available clearly suggest that the accused is entitled to the protection of the plea/general exception of insanity under Section 84 of I.P.C. Finally it is contended that the sentence imposed is, at any rate, excessive and the direction to pay compensation under Section 357(3) Cr.P.C. and the default sentence is legally unsustainable.

12. I have considered all these contentions. The first contention is that the evidence of PWs. 1, 2, 7 and 12 should not have been believed. They are interested, it is contended, they being the father, brother, cousin and sister of the deceased. Interestedness is normally a plank on which courts are requested to discard the testimony of witnesses, and/or atleast to approach them with care and caution. I have no doubt that care and caution deserve to be employed in a case like this when the evidence of relatives/ interested PWs. 1, 2, 7 and 12 are

considered. But no court can afford to ignore the fact that they are the persons who are most suited to speak about the facts which they have spoken to before court. Appreciation of evidence is both a science and an art. No rigid rule of the thumb can be applied. In the facts and circumstances of each case the courts have to consider all the probative inputs available and sequence of events. Ultimately, under Section 3 of the Evidence Act it is to be decided whether the relevant fact is proved or not and Section 3 of the Evidence Act makes it clear that the Court has to adopt the standards of an ordinarily prudent person while undertaking the appreciation of evidence. In a system like ours, where there is no jury, who are supposed to be men of ordinary prudence, the court has to adopt the standards of an ordinarily prudent person and answer the question whether the fact in dispute has been proved or not.

13. I have been taken through the evidence of PWs. 1, 2, 7 and 12. Approached with the yardstick/touchstone of an ordinarily prudent mind I find no circumstance which would justify an approach with inherent doubt and suspicion to their testimony. Yes, they were interested in the deceased, who was related to them. But there is nothing to show that they had any prior animosity against the appellant herein. The learned Sessions Judge appears to have considered all the relevant and vital inputs, which must appeal to an ordinarily prudent mind. Criticism that Ext.P1 F.I. statement does not give all the details which PWs. 1, 2, 7 and 12 have deposed before court was alertly considered by the learned Sessions Judge. The reasons given by the learned Sessions Judge do appeal to me to be impeccable. I find no reason why Pws.1, 2, 7 and 12, who, of course, must have held the deceased dearer to them than the appellant, should speak falsehood against the appellant.

14. Evidence of PWs. 1, 2, 7 and 12 reveal what a suspicious husband PW7 had been. It also reveals the pieces of cruel conduct that emanated from the appellant towards the deceased. Merely on suspicion the appellant used to take the deceased to task. He had also gone to the place of work of PW7 merely because the deceased and PW7 had a blood relationship, where marriage between them was not taboo. We also have convincing indications to show that the deceased, when she came from the house of the accused, bore marks of violence on her

person. We further have convincing data to show that when the deceased returned to the house of her father to stay there for some time, she had come back as directed by the accused - not to return unless she is able to raise an amount of Rs. 2,000/- We have satisfactory indications to show that her ornaments were all dissipated and not returned by him. Cruelty as defined under Section 498A I.P.C. is thus indicated convincingly by the evidence of PWs.1, 2, 7 and 12 - of what they physically perceived by their senses. I am, in these circumstances, satisfied that the court below committed no error in choosing to exercise its discretion in favour of acceptance of the oral evidence of PWs. 1, 2, 7 and 12. That all details have not been narrated in Ext.P1 or that earlier complaints had not been filed about the alleged cruelty of accused to the deceased are not reasons sufficient to discard the oral evidence of PWs. 1, 2, 7 and 12 or to generate any reasonable doubt in the mind of the court. The challenge on the first ground - that PWs. 1, 2, 7 and 12 should not have been believed - must, in these circumstances, fail.

15. The learned Counsel for the appellant contends that even if all the allegations raised by PWs. 1, 2, 7 and 12 were accepted in toto, it cannot be said to amount to cruelty as defined under Section 498A I.P.C. Under Section 498A we have to go not by the semantic meaning of the expression 'cruelty'. Explanation to Section 498A defines cruelty. I extract Section 498A with its explanation below.

Section 498-A. Husband or relative of husband of a woman subjecting her to cruelty: Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: For the purpose of this section, cruelty means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to

meet such demand.

16. The background under which the offence under Section 498A was brought into the Statute Book need not be adverted to in detail in this judgment. The evidence clearly shows that both under Clause (a) and (b) of the explanation to Section 498A the conduct of the appellant does amount to cruelty. The alleged conduct was certainly such as to cause grave injury to limb or health of the deceased. It is also further seen, I shall advert to that aspect in greater detail later, that such conduct of the appellant had driven the deceased to commit suicide. The standards adopted under Clause (a) of Explanation to Section 498A, as to what conduct is likely to drive the woman to commit suicide cannot obviously be the standards of a reasonably prudent person. The instinct to survive is so primary and basic in life that no conduct can be reckoned as likely to drive an ordinarily prudent person to commit suicide. An ordinarily prudent human being, it is possible to reasonably assume is not likely to commit suicide whatever be the adversity. He would battle to get over and surmount the adversity. No conduct can hence be objectively calibrated as conduct likely to drive an ordinarily prudent woman to commit suicide. The Legislature, it appears to me, had alertly and consciously used the expression 'the woman' and not 'a woman' or 'a reasonably prudent woman'. Expression 'the woman' used in Clause (a) of the explanation must certainly suggest that the standards of the woman in question have to be adopted while considering whether the conduct impugned was likely to drive the said woman to commit suicide. The crucial question hence is whether there was wilful objectionable conduct and whether the deceased committed or attempted to commit suicide on account of such conduct. If so that must be held to be conduct of the culpabale variety under Section 498A I.P.C. The conduct proved by PW7, the fact that the deceased who came from the house of the accused had telltale marks on her person as spoken to by PWs. 1,2, and 12, and that she did commit suicide ultimately because of such objectionable conduct do certainly bring the conduct of the appellant within the sweep of conduct defined in explanation (a) of Section 498A I.P.C. So much about the wilful conduct coming under Clause (a).

17. Coming to Clause (b), there is evidence to show that the deceased was harassed by the accused. We have convincing evidence to show that more than

once, she was sent back to her house with a mandate to bring more cash. This was obviously in addition to the dowry *stricto sensu*, which was paid at the time of marriage. Subsequent demands for money were made. The helpless deceased had complained to PW2 that she cannot look up to her aged father (PW1) for any further amount and that he, PW2, must somehow help her. This evidence of PW2 of what he perceived from her eloquently conveys the harassment which the deceased met at the hands of the appellant. Thus both under Clauses (a) and (b) of Explanation to Section 498A, the proved conduct of the appellant, as revealed from the evidence of PWs. 1, 2, 7 and 12 does amount to the offence of matrimonial cruelty punishable under Section 498 IPC I find no merit in the challenge raised on this ground.

18. We now proceed to consider the conviction under Section 304B IPC. The learned Counsel for the appellant raises various contentions to claim absolution from liability for the appellant for this offence. It will be advantageous to extract Section 304B IPC. straight away:

Section 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.'

It may not be necessary to advert to precedents on the point. The circumstances which have to be proved can safely be enumerated as follows:

- (1) Death of a woman must be caused by any burns or any bodily injury or must occur otherwise than under normal circumstances.
- (2) Such death must have occurred within 7 years of her marriage.
- (3) It must be shown that she was subjected to cruelty or harassment by the husband or any relative of her husband.

(4) Such cruelty or harassment must be for or in connection with any demand for dowry.

(5) Such cruelty or harassment must have taken place soon before her death.

If these circumstances are proved, Section 304B I.P.C. declares that such death shall be dowry death, a different and new offence defined and introduced into the Penal Code by Act 43 of 1986, and that such husband or relative shall be deemed to have caused her death. There is also a rider that 'dowry' used under Section 304B must convey the same meaning as in Section 2 of the [Dowry Prohibition Act, 1961](#). Section 304B(2) prescribes the punishment for the offence of dowry death for the culpable conduct of the husband or his relative - i.e. imprisonment for a term which shall not be less than 7 years, but it may extend to imprisonment for life.

19. It will be apposite to refer to another amendment that has been brought in by the very same amendment by which Section 304B found its way to the Indian Penal Code viz. Section 113B of the Evidence Act. Again, for the sake of convenience, I shall extract Section 113B:

Section 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 had 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.

Section 113B can have relevance only to a prosecution under Section 304B I.P.C, as it covers only dowry deaths and no other offence at all. It is mandated that the courts shall presume that a person (husband or relatives of the deceased), who had indulged in cruelty or harassment of the variety described under Section 304B had caused the dowry death. The expression 'shall presume' is defined under Section 4 of the Evidence Act in the following words.

'Shall presume' - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

I entertained a doubt as to what is the need or scope of the presumption under Section 113B of the Evidence Act when the substantive penal provision under Section 304B I.P.C. itself deems that the dowry death is caused by the husband or his relatives. When it is once deemed by the substantive provision that the husband or his relative has committed dowry death, why should there be any further presumption under Section 113B of the Evidence Act? Will the deeming under Section 304B constitute a conclusive proof under Section 4 of the Evidence Act, in which event Section 113B would become unnecessary and superfluous.

20. My attention has been drawn to the decisions reported in Hem Chand v. State of Haryana : AIR 1995 SC120 , Shamnsaheb M. Multtani v. State of Karnataka : (2001)2SCC577 and Sunil Bajaj v. State of M.P. : 2001 CriLJ4700 . I extract below paragraph 6 of the decision in Sunil Bajaj.

6. It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called 'dowry death' and such husband or his relative shall be deemed to have caused her death. It may be noticed that punishment for the offence of dowry death under Section 304-B is imprisonment of not less than 7 years, which may extend to imprisonment for life. Unlike under Section 498-A IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three years and shall also be liable to fine. Normally, in a criminal case the accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304-B IPC, an exception is made by deeming provision as to nature of death as 'dowry death' and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients/of the offence are proved by the prosecution. In the case on hand, the learned Counsel for the appellant could not dispute that the first two ingredients mentioned above are satisfied.

(emphasis supplied)

21. These decisions do not, of course, consider what further purpose was sought to be achieved by Section 113B of the Evidence Act in the wake of the deeming provision under Section 304-B I.P.C.

22. One must carefully consider the concept of dowry death introduced for the first time into the penal law by Section 304-B I.P.C. Dowry death had to be defined. It was defined and made an offence considering the peculiar circumstances of the Indian bride who had been much harassed and vexed in the name of dowry. Offering protection for her in the matrimonial home is the purpose for which Section 304-B I.P.C. in particular and Act 43/1986 in general sought to achieve. When dowry death was defined, by the peculiar nature of the definition therein, the responsibility had to be fixed in addition to defining dowry death. Dowry death was defined by the former part. The perpetrator of that crime was not capable of ascertainment crisply by the former part of the section. It had to be made clear as to who would be guilty of such defined dowry death. Cruelty or harassment emanating from the husband or relatives of the husband was the culpable act contributing to such death and therefore the law wanted it to be declared that the husband or relatives guilty of such cruelty or harassment must be held to be culpably responsible.

23. Though the Statute used the expression 'shall be deemed to have caused her death'. I must assume that no presumption of law was intended to be introduced to fix culpability in a given case. The only intention was to say that such husband or relative who is guilty of harassment 'must be said to have' caused her death. If the expression 'deemed to have caused her death' were given any wider interpretation of fictional or deemed culpability, certainly the presumption under Section 113B would be superfluous. More over, if such an interpretation were to be given to the expression 'deemed to have caused her death', even in the absence of a live link between cruelty or harassment and death such husband or relative will have to be held guilty of dowry death. Though the words 'deemed to have caused her death' is seen used in Section 304-B I.P.C. it must certainly be read down and understood to mean 'shall be said to have caused her death'. Any other

interpretation would only create confusion and render Section 113B brought into the Evidence Act by the same Act 43 of 1988 redundant, superfluous and unnecessary. Such an interpretation would render the husband or his relative culpably liable even if there be no live and proximate linkage between the alleged cruelty/ harassment and the death of the victim. I therefore take the view that the body of Section 304-B I.P.C. which stipulates that such husband or relative shall be deemed to have committed such death can only be understood to mean that such husband or relative shall be said to have caused the death. Presumption of any of the three varieties contemplated under Section 4 of the Evidence Act was not intended to be introduced by employment of such expression in Section 304B. The expression 'deemed to have caused the dowry death' in Section 304B does not create any legal fiction. It only lays down the culpable responsibility for causing dowry death. It will further have to be shown that there was a live and proximate link between cruelty or harassment perpetrated against the victim woman by her husband or relatives and the death suffered by the victim.

24. That there must be a live and proximate link between the alleged cruelty/ harassment and death is by now well established. It is unnecessary to advert to all precedents on the subject. But the decisions in *Satvir Singh and Ors. v. State of Punjab and Anr.* : 2001 CriLJ4625 , *Kamesh Panjiyar Alias Kamlesh Panjiyar v. State of Bihar* : 2005 CriLJ1418 and *State of Rajasthan v. Teg Bahadur and Ors.* 2005 SCC (Cri) 218 do appear to conclude the issue. Quintessence of these decisions is available in the following passage appearing in paragraph 11 of the judgment in *Kamesh Panjiyar's case (supra)*, i.e.

there must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned. If the 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.

(emphasis supplied)

25. Such linkage must be established. It is only then that the husband or relatives can be said to have committed the offence of causing dowry death. Where cruelty or harassment is proved, the law mandates that the presumption under Section 4

that the court shall presume will come into operation. The linkage has to be established, but it can be presumed and the presumption is of the 'shall presume' variety referred to in Section 4 of the Evidence Act. It therefore follows that Section 304-B defines the offence and declares that the husband or his relatives from whom the cruelty emanates shall be said to have committed such offence. This is to be read along with Section 13-B, which mandates a presumption that such husband/relatives had caused dowry death. Such presumption is rebuttable as indicated in Section 4 of the Evidence Act.

26. So far as this case is concerned, there can be no serious dispute on the first two ingredients of the offence defined under Section 304B. Death of the deceased had taken place otherwise than under normal circumstances. There is no dispute on this aspect. Such death had occurred within seven years of her marriage with the appellant. This again is well established and there is no dispute. I have already come to the conclusion that the appellant had subjected the deceased to cruelty and harassment of the variety described under Section 498A. It is crucial to note that neither Section 304-B nor Section 113B specifically stipulates that cruelty or harassment must be of the variety contemplated under Section 498A, (i.e. Clauses (a) and (b) of the Explanation). But it is by now trite that cruelty must take its meaning and colour from the description of cruelty under the Explanation to Section 498A. This is declared unambiguously in paragraph 12 of Kamesh Panjiyar's decision (*supra*) and I extract below the relevant portion:

In Section 304-B there is no such explanation about the meaning of 'cruelty'. But having regard to the 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 498-A under which 'cruelty' by itself amounts to an offence.

(emphasis supplied)

I have already held while considering Section 498-A that the appellant is guilty of cruelty and harassment as described under Section 498-A Explanation (a) and (b).

27. The learned Counsel for the appellant contends that by no stretch of imagination can it be held that the demand for money allegedly raised by the

appellant when the deceased was allegedly sent home on the last occasion is 'dowry' as defined under the [Dowry Prohibition Act, 1961](#). The learned Counsel contends that if such an unlimited meaning were to be given to the expression 'dowry' it would work out hazardous consequences. In order to attract culpability under Section 304-B, any cruelty or harassment is not sufficient. Such cruelty or harassment must be 'for or in connection with any demand for dowry'. To attract culpability under Section 498-A, this is not necessary. Wilful conduct and harassment as explained in Explanations (a) and (b) to Section 498-A would attract culpability under Section 498-A. The demand need not necessarily be for dowry under Section 498A. But in order to attract culpability under Section 304-B, such cruelty or harassment must be 'for or in connection with any demand for dowry'. Therefore, it is important to ascertain what the expression 'dowry' means under Section 304-B. The Explanation to Section 304-B makes it clear that the expression dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act. Section 2 of the Dowry Prohibition Act reads as follows:

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 parent 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 on any time after the marriage in connection with the marriage of the said parties.

28. The expression 'dowry' in the [Dowry Prohibition Act, 1961](#), has undergone transformation after its enactment in 1961. It is not any more necessary or essential that the demand must be made at or before or immediately after the marriage. The Act has been amended to stipulate that the payment and demand of dowry can be at any time after the marriage. Similarly, it is not any more necessary that such payment must be as consideration for the marriage'. It is enough now if such payment is 'in connection with the marriage'.

29. The expression 'marriage' can have two distinct meanings. I attend a marriage. A marriage takes place on a particular date. But the spouses live in marriage and they remain married from that date. It is a one time event if we reckon the same as solemnisation of marriage. Obviously in the section in the first part when it referred to payment at or before or at any time after the marriage the reference must have been to the one time event of solemnisation performance of marriage. But different seems to be the intention when we consider the latter expression 'in connection with the marriage'. It is not essential that such payment must relate to the initial function or performance of rites or solemnisation of marriage. The expression marriage understood in the former sense is the event of commencement of the relationship of the marriage. Thereafter only the relationship of marriage comes into existence. The marriage of the spouses continues from that day.

30. The learned Public Prosecutor contends that in the expression 'in connection with the marriage', the marriage must be reckoned as such relationship of marriage until such marriage continues. The expression 'in connection with the marriage' does not refer to the marriage performed, which only heralds the relationship of marriage and indicates solemnisation or commencement of the marital tie.

31. The learned Counsel for the appellant further contends that only property or valuable security 'given or agreed to be given' can qualify to be dowry. In a case like the instant one, where no one has a case that there was any property given or agreed to be given after the marriage in connection with the solemnisation of marriage, any and every subsequent demand for amounts from the wife or her parents cannot be reckoned as dowry as defined under Section 2 of the Act 28 of 1961. In this view of the matter, the counsel contends that even if it be accepted, that a demand for an amount of Rs. 2,000/- was made, when the deceased was sent home by the appellant as alleged by the prosecution, such demand for Rs. 2,000/- which was never given or agreed to be given in connection with the solemnisation of marriage cannot at any rate be reckoned as dowry.

32. Though some doubt can certainly be entertained by the use of the expression 'given or agreed to be given', which does not specifically include a demand for any

payment, such doubt cannot any more be held to be legally permissible in view of the decisions of the Supreme Court on the subject.

33. Here again, it is unnecessary to advert to all the decisions on the point. The question has been considered in the following decisions i.e. in *State of H.P. v. Nikku Ram* : 1995 CriLJ4184 , *Pawan Kumar v. State of Haryana* : 1998 CriLJ1144 and *Satvir Singh v. State of Punjab* : 2001 CriLJ4625 . In para 11 of the decision in *Nikku Ram* the expression 'given or agreed to be given' is considered in detail. It must be remembered that Their Lordships were considering the sweep of the expression 'dowry' even before the amendment i.e., even before the payment 'at any time after the marriage' and payments in connection with the marriage only and not as part of the consideration for marriage were not brought under the sweep of the expression 'dowry'. This is what Their Lordships observed in paragraph 11, which I extract below:

Despite the aforesaid definition having stated that the property or valuable security given or agreed to be given has to be as 'consideration for the marriage', demands made after the marriage could also be a part of the consideration, according to us, because an implied agreement has to be read to give property for valuable securities, even if asked after the marriage, as a part of consideration for marriage. When the Dowry Prohibition Act was enacted, the Legislature was well aware of the fact that demands for dowry are made, and indeed very often, even after the marriage has been solemnised, and this demand is founded on the factum of marriage only. Such demands, therefore, would also be, in our mind, as consideration for marriage.

(emphasis supplied)

34. It is hence settled beyond controversy from these decisions as well as later decisions that it is not necessary that there must be any actual agreement for making post marriage (solemnisation) payments. Such demands which come from the husband or his relatives at any time after the marriage which are not as consideration for marriage, but only in connection with marriage (and though there is no earlier agreement to make such payments) would all qualify to be dowry as defined under Section 2 of the Dowry Prohibition Act. Repetition of the argument

that such payment cannot be said to be amount given or agreed to be given is of no help to the appellant as the position has been well established by now. Going by the dictum in Nikku Ram's case an implied agreement has to be read in to give valuable property even if asked after marriage. If that is the position prior to amendment, there can be no doubt that such payment will also be brought under the expression 'dowry'. The law having been laid down clearly in those decisions, I am not persuaded to embark on an academic discussion as to whether such payments can be reckoned as payments given or agreed to be given. That academic discussion is unnecessary in view of the binding precedent referred above.

35. What now remains to be considered is whether there was demand for dowry in this case. I have already taken note of the fact that the evidence of PWs.2 and 12 clearly show that there was a demand and the deceased did not want to return to the accused unless she was able to raise the amount of Rs. 2,000/- which she was asked to bring. This must certainly be reckoned as payment of dowry notwithstanding the fact that the demand was made long after the marriage and notwithstanding the fact that there was no prior agreement to pay such amount or that such payment cannot be reckoned as consideration for marriage. Such demand was certainly demand for dowry.

36. The counsel contends that there is no live and proximate link between the said demand and the death of the woman. It is well settled that any such demand or harassment for dowry made at any distant earlier point of time will not attract culpable liability under Section 304B I.P.C. It has to bear a live and proximate link with the death of the deceased. The demand for dowry and harassment must be soon before death. Is there such link in this case? We have evidence to show that the deceased had come back to her house as sent by the appellant, intending to remain there for some time. She expected to go back only with an amount of Rs. 2000/- as demanded by the appellant. She was embarrassed to request her aged father, PW1, to raise that amount. So she implored her brother PW2 to raise that amount. PW2 did not have the amount readily with him. He said that he had to raise that amount only within atleast a month and by then he will do the needful. But she did not get that expected span of time. She was forced to return because

the appellant came to her parental home and wanted her to return as his parents had gone for an Ayurvedic treatment. Thus it is evident that she had to return without the money as demanded by the appellant. The death occurred in this case one day after she had so returned - on the same night. The sequence of events in this case clearly show that there is a live and proximate link between the demand and the death of the deceased.

37. The presumption under Section 113B is only a rebuttable presumption. The accused can attempt to rebut the presumption. Under Section 43 of the Evidence Act, it is to be presumed that dowry death was caused by the appellant. The burden on an accused facing indictment to rebut the presumption under Section 4 is not as heavy and onerous as the burden on the prosecution to discharge its initial paramount burden to prove its case beyond reasonable doubt. The lesser yardstick will be adopted even if the burden on the accused to rebut the presumption is one which comes under the category of presumption of 'shall presume' under Section 4 of the Evidence Act.

38. The learned Counsel for the appellant contends that the deceased must have been under great emotional stress. Her husband was suffering from a psychiatric ailment as revealed from the evidence of DW1 and Ext.P13. He further contends that the child was also ill and to drive home this point, he relies on the case diary contradictions marked, which had been denied by the witnesses concerned. It cannot be lost sight of that the appellant is the father of the child. It must be possible for him to prove the existence of any ailment of the child as to create such anxiety in the mind of the deceased to prompt her to commit suicide. No attempt is made by the accused to satisfactorily prove such ailment, if any, of the child at all. The alleged illness of the child is not proved at all. I shall accept the evidence of DW1 and Ext.P13. That can only show that the accused had some mental aberration. Such a mental ailment as to prompt the wife to commit suicide is not even indicated. Here I find the reasoning of the learned Sessions Judge to be eminently acceptable. The deceased did not commit suicide even after she returned to the appellant's house or even till the appellant returned to his house at about 12 midnight. Poison must have been consumed by her between 12 midnight and 2.45 a.m. At that time only the appellant and she were available in the house-

in their room.

39. The presumption under Section 113-B is available against the accused. What transpired on that night between the accused and the deceased, only the accused can now explain. The burden under Section 106 cannot be lightly wished away by the accused though he is only one facing indictment in a criminal trial. The appellant wants to take umbrage behind the evidence of his brother, PW5, who asserted that the deceased and the appellant did not share the same room and the appellant slept in the hall outside the bed room used by the appellant and the deceased. What reason was there for him to so sleep in a different room? No explanation whatsoever comes forth from the accused. It is reasonable, as held by the learned Sessions Judge, to look up to the accused to offer explanation. He does not offer any. In considering whether the burden under Section 113-B read with Section 4 of the Evidence Act has been discharged by the accused, the absence of any explanation coming forth from him of what happened inside the house on that night assumes crucial significance. In the totality of facts and circumstances of this case, I am of the opinion that the learned Sessions' Judge was absolutely justified in coming to the conclusion that the burden under Section 113-B has not been successfully discharged by the appellant.

40. It follows from the above discussions that all ingredients of Section 304-B I.P.C. have been established by the prosecution. That the deceased died under circumstances not normal is established. That she died within 7 years of her marriage is established. That there was cruelty and harassment to the deceased by the appellant as defined under Section 498A is established. That such cruelty and harassment was for and in connection with demand for dowry is established. That such demand was soon before the death of the deceased has also been established. The live link between such cruelty and death is established. The burden to rebut the presumption under Section 113B of the Evidence Act is not discharged. Thus the offence under Section 304-B I.P.C. has been established satisfactorily. I concur with the conclusion of the learned Sessions Judge on this aspect.

41. The learned Counsel for the appellant then contends that at any rate the accused is protected by the general exception to criminality - of insanity, under Section 84 I.P.C. He relies on the evidence of DW1 and Ext.P13 on this aspect. Though CW1 and Ext.C1 were not examined/marked in the course of the trial in this case, a feeble attempt is made to rely on such evidence of CW1 and Ext.C1 also. I shall for the purpose of argument assume that the evidence of CW1 and Ext.C1, though not strictly legal evidence in the trial, can be looked into atleast to ascertain whether the prosecution has not discharged its burden to place evidence about the state of mind of the appellant.

42. The defence of insanity under Section 84 I.P.C. can enure to the benefit of an indicttee only if he succeeds in proving that the act was done by him 'who at the time of doing it, by reason of unsoundness of mind, was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law'. I have gone through the evidence of DW1 and CW1 and Exts.P13 and C1 with utmost care. There is not a semblance of evidence, not a whisper from CW1 or DW1 which would suggest that there was any such unsoundness of mind which could have rendered the appellant incapable of knowing the nature of the act, (cruelty and harassment in this case) or that he was doing what was either wrong or contrary to law. It will be apposite in this context to take note of Section 105 of the Evidence Act, which mandates that the Court shall presume absence of circumstance making any of the General Exceptions applicable to a given case. It is in these circumstances very evident that the protection of the plea of general exception of insanity under Section 84 I.P.C. is not available to the appellant. The learned Sessions Judge was absolutely justified in turning down the plea raised under Section 84 I.P.C. In fact it is seen that though such plea was not specifically raised, the learned Judge rightly felt it to be his duty to consider whether such plea is available to the appellant.

43. What remains is only the question of sentence and the validity of the direction under Section 357(3) Cr.P.C. Though not a valid defence, a court cannot afford to ignore the fact that there is some mental aberration for the appellant. So much is evident from the evidence of DW1 and CW1 as also Exts.P13 and C1. There is nothing to show that such mental aberration is sufficient to attract absolution from

culpability. But the fact remains that there was some mental ailment for the appellant. I am, in these circumstances, satisfied that imposition of the minimum mandatory imprisonment under Section 304-B I.P.C. shall eminently meet the ends of justice in the fact and circumstances of this case. I am in agreement with the learned Sessions Judge that imposition of the maximum punishment under Section 498-A I.P.C. is warranted in the facts and circumstances of this case. I am satisfied in these circumstances that the substantive sentence of imprisonment under Section 304-B I.P.C. can be reduced to the minimum mandatory sentence of R.I. for 7 years. The challenge against the sentence can succeed only to the above extent.

44. The learned Counsel for the appellant finally contends that the direction under Section 357(3) Cr.P.C. is legally not justified. Most surprisingly, for the offence under Section 304-B I.P.C. no sentence of fine is permissible under law. The counsel contends that when no sentence of fine is permissible under law, it would be inapposite/illegal to impose any direction to pay compensation under Section 357(3) Cr.P.C. The counsel contends that the issue of the impugned direction under Section 357(3) Cr.P.C. is illegal and unsustainable.

45. The learned Counsellor the appellant relies on the decision reported in *Arun Garg v. State of Punjab* 2004 (3) KLT 435 (SC). A two Judge Bench of the Supreme Court in that decision had set aside the direction for payment of fine imposed under Section 304-B I.P.C. The Hon'ble Judges did not accept the request of the respondent in that case to reckon the direction for payment of fine as one for payment of compensation under Section 357(3) Cr.P.C. only. Relying on that course adopted by the Judges in that case, the learned Counsel for the appellant submits that imposition of any direction for payment of fine under Section 357(3) Cr.P.C. is not justified when no fine is legally permissible.

46. I have been taken through the decision in detail. I am unable to find anything in the said decision which stipulates that in the absence of legal competence to impose a sentence of fine a direction for payment of compensation under Section 357(3) Cr.P.C. cannot be issued. The discussions clearly show that their Lordships did not lay down any such proposition of law. In the facts of that case what was

imposed was only a sentence of fine and a consequent direction under Section 357(3) Cr.P.C. In as much as Section 304-B does not provide for any sentence of fine, such imposition of fine was not legally justified. Their Lordships proceeded to consider whether the direction can be reckoned as one under Section 357(3) Cr.P.C. Their Lordships did not lay down that such issue of direction under Section 357(3) is impermissible when the penal provision does not authorise imposition of any sentence of fine. Their Lordships proceeded to consider whether imposition of a direction for payment of compensation under Section 357(3) Cr.P.C. would be justified in the facts of that case. Their Lordships took the view that the father-in-law of the accused, the father of the deceased, had no right in law to claim any amount from the accused in that case. That is the reason why their Lordships did not choose to convert the direction for payment of fine to a direction under Section 357(3) Cr.P.C. Their Lordships had only held that there must be a civil right to claim compensation before the discretion under Section 357(3) is invoked in favour of a grantee.

47. Having gone through that decision exhaustively I am of the opinion that the said decision cannot be reckoned as authority for the proposition that the discretion under S 357(3) Cr.P.C. cannot be invoked where no fine is imposable under the relevant penal provisions. Such a proposition is legally unsustainable as the language of Section 357(3) which I extract below shows clearly that such power can be invoked only in a case where no fine is imposed. That the court must be capable of imposing a fine is not a requirement that can reasonably be read into that provision.

Section 357(3): When a Court imposes a sentence of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(emphasis supplied)

48. The child in this case, the child of the appellant, has been illegally deprived of maternal care, affection and protection. She has suffered loss. Such loss can be

the foundation for a legal action for compensation against the appellant. Unlike the facts in Arun Garg (supra) referred above, the daughter of the deceased in this case has a legal right to claim compensation and therefore the direction for payment of compensation, even going by the dictum in Arun Garg, is perfectly justified. There is absolutely no legal error or impropriety in the issue of the impugned direction under Section 357(3) Cr.P.C.

49. The learned Counsel for the appellant contends that a default sentence is not legally permissible for nonpayment of compensation under Section 357(3) Cr.P.C. There is no enabling provision in the Statute, contends the learned Counsel. This contention is no more available to the appellant. The Supreme Court in Hari Kishan & State of Haryana v. Sukhbir Singh : 1989 CriLJ116 has laid down that a direction for payment of compensation under Section 357(3) Cr.P.C. can be enforced by a default sentence. The Supreme Court was certainly aware that there is no specific statutory provision enabling such imposition of default sentence. In spite of that, in the interests of the victims and to advance the principles of victimology, the Supreme Court appears to have advisedly laid down the principle that a default sentence can be imposed for non-compliance with the direction under Section 357(3) Cr.P.C. The argument that imposition of a default sentence for nonpayment of compensation under Section 357(3) obliterates the distinction between fine and compensation does appear to be impressive, but I cannot accept the same in view of the decision of the Supreme Court referred above. The said law has stood the test of time. The Supreme Court in Suganthi Suresh Kumar v. Jagdeeshan : 2002 CriLJ1003 has reiterated that the dictum in Hari Kishan 's case (supra) is valid and binding on all courts. That must be reckoned as reiteration of the declaration of law binding on this Court under Article 142 of the Constitution. The challenge on that ground must also hence fail.

50. In the result:

(a) This appeal is allowed in part.

(b) The verdict of guilty and conviction under Sections 498A and 304B I.P.C. are upheld.

(c) The sentence imposed under Section 498A I.P.C. is upheld.

(d) The direction for payment of compensation under Section 357(3) Cr.P.C. and the default sentence are also upheld.

(e) But the sentence of imprisonment under Section 304B I.P.C. is modified and reduced from R.I. for a period of 10 years to R.I. for a period of 7 years.

51. Communicate a copy of this judgment to the court below as also to the Prison authorities. A copy shall be communicated to the prisoner also and his acknowledgment obtained. The same shall be filed in the records.

52. If the appellant has already served the modified sentence hereby imposed and he is not required to be in custody in connection with any other case, the Prison authorities shall take necessary steps to release the appellant from custody.

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