

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 186 of 2004

Barun Devi & Anr.

-Vs-

The State of West Bengal

For the Appellants : Mr. Milon Mukherjee
Mr. Biswajit Manna

For the State : Mr. Pratick Bose

Heard on : 13.07.2023, 19.07.2023, 27.07.2023,
07.08.2023, 21.03.2024, 26.06.2024

Judgment on : 24.09.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23.12.2003 passed by the Learned Additional Sessions Judge, 14th Court, Alipore, South 24 Parganas in Sessions Trial No.1(1) 2002 convicting thereby the appellants for commission of offences punishable under Sections 498A/34 and Sections 304B/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 2 years each and to pay a fine of Rs.500/- each in default to suffer rigorous imprisonment for a period of 1 month each for the offences punishable under Sections 498A/34 of the Indian Penal Code and also to suffer rigorous imprisonment for 7 years each and to pay a fine of Rs.2000/-

each in default to suffer rigorous imprisonment for 2 years each for the offences punishable under Sections 304B/34 of the Indian Penal Code and both the sentences were directed to be run concurrently.

2. The prosecution case in brief was to the effect that Gita Shaw (since deceased) was married to the appellant no.2 according to Hindu Rites and Customs. At the time of the said marriage the parents of deceased victim lady gave some *Jautuks*, namely cash of Rs.23,000/- and cash of Rs.10,000/- for purchase of gold ornaments, wrist watch and a sum of Rs.2000/- in cash for purchase of garments of the groom and a pair of earrings weighing 14 *annas* and an iron churi with gold to the accused. It was alleged that immediately after the said marriage the accused persons started inflicting torture both mental and physical on the person of victim lady for demand of further dowry. After 6 months of the marriage the parents of the deceased also gave a cash of Rs.10,000/- only to the appellant no.2 for purchase of a cot and bedding for their use. It was alleged that the deceased was subjected to cruelty by the accused persons, namely the husband, mother-in-law and sisters-in-law (nanads). She was denied food and clothing's. She was not even allowed to talk to any person. The accused persons also instigated Gita to commit suicide. The mother-in-law (appellant no.1) of the deceased threatened the deceased by saying that she will never get such a good husband like the appellant no.1 and demanded dowry to the tune of Rs.50,000/-. When deceased girl went to her paternal home, she narrated the incidents of torture meted out to her by her in-laws. It was further alleged that deceased girl was assaulted with a 'hanta' by her

husband i.e., the appellant no.2. Deceased girl ultimately committed suicide at her matrimonial home on 13.04.2001 at about 08:30 a.m. On receipt of the information of the death of the deceased girl, her parents rushed to her matrimonial house and came to know from the para people that deceased was sent to R.G. Kar Medical College and Hospital. The parents of the deceased thereafter went to R.G. Kar Medical College and Hospital wherefrom they came to know that their daughter was declared brought dead.

3. Based on the complaint Chitpur P.S. Case No.101 of 2001 under Sections 498A/304B/34 of the Indian Penal Code was registered.
4. After completion of investigation, the investigating agency submitted charge-sheet under Sections 498A/304B/34 of the Indian Penal Code against the appellants and two others namely Smt. Anju Shaw and Smt. Urmila Shaw on 12.07.2001.
5. Charges under Sections 498A/304B/34 of the Indian Penal Code were framed against them which were read over and explained to the appellants and to which they pleaded not guilty and claimed to be tried.
6. In order to prove its case the prosecution examined as many as 17 witnesses and exhibited certain documents.
7. Learned Advocate for the appellants submitted as follows –
 - i. The evidence adduced by the prosecution did not prove the charges under Sections 498A/304B of the Indian Penal Code and in such circumstances.

- ii. There were contradictions in the evidences of the prosecution witnesses.
- iii. Save and except the evidence of PW-9 and PW-10, the other material witnesses adduced by the prosecution were close relatives of deceased girl, who had an interest to punish the appellants.
- iv. Moreover, PW-9 and PW-10, the independent witnesses had only mentioned about the alleged torture upon deceased girl by the appellant no.1.
- v. No evidence had been adduced by the prosecution to show the deceased girl was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry soon before her death. In the absence of such evidence on record, the conviction of the appellants under Section 304B of the Indian Penal Code was unjustified as also the invocation of the presumption under Section 113B of the Evidence Act.
- vi. The post mortem report contained 12.04.2001 as the date on which the body was brought for post mortem examination. However, the death of victim lady took place on 13.04.2001. It was thus apparent that no post mortem on the body of victim lady could had taken place on 12.04.2001 and as such, the post mortem report could not had been relied upon.
- vii. There existed grave inconsistencies and contradictions between the evidences of the material witnesses, adduced by the prosecution.

- viii. From the facts and circumstances of the case it could be seen that the prosecution miserably failed to bring home the charge as brought against the appellants and hence the interference of that Hon'ble Court was highly solicited.
8. The Learned Advocate for the State submitted that the prosecution was successful in proving its case and the appeal should be dismissed.
9. A circumspection of the prosecution witnesses revealed as follows:
- i. PW-1 in his deposition to a constable being no.9051, attached to Photography Section, D.D. Lalbazar and as per direction of his O/C, Photography section, Lalbazar he went to the dead house at N.R.S. Morgue and took out the photograph of the dead body of the victim, marked Exbt. Mat.-I with negative. Thereafter, he went to Chitpur P.S. and met S.I. T.N.Ghosh who accompanied him to Mitrabagan, 2/1, H/2, Dum Dum Rd., Cal-30 and as per his direction he took out three photographs with negative of the said premises. The photograph of the ceiling of the room of the said premises was marked as Exbt. Mat-I/1. The photograph with negative was marked Exbt. Mat-I/2. Photograph with negative of the outside of the premises and also the cot and partly broken door of the room was marked as Exbt. Mat-I/3.
 - ii. PW-1 in his cross-examination stated that he did not have any degree or diploma in photography. There were four photographs attached to their photography section, D.D. Lalbazar. Those photographs did not bear his signature. Exbt. Mat-I did not bear any signatures of the

parents of the deceased. Other three photographs did not bear the holding number of the premises.

- iii. PW-2 recounted her deceased daughter was married to the accused Umesh Shaw on 30.04.99 according to Hindu Rites and Customs against several *Joutuks* and cash of Rs.23,000/- and a cash of Rs.10,000/- for purchasing of gold ornaments and thereafter they paid a further sum of Rs.10,000/- out of the demands to the accused. After marriage, the deceased victim lived with her husband at her matrimonial home. Immediately after marriage, the husband and mother-in-law and sister-in-law of the deceased ill-treated the victim. Her daughter was subjected to cruelty by all the accused persons. The accused persons further demanded a cash amount of Rs.50,000/- through her deceased daughter. Her deceased daughter while staying in their house narrated them about the tortures on her by the accused persons. They paid a further cash of Rs.10,500/- towards purchase of bedding to fulfil further demands of the accused persons. On the information of a young boy of the locality of accused persons PW-1 along with her son Mahesh Shaw, local people Arjun Shaw and his wife Sital Prasad Shaw, Bhola Shaw had been to the house of the accused persons and learnt that the victim was taken to R.G. Kar Medical College & Hospital for treatment. They thereafter went to R.G. Kar Medical College & Hospital wherefrom they came to learn from police personnel that the victim daughter expired by committing suicide by hanging. Police recorded her statement at R.G. Kar Medical

College & Hospital at Calcutta. She put her L.T.I. on the written statements recorded by police.

- iv. PW-2 in her cross-examination stated the contents of the statements were recorded by police who read over and explained to her and thereafter she put her L.T.I. on it. She had not gone through the contents thereof. She was not allowed by police to see the dead body of her deceased daughter at hospital. Her husband was a rickshaw puller. She was an illiterate woman. She could not account the amount of Rs.23,000/- in Rs.500/- denomination. Her husband paid the said amount to the accused. After marriage, the victim along with her husband accused Umesh Shaw visited their house twice or thrice but they did not stay overnight in their house. She also visited the accused house once or twice.

She did not lodge any information with the local P.S. regarding demand of further dowry subsequent to the marriage by accused. Deceased daughter was not treated by any doctor. She did not lodged any information with the local P.S. regarding torture by all the accused. The witness volunteers, her daughter however stated to him that the dispute would be settled soon. She did not state the fact to the police. She had not brought any documents to show that they purchased gold ornaments before marriage ceremony of his deceased daughter with accused but she however handed over the cash memo in respect of the gold ornaments to the police.

- v. PW-3 in his deposition stated the victim lady was his elder sister who was married to the accused Umesh Shaw. Several Jautuks namely Cash money of Rs.23,000/- only and a further cash money of Rs.10,500/- only towards purchase of gold ornaments, wrist watch and others were also given in her marriage ceremony. A sum of Rs.2000/- in cash was also paid to the accused Umesh Shaw for purchasing dresses, one golden churi and a golden ear-ring were also given in the said marriage ceremony. After 6 months of their marriage a cash money of Rs.10,000/- towards purchase of palanka was also paid to the accused. After a few days of marriage, he went to the house of the accused to bring his sister as per local customs but the accused persons excepting Umesh Shaw refused to send his sister back to him. They also abused him in filthy languages and misbehaved with him. On the next following day he along with his neighbours namely Arjun Shaw and his wife and also his mother again went to the house of the accused. On the following day the victim came along with his mother, Arjun babu and his wife to their house. While staying in their house the victim had narrated to him that her belongings namely, golden ornaments and others were taken by her husband and they threatened her to perform the household works with one saree. His deceased sister was also denied to take her bed on the palanka (cot) by the accused. He went to the house of the accused to see his deceased sister with mangoes and sweets just two days prior to her death. He found her sitting under a cot.

- vi. PW-3 in his cross-examination stated that he passed Madhyamik Examination. A sum of Rs.50,000/- in cash was paid by his mother to the accused Barun Devi (mother of the accused Umesh shaw). He was interrogated by the I.O. on the next date of occurrence.

He did not lodge any information with the local police station. He did not ask his parents to lodge any information regarding ill-treatment of his deceased sister by the accused.

- vii. PW-4 deposed to have negotiated the marriage of the victim with the appellant no.2. His evidence is based on hearsay being tutored.
- viii. PW-5 deposed to have participated in the negotiation of marriage of the deceased Gita Shaw and the accused Umesh Shaw and in the said negotiation it was agreed by the parties that the deceased's father will pay a sum of Rs. 23,000/- in cash and a sum of Rs. 10,000/- towards gold ornaments and also a sum of Rs. 2,000/- towards dresses, with further condition that after 10 months of marriage deceased's father will pay a sum of Rs. 10,000/- to the accused. The father of the deceased gave all the above jautuks in the marriage ceremony. The victim narrated to him that she was assaulted by the members of her in-laws family and sometimes she was not allowed to take bed in the cot. They requested the accused Umesh to reconcile the matter, but later denied. Thereafter, he along with Ramesh Shaw, Sital Shaw, Bhola Shaw and Arjun Shaw went to the in-laws house of the deceased and settled the dispute amicably. In the said meeting accused Umesh Shaw agreed to treat his wife well in presence of his

parents and others. Deceased Gita Shaw committed suicide by hanging on 13.04.2001 in her matrimonial home. On the same day morning, at about 9.00/10.00 a.m. he went to the house of the accused and found that the dead body of the deceased was taken to the hospital.

- ix. PW-5 further stated in his cross-examination the relationship between the deceased and her husband Umesh Shaw immediately after marriage was cordial. He visited the house of the accused thrice. The marriage of the deceased with her husband was solemnized on 30.4.1999. He had not spoken to the inmates of the family of the deceased excepting the date of negotiation, date of marriage and date of 'salis' board. He had spoken to the deceased Gita Shaw about 15/20 days prior to her death.
- x. PW-6 deposed to have been present at the negotiation of marriage of the deceased with the accused Umesh Shaw. In the said negotiation, it was settled that a sum of Rs. 23,000/- only in cash, 2 voris of gold, cot, beddings, almirah etc. were to be given by the deceased's father to the accused family. The mother of the deceased Gita Shaw sometimes stated to him that her deceased daughter was subjected to torture by the members of her in-laws family. PW-6 had been to the house of the accused. The mother of the accused Umesh Shaw stated to him that they took ornaments and cash money in order to satisfy their loan. After death of the victim he had been to the house of the accused. He met the police. One small sitting wooden table and a

napkin were, seized by police in his presence marked Mat. Exhibit.- I/1. The said Napkin which was seized by police in his presence was marked Mat Exhibit II. The signature of the label of the seized napkin marked as Exhibit II/1.

- xi. PW-6 further stated in his cross-examination that he could not read the contents of the seizure list dated 13.4.2001.
- xii. The evidence of PW-7 is based on hearsay.
- xiii. PW-8 in his deposition stated that PW-2 Raj Kumari Shaw was his elder sister. Deceased lady was her daughter who was married to the accused Umesh Shaw. He participated in the marriage ceremony of the deceased. After sometimes of their marriage, PW-2 came to his house and narrated that her deceased daughter was subjected to ill-treatment by members of her in-laws family and she requested him to go to the accused house. On her requests, about 1½ months of the marriage of the deceased, he went to the house of the accused and found the deceased sitting under the cot. On being asked, deceased lady stated to him that she was not allowed by the accused persons to lay on the cot and that she was further assaulted by all the accused persons. She also stated that she was not given proper food and lodging by the accused persons. After arrival of her mother-in-law, deceased however, stopped to speak to him.
- xiv. PW-8 and PW-9 conformed to the evidence of the de-facto complaint in the context of provision of dowry and the plight of the victim at her

matrimonial house being tortured physically and mentally by the accused persons and being starved days together.

- xv. PW-9 in her cross-examination stated that she attended in the marriage ceremony of the deceased lady. She could not say whether any jautuks namely cot, beddings were given by the parents of the deceased to her in-law's house. Accused persons have old cots in their house. Deceased lady mainly complained of against her mother-in-law.
- xvi. PW-10 deposed that the victim lady was not happy in her matrimonial home. She was mainly ill-treated by her mother-in-law.

In his cross-examination PW-10 stated that he heard that the deceased was ill-treated mainly by her mother-in-law regarding cooking.
- xvii. PW-11 held an inquest over the dead body of the deceased lady in connection with Section 'N' being Case No.101 dated 13.04.2001 u/s 304B/498A/34 of the Indian Penal Code in presence of the witnesses. The carbon copy of the inquest report, prepared and signed by him was marked as Exbt.-2.
- xviii. PW-12 deposed he brought the dead body of the deceased lady from R.G. Kar Medical College & Hospital to N.R.S. Medical College & Hospital morgue for post mortem examination and he identified the dead body of the deceased to the doctor.
- xix. PW-13 deposed he performed post-mortem examination over the dead body of the deceased victim lady. During post-mortem he found the

following injuries on the persons of the dead body – “one ligature mark measuring 10” X ½” placed in front of the neck over superior border of the cartilage. On the right side, ligature mark passes along the lower margin of the mandible and passes 1/2” below the right angle of mandible and passes upwards and ended over front of the right Petra’s Part of temporal bone on the left side, it passes lower margin of left mandible, passes 1” below left angle of mandible and passes upwards and backward passes back of the neck along the hearing margin of scalp by crossing the midline and ended over the petras part of the temporal bone 1” away from the end and right side ligature mark. The ligature beneath the skin was glistening, parchmented with evidence of multiple hemorrhage spot above and below the ligature mark. Viscera preserved, stomach and its content, a portion of liver, ½ of each kidney preserved in S.S. of common salt with control and blood a vowl – all sent to F.S.L. through P.S.”. In his opinion, death was caused due to the effect of hanging as noted above ante mortem in nature. The original post-mortem report, prepared and signed by him and marked as Exbt.-4.

- xx. PW-14 was a seizure list witness who corroborated the prosecution story. Police seized a wooden tool and napkin under a seizure list in his presence marked as Exbt.3/2.
- xxi. PW-15 deposed to have been informed through a telephonic message that a woman had hanged to death at 21/H/2, Dum Dum Road, Kolkata – 30. S.I. Tarak Nath Ghosh, after recording G.D.E. at the

Chitpur P.S. accompanied him and other police forces had been to the P.O. The victim had committed suicide and was taken to R.G. Kar Hospital. They placed police forces at the P.O. for guarding the same and then they proceeded towards R.G. Kar Medical College & Hospital. They found the de facto complainant Raj Kumari Shaw, mother of the victim at the said hospital. He, thereafter, recorded the statement of the de-facto complainant Raj Kumari Shaw at the R.G. Kar Medical College & Hospital. He found that the victim was declared brought dead. The statement of the de-facto complainant Raj Kumari Shaw, was recorded and signed by him marked as Exhibit-5. The de-facto complainant also put her LTI in his presence. As per the direction of the O/C, Inspector S.P. Chatterjee, Chitpur P.S. he drew up the formal F.I.R. being Chitpur P.S. Case No.101 dated 13.04.2001 u/s 498A/304B/34 of the I.P.C. marked as Exhibit-6.

- xxii. PW-15 in his cross-examination stated that the LTI of the de-facto complainant Raj Kumari Shaw on the written complaint did not bear the date. There was no endorsement on the body of the written complaint that the LTI of the de-facto complainant Raj Kumari Shaw was taken by him.
- xxiii. Further examination-in-chief of PW-15 conducted on 26.08.2003 and stated that after returning from the P.O. to Chitpur P.S., S.I., T.N. Ghosh, I.O. of that case registered the G.D.E. no.1452 dated 13.04.2001 at 03:34 p.m. The original G.D.E. brought from the P.S. Chitpur was marked as Exhibit-7. S.I., T.N. Ghosh (I.O.) arrested the

- accused persons from the P.O., examined and recorded the statements of the available witnesses and also prepared a seizure list in respect of certain articles in presence of the witnesses. He was also present at that time. The seized articles were then sealed, labelled and packed, duly signed by the I.O. and the witnesses on the labels of the articles. The signature of the I.O., S.I., T.N. Ghosh on the label of the seized tool was marked as Exhibit-I/2.
- xxiv. Further cross-examination of PW-15 conducted on 26.08.2003 and stated that he could not say whether any sketch map with index of the P.O. was prepared or not.
- xxv. PW-16 deposed to be the medical officer, attached to R.G. Kar Medical College & Hospital, Calcutta. On 13.04.2001 he examined one deceased lady aged about 26 years. The patient was brought dead by her husband at about 09:20 a.m. on that date. Husband of the deceased lady stated that the victim hanged herself after a quarrel with her mother-in-law. The medical report dated 13.04.2001, prepared and signed by him was marked as Exhibit-8. The certificate of death of the deceased lady, prepared and signed by him was marked as Exhibit-4.
- xxvi. PW-17 recounted as per order of the O.C., Grievance Cell, D.D. Lalbazar, she took up further investigation of Chitpur P.S. Case No.101 dated 13.04.2001 u/s 498A/304B/34 of I.P.C. She received the case diary on 07.05.2001. During investigation of the case, she consulted about the case with the S.I., A.K. Saha and T.N. Ghosh who

were closely acquainted the case, visited the P.O. on 08.05.2001. She examined and recorded the statements of the six witnesses u/s 161 Cr.P.C., collected the P.M. report from N.R.S. Medical College & Hospital morgue, collected F.S.L. report, prepared the rough hand sketch map with index of the P.O. She arranged the plan maker who prepared then plan being Constable Adhip Banerjee of plan making section of D.D. Lalbazar, since deceased. The blue print with rough sketch map of the P.O., prepared by the constable Adhip Banerjee, since deceased was marked as Exhibit-11 and Exhibit-11(2).

- xxvii. PW-17 collected the viscera report of the deceased in-course of investigation was marked as exhibit-12. She also collected the report of the F.S.L. experts who visited the P.O. marked as Exhibit-13. She also collected the photographs from the D.D. Photography Section, Lalbazar. Thereafter, on completion of investigation with the prior permission of her superior officer, she submitted the charge sheet u/s 498A/304B/34 of I.P.C. against the accused Barun Devi, Umesh Shaw, Anju Shaw and Urmila Shaw to the court of Ld. A.C.J.M., Sealdah on 12.07.2001. Accused Urmila Shaw was however, shown as an Absconder in the charge sheet.

It takes about 15 minutes by a vehicle to reach from the house of the complainant to the house of the accused. She could not say the number of the tenants excluding the accused persons living in the tenanted house. She did not interrogate any tenants of the said tenanted house. She had interrogated some neighbours

of the P.O. She found two wooden cots (small) and some household articles inside the room (P.O.) of the accused. She did not however, collect any purchase receipts in respect of the said two small wooden cots.

xxviii. She did not interrogate the parents and elder brother of the accused. She could not say the number of brothers and sisters of the accused persons. On 08.05.2001 she examined the neighbours of the place of occurrence, which was noted in the case diary. No G.D.E. was maintained in that matter in D.D. Lalbazar and as such she did not register any G.D.E. She did not examine the father of the deceased lady. She did not collect any cash – memos or receipts in respect of dowry money and wooden furniture.

She did not find any antecedents against the accused Umesh Shaw. The inmates of the accused as well as the neighbours stated before him during investigation that the deceased lady was not allowed by the accused to go to her father's place.

10. In **Kans Raj v. State of Punjab**¹, the Hon'ble Supreme Court held as follows:-

“5,....For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry

¹ (2000) 5 SCC 207

deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

11. In **Charan Singh v. State of Uttarakhand**², the Hon’ble Supreme Court held as follows :-

“13. A conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:—

“32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346]. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has

² 2023 SCC OnLine SC 454

committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.

xxx

21. *In the aforesaid evidence led by the prosecution, none of the witnesses stated about the cruelty or harassment to the deceased by the appellant or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act. Even the ingredients of Section 498A IPC are not made out for the same reason as there is no evidence of cruelty and harassment to the deceased soon before her death.”*

12. In **Chabi Karmakar v. State of W.B.**³, the Hon’ble Supreme Court held as follows:-

“7. In Charan Singh alias Charanjit Singh v. State of Uttarakhand, 2023 SCC OnLine SC 454, where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113B of Evidence Act and section 304B of IPC, had noted that:

³ 2024 SCC OnLine SC 2433

“21.....It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the prerequisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act.....

...

23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B and Section 113B of the Indian Evidence Act having not being fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A of IPC.”

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death under Section 304B of the Penal Code, 1860....

8. *....In paragraph 9 of Rajinder Singh (Supra), this Court had discussed the ingredients of Section 304B of IPC as follows:*

“9. The ingredients of the offence under Section 304-B IPC have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.”

The evidence placed before us, in the case at hand, is not sufficient to prove the fourth ingredient i.e. cruelty or harassment in connection with the demand for dowry, as laid down by the abovementioned case.”

13. In **Abhishek v. State of M.P.**⁴, the Hon’ble Supreme Court held as follows:-

“**14.** In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra v. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the ‘be all and end all’ of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and

⁴ **2023 SCC OnLine SC 1083**

every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.”

14. In ***Kahkashan Kausar v. State of Bihar***⁵, the Hon’ble Supreme Court held as follows:-

“13. Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , it was also observed : (SCC p. 276, para 4)

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

14. Further in Preeti Gupta v. State of Jharkhand [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473] , it has also been observed : (SCC pp. 676-77, paras 32-36)

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid

⁵ (2022) 6 SCC 599

increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely

visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.”

15. *In Geeta Mehrotra v. State of U.P. [Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741 : (2013) 1 SCC (Civ) 212 : (2013) 1 SCC (Cri) 120] it was observed : (SCC p. 749, para 21)*

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12)

‘12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be

mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.’

The view taken by the Judges in this matter was that the courts would not encourage such disputes.”

16. Recently, in *K. Subba Rao v. State of Telangana* [*K. Subba Rao v. State of Telangana*, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605], it was also observed that : (SCC p. 454, para 6)

“6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them.”

15. Though the victim committed suicide within 7 years of marriage, the prosecution failed to prove the imminent cause of dowry death. The evidence of related witnesses disclosed general and omnibus allegations of demand of

dowry without substantive proof of the same. The investigating agency did not examine the tenants and the immediate neighbours to have been advantageously placed to reveal the torture being inflicted upon the victim for demand of dowry.

16. The presumption under Section 113B of the Indian Evidence Act cannot be universally applicable which becomes predominantly different from case to case. The relationship between the victim and the mother-in-law was constrained on the score of performance of domestic chores. The victim was inclined towards her studies presumably not efficient in performing day-to-day domestic work to the dissatisfaction and annoyance of the mother-in-law being a rustic rural lady giving rise to normal wear and tear in a family life. However, being reprimanded or abused by the mother-in-law, a daughter-in-law can get angry and rebuff and one can simply ignore. Again another lady can be affected emotionally considering the same to be an insult and humiliation accounted to her which might have been in the instant case to have compelled the victim to commit suicide out of frustration. The post mortem doctor did not record any injury to have been otherwise inflicted upon the victim apart from the injuries as the consequence of committing suicide by hanging. There had been inconsistencies and deviations in the versions of the prosecution witnesses resulting in the same to be unreliable.
17. The prosecution further failed to substantiate continuous harassment, demand of dowry as well as torture upon the victim for extortionate and compulsive grab of money from the parents of the victim.

18. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
19. Accordingly, the criminal appeal being CRA 186 of 2004 stands disposed of.
20. There is no order as to costs.
21. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)