

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 503 OF 2013

STATE OF KARNATAKA BY GANDHINAGAR P.S.Appellant(s)

Vs.

M.N. BASAVARAJA & ORS.Respondent(s)

O R D E R

1. The first respondent along with the other respondents (second to fifth) stood trial before the Court of the Additional Sessions Judge, Fast Track Court-II at Davangere, Karnataka for commission of offence punishable under sections 302, 498A and 201 of the Indian Penal Code, 1860 ('IPC', hereafter) read with sections 3 and 4 of the Dowry Prohibition Act ('DP Act', hereafter). *Vide* judgment and order dated 4th March, 2004, all the respondents were acquitted. The State of Karnataka carried the judgment and order of acquittal in appeal before the High Court. The High Court *vide* judgment and order dated 27th August, 2010 confirmed the acquittal of the respondents for the offences under sections 302 and 201 of the IPC as well as sections 3 and 4 of the DP Act; however, convicted the first respondent under section 498A, IPC only. On the question of sentence, it was represented on behalf of the first respondent before the High Court that he had been behind bars for four years during the period of trial. Considering

that the maximum punishment that could be imposed under section 498A, IPC is three years, the High Court sentenced the first respondent to the period of incarceration already undergone and disposed of the appeal. This judgment and order of the High Court is the subject matter of challenge in the present appeal, by special leave, at the instance of the State of Karnataka ('appellant', hereafter).

2. At the outset, we are informed by the parties that correct representation had not been made before the High Court by counsel for the first respondent in respect of the period of incarceration suffered by him. He had been behind bars for a little less than seventeen months, and not four years as submitted.

3. The trial stemmed from the unnatural death of Susheelamma within 7 years of her marriage. The first respondent happened to be her husband while the other respondents were her in-laws. After the First Information Report was registered under sections 498A and 304B, IPC read with sections 3 and 4 of the DP Act based on the complaint of Susheelamma's brother (PW-1), police report under section 173(2), Code of Criminal Procedure Code ('Cr. PC.', hereafter) was submitted before the relevant Court by the Deputy Superintendent of Police, Davangere City, Sub-Division, Davangere, Karnataka. Bare perusal of the police report reveals that materials collected during investigation pointed towards suicidal death of Susheelamma owing to harassment meted out to her by the respondents for not having brought with her requisite dowry at the time of marriage and

even thereafter till her death. Despite the police report having been filed, *inter alia*, under section 304B, IPC and suggesting death of Susheelamma by suicide, charge against the respondents was framed by the Sessions Court on 24th July, 2003, *inter alia*, under section 302, IPC. This appears to us inexplicable in the absence of any material in the police report suggesting commission of offence under section 302, IPC. Assuming that the Sessions Court had reason to frame a charge under section 302, IPC, it is incomprehensible why no alternative charge under section 304B, IPC was framed.

4. Evidence was led by the prosecution. The Sessions Court did not find adequate material on record to convict the respondents under section 302, IPC or any other relevant provision resulting in an order of acquittal being recorded, as noticed earlier. However, in appeal, only the first respondent was found guilty of the offence under section 498A, IPC by the High Court and erroneously sentenced premised on incorrect representation in respect of the period of incarceration.

5. We have observed on perusal of the impugned judgment brushing aside by the High Court of the contention raised on behalf of the appellant that sufficient materials were available on record for convicting the first respondent as well as the other respondents under section 304B, IPC merely on the ground that no charge in that behalf had been framed and having regard to efflux of time, which had since occasioned since the date of death, in the interest of justice, it would not look into the evidence adduced by the prosecution for the purpose of

finding out whether there was any material for convicting the respondents under section 304B, IPC.

6. Mr. Chidanand, learned counsel appearing for the appellant, has taken serious exception to this approach of the High Court. According to him, the High Court occasioned grave failure of justice in letting the respondents off on the twin grounds of absence of any charge framed against them under section 304B, IPC and long lapse of time. He contends that notwithstanding such lapse, the High Court ought to have examined whether the evidence on record were sufficient to presume dowry death of Susheelamma and whether the respondents should have been proceeded against for commission of offence punishable under section 304B, IPC; and, if the answers were in the affirmative, it was the duty of the High Court to draw statutory presumption and remit the case to the Sessions Court for proceeding against the respondents to examine as to whether they are liable for conviction under section 304B, IPC. Referring to and relying on the testimony of PW-1 and Susheelamma's parents, neighbours and an aunt (PWs 10, 12, 8, 14 and 9, respectively), he further contends that since all the ingredients of section 304B, IPC were present, i.e., (i) death of Susheelamma occurred within 7 years of marriage; (ii) such death was due to circumstances other than normal; (iii) sufficient material was available on record to indicate that Susheelamma prior to her unnatural death was subjected to cruelty by the first respondent, which also stands proved by reason of his unchallenged conviction under section 498A, IPC;

and (iv) such cruelty was inflicted on Susheelamma owing to her inability to bring requisite dowry, the High Court grossly erred in not presuming dowry death of Susheelamma.

7. Our attention has been drawn by Mr. Chidanand to the decision of this Court in *Shamnsaheb M. Multtani vs. State of Karnataka*¹. Heavy reliance has been placed by him on such decision in support of the prayer for remand to the Sessions Court. The relevant paragraphs of the said decision read as follows:

"13. ... The question raised before us is whether in a case where prosecution failed to prove the charge under Section 302 IPC, but on the facts the ingredients of section 304-B have winched to the fore, can the court convict him of that offence in the absence of the said offence being included in the charge.

17. The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. ...

18. So when a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge?

21. The crux of the matter is this: Would there be occasion for a failure of justice by adopting such a course as to convict an accused of the offence under

1 (2001) 2 SCC 577

Section 304B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? ...

27. The postulates needed to establish the said offence are: (1) Death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading section 113B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances 'the court *shall presume* that such person had caused the dowry death'.

28. Under Section 4 of the Evidence Act 'whenever it is directed by this Act that the Court shall presume the fact it shall regard such fact as proved unless and until it is disproved'. So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

30. But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it.

31. Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts on to him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304B IPC and sentenced to the serious punishment prescribed thereunder, which mandates a minimum sentence of imprisonment for seven years.

34. In such a situation, if the trial court finds that the prosecution has failed to make out the case under Section 302 IPC, but the offence under Section 304-B IPC has been made out, the court has to call upon the accused to enter on his defence in respect of the said offence. Without affording such an opportunity to the accused, a conviction under Section 304-B IPC would lead to real and serious miscarriage of justice. Even if no such count was included in the charge, when the court affords him an opportunity to discharge his burden by putting him to notice regarding the prima facie view of the court that he is liable to be convicted under Section 304B IPC, unless he succeeds in disproving the presumption, it is possible for the court to enter upon a conviction of the said offence in the event of his failure to disprove the presumption.

35. As the appellant was convicted by the High Court under Section 304-B IPC, without such opportunity being granted to him, we deem it necessary in the interest of justice to afford him that opportunity. The case in the trial court should proceed against the appellant (not against the other two accused whose acquittal remains unchallenged now) from the stage of defence evidence. He is put to notice that unless he disproves the presumption, he is liable to be convicted under section 304-B IPC. To facilitate the trial court to dispose of

the case afresh against the appellant in the manner indicated above, we set aside the conviction and sentence passed on him by the High Court and remand the case to the trial court."

8. It is, accordingly, prayed by Mr. Chidanand that upon setting aside of the impugned judgment and order of the High Court except to the extent of recording of conviction against the first respondent under section 498A, IPC, the Sessions Court may be directed to re-start the trial against the respondents from the stage of defence evidence in order to afford them fair opportunity of defence to disprove the presumption of dowry death under section 304B, IPC read with section 113B of the Evidence Act, 1872.

9. Mr. Kotemath, learned counsel appearing for the first respondent as well as the other respondents, on the other hand, contends that the materials on record are insufficient to grant relief on terms as claimed by learned counsel for the appellant. He was heard to submit that the dead body of Susheelamma was not found in the house where Susheelamma and the first respondent were residing together just prior to the former's death; on the contrary, the dead body of Susheelamma was found in her paternal home. It is further submitted that the material witnesses for the prosecution were interested witnesses and, therefore, the Sessions Court was entirely correct in not relying on their evidence. He also submits that there is no material on record to link the in-laws of Susheelamma (respondents 2 to 5) to the alleged offence and

that only general allegations have been levelled against them by the prosecution witnesses and on account thereof, no order adverse to their interest is called for. He, thus, prayed for dismissal of the appeal.

10. Having heard learned counsel for the parties and on perusal of the materials on record, we are of the opinion that the High Court, to a substantial extent, grossly erred in deciding the appeal in the manner it did and that the appeal deserves to succeed by remitting the case to the Sessions Court for the purpose of trying only the first respondent, and not the other respondents, in the manner indicated in the decision in *Shamnsaheb M. Multtani* (supra).

11. The testimonies of the relevant witnesses for the prosecution, which were read in Court by Mr. Chidanand, leave no manner of doubt that dowry death of Susheelamma could be and ought to have been presumed. All the ingredients for framing of a charge under section 304B, IPC were present and quite mindlessly, an exercise appears to have been undertaken to nail the respondents for committing offence punishable under section 302, IPC overlooking the contents of the police report under section 173(2), Cr. PC suggesting suicidal death. The Sessions Court while framing charge under section 302, IPC, in our opinion, did not apply its judicial mind resulting in non-framing of an alternative charge under section 304B, IPC. The High Court too failed to address the problem in the proper perspective and, thus, disabled itself from rendering justice to the parties. Merely because a charge under section 304B, IPC

had not been framed and there had been lapse of time did not afford any ground to the High Court to distance itself from following the settled law and ordering a remand.

11. We find no reason to accept the argument advanced on behalf of the respondents that the dead body of Susheelamma was found in her paternal home. In fact, we have found a specific finding in the judgment of the Sessions Court that both the first respondent and Susheelamma were residing together in a house in Suez Plot and that the dead body of the latter was found in such house. Having regard thereto and also in the light of the testimony of the neighbour (PW-14), it would entirely be for the first respondent to explain as to how Susheelamma died and under what circumstances in terms of provisions contained in section 106 of the Evidence Act. Significantly, it is in the evidence of PW-14 that while she was brooming at about 4.00 hours of 19th December, 2002, she saw the first respondent cross the "*drain that is situated in front of all the houses*". It is also in the evidence of PW-14 that an hour or two earlier, she had been woken up by the sound of a meowing cat and then had heard the scream of a woman coming from the house of the first respondent, whereupon she assumed that someone must have been harassing a woman in the night hours.

12. The next argument that PWs 1, 10 and 12 are interested witnesses and hence their evidence lacks credence has been advanced only to be rejected. A lady facing harassment and cruelty owing to her or her family's failure to meet dowry

demands would more often than not confide in her immediate family members. If the evidence of the family members in a case of dowry death is to be discarded on the ground that they are interested witnesses, we wonder who would be the reliable witness to testify for bringing the culprit to book. We have no hesitation in rejecting the argument as one wholly without substance.

13. The further argument that materials are insufficient to presume a dowry death need not detain us for too long. The ingredients for presuming a dowry death, as submitted by Mr. Chidanand and noted by us in paragraph 6 are present. That apart, PW-12 was categorical in her assertion that even six days prior to her death, Susheelamma had complained to PW-12 that the first respondent beat Susheelamma for failing to meet his demand to bring Rs.50,000/- or to get a job for him.

14. However, we are in agreement with Mr. Kotemath that allegations levelled against the other respondents (in-laws of Susheelamma) are general in nature and that no specific overt acts are attributed calling for interference with the order acquitting them.

15. We are conscious of the law as well as decisions of this Court holding that an accused could be convicted for an offence for which no charge was framed if the accused is aware of the basic ingredients of the offence with which he could have been charged and if no failure of justice would occasion, provided fair chance of defence is extended to him. Even then, we feel persuaded to follow the decision in *Shamnsaheb M. Multtani*

(supra) not only because we are bound by it (the same having been rendered by three Hon'ble Judges) but also because that too was a case where both sections 302 and 304-B, IPC were involved, as in the present appeal, and the approach followed therein has our concurrence as the correct approach. Hence, following the same, an opportunity is required to be extended as part of the assurance of a fair trial and reasonableness of the procedure established by law to enable the first respondent rebut the presumption of dowry death drawn in terms of the provisions contained in section 304B IPC read with section 113B of the Evidence Act. However, we repeat that notwithstanding the availability of evidence and materials on record sufficient to draw a presumption of dowry death of Susheelamma, such presumption is, of course, rebuttable and such presumption is open to be rebutted if the first respondent adduces relevant evidence sufficient for a prudent man to believe the existence of circumstances put forward by him leading to the death of Susheelamma as probable without he being responsible in any manner; however, should such presumption be not rebutted, a conviction under section 304B, IPC could logically follow.

16. Bearing the same in mind and considering the totality of the circumstances, the impugned judgment is liable to limited interference in exercise of our appellate jurisdiction as indicated hereafter. The first respondent not having challenged his conviction recorded by the High Court under section 498A, IPC, the same is sustained; however, the sentence stands set aside since it was admittedly based on incorrect representation

of facts. Further, acquittal recorded by the Sessions Court, since affirmed by the High Court, *qua* the other respondents (second to fifth) is also maintained. Also, acquittal recorded by the High Court in respect of the other offences against the first respondent (except section 302, IPC) is set aside. The case is remitted to the Sessions Court for proceeding further and to take the same to its logical conclusion in accordance with law upon granting reasonable opportunity to both the prosecution and the defence.

17. We clarify that the Sessions Court, on remand as ordered by us, shall proceed with the trial from the stage of defence evidence. The first respondent has been adequately put on notice that unless he disproves the presumption of dowry death, he is liable to be convicted under section 304B, IPC. He shall, therefore, be at liberty to disprove the presumption of dowry death by adducing relevant evidence. Upon evidence being adduced, or if no evidence is adduced, the Sessions Court shall proceed to conclude the trial in accordance with law, as expeditiously as possible. The Sessions Court shall be free to draw its own conclusions and observations made hereinabove will not stand in the way of conducting a fair trial, which is the essence of the criminal justice system. Irrespective of the outcome of the trial to be resumed in terms of this order, the Sessions Court shall also be free to decide on the sentence to be imposed on the first respondent for the conviction recorded against him by the High Court in respect of the offence under section 498A, IPC.

18. To facilitate the Sessions Court to dispose of the case against the first respondent in the manner that we have indicated above and to avoid delay, we direct the first respondent to appear before the Sessions Court on 3rd June, 2024 and also grant him the liberty to seek bail. Till 3rd June, 2024, he shall not be arrested. Upon the first respondent applying for bail, the Sessions Court shall enlarge him on bail subject to such terms and conditions as it deems fit and proper to impose. Should the first respondent not appear on 3rd June, 2024, the Sessions Court shall be entitled to secure his presence in accordance with law. _

19. The appeal is allowed to the extent indicated above and on the aforesaid terms.

20. The trial court records be sent back forthwith.

21. Pending application(s), if any, including the application for impleadment of PW-1 shall also stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(S.V.N. BHATTI)

New Delhi;
April 03, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 503/2013

STATE OF KARNATAKA BY GANDHINAGAR P.S.

Appellant(s)

VERSUS

M.N. BASAVARAJA & ORS.

Respondent(s)

Date : 03-04-2024 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Appellant(s) Mr. D. L. Chidananda, AOR

For Respondent(s) Mr. Ashwin V. Kotemath, Adv.
Ms. K. V. Bharathi Upadhyaya, AORMr. Shailesh Madiyal, Sr. Adv.
Mr. Mahesh Thakur, AOR
Mr. Vaibhav Sabarwal, Adv.
Ms. Anusha R, Adv.
Ms. Mythili Srinivasmurthy, Adv.
Mr. Ranvijay Singh Chandel, Adv.
Mr. Shivamm Sharrma, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of signed order.

The trial court records be sent back forthwith.

Pending application(s), if any, including the application
for impleadment of PW-1 shall also stand disposed of.

(NEETA SAPRA)

COURT MASTER (SH)

(Signed order is placed on the file)

(RAM SUBHAG SINGH)

COURT MASTER (NSH)