2023 INSC 933

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPEALLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2023
(@ SPECIAL LEAVE PETITION (CRL.) NO.12216 OF 2022)

PARANAGOUDA AND
ANOTHER ...APPELLANTS

VERSUS

THE STATE OF KARNATAKA
AND ANOTHER ….RESPONDENTS

J U D G M E N T

Aravind Kumar, J.

1. Leave granted.

2. The judgment dated 20.07.2022 passed by High Court of Karnataka, Dharwad Bench dismissing the Criminal Appeal No.2847 of 2012 by affirming the judgment and order of sentence convicting

the appellants passed by the Sessions Judge, Bagalkot in S.C. No.35 of 2011 dated 14.09.2012 for the offences punishable under Section 498A, 304B read with Section 34 of IPC and Section 3 and 4 of Dowry Prohibition Act (for short the 'DP Act') has been called in question.

FACTUAL BACKGROUND

3. The third daughter of the complainant (Shri Chandappa Gooli) named Akkamahadevi was married to second respondent/accused No.1 herein on 16.05.2010. A complaint came to be lodged by Sri Chandappa Gooli, father of the deceased on 20.12.2010 alleging thereunder that a dowry of Rs. 31,000 and 1.5 tolas of gold was given at the time of marriage and additional dowry of Rs. 50,000 and gold was demanded after two months of marriage. It was alleged that accused No.1 and his parents (appellants) gave physical and mental torture to his daughter and unable to bear the same she committed suicide by self-immolating namely by pouring kerosene and lighting fire. A dying declaration came to be recorded on 20.12.2010 and she

died on 24.12.2010 due to burn injuries. Initially FIR came to be registered in Crime No.143 of 2010 for the offences punishable under Section 323, 498A read with Section 34 of IPC and 504 of IPC and Sections 3 and 4 of the DP Act and on her death on 24.12.2010, Section 304B of IPC was added. On completion of investigation charge-sheet came to be filed and the jurisdictional sessions judge took cognizance of the offence alleged against the accused persons namely husband-accused No.1 (R-2 herein), appellant No's 1 and 2 herein (accused No.2 and 3) and Smt. Ningamma accused No.4. On behalf of the prosecution, 32 witnesses were examined as PW-1 to PW-32 and they got marked 50 documents as Ex.P-1 to P-50 and three material objects as MO 1 to MO 3. On closure of prosecution side, the accused were examined and their statements also came to be recorded under section 313 of Cr.P.C. Accused No.4 (mother of accused No.3) had expired on 28.02.2012 and as such the proceedings against her stood abated. After hearing the learned Public Prosecutor and the learned advocates appearing for accused No. 1 to 3, they came to be convicted for the offences alleged against them. The learned Trial

Judge had convicted the accused by relying upon the dying declaration (Ex.P.45) and sentenced them to undergo 7 years of simple imprisonment for the offence under Section 304B, five years of simple imprisonment for the offence under Section 3 of Dowry Prohibition Act, one year of simple imprisonment for the offence under Section 498A r/w Section 34 of IPC and one year of simple imprisonment for the offence under Section 4 of Dowry Prohibition Act with fine of Rs. 1000 for each of the offences under Section 498A, 304B and Section 4 of DP Act for each of the accused and in default to undergo further simple imprisonment for a period of 3 months, and fine of Rs. 31,000 each for the offence under Section 3 of DP Act with default sentence of three months. All sentences were ordered to run concurrently.

4. Being aggrieved by said judgment, appeal came to be preferred on various grounds and primarily on the ground that deceased had suffered burn injuries to the extent of 70-80% and she was not in a position to speak. It was also contended that Doctor PW-32 who had certified that deceased was able to speak had not even recorded the blood pressure and pulse rate of the deceased in the case-sheet and the

treated doctor PW-31 has also admitted that general condition of the deceased was poor at the time of admission to the hospital itself. It was also urged that evidence which was available before the trial court was not appreciated in proper perspective and mere dying declaration cannot be the sole basis of conviction unless it was corroborated. It was also contended that none of the prosecution witnesses supported the story of prosecution and they had turned hostile and as such learned Session Judge ought not to have convicted the accused persons.

5. The High Court by the impugned judgement having formulated points for its consideration vide paragraph 18 of the impugned judgment, has answered the points formulated, in favour of the prosecution and against the accused by holding that dying declaration was recorded properly and same is proved by taking into consideration the contents of the same and the evidence of Tehsildar who recorded the same as well as the evidence of Doctor PW-31 who treated the deceased and had issued Ex.P-46 (case sheet of deceased Mahadevi). Hence, this appeal.

6. We have heard the arguments of the learned advocates appearing for the parties. Learned advocate appearing for the appellants contends that dying declaration is neither true nor voluntary statement of deceased as she was not physically or mentally fit to make any declaration and undisputedly the parents of the deceased had not supported the case of the prosecution. He would also contend that doctor who had examined the deceased and treated her has clearly deposed that deceased was suffering from breathlessness when brought to the hospital and he had also certified that she had suffered 70 to 80% burn injuries and thereby making her physically and mentally incapacitated to give any declaration or make any statement.

7. Per contra Shri V.N. Raghupathy, learned Standing Counsel appearing for the State by supporting the judgment of both the courts would submit that there is no cogent material to displace the findings recorded by the courts below. He would also contend that dying declaration cannot be brushed aside merely because deceased had suffered 70% to 80% burn injuries and this cannot be a ground to set

aside the conviction. He would submit that Doctor PW-31 had deposed in clear terms that deceased was mentally fit to make statement and as such no doubt can be raised as regards the mental capacity of the deceased to make statement wherein she had assigned the reasons for her self-immolation. Hence, he prays for rejection of the appeal.

DISCUSSION, FINDINGS AND CONCLUSION

8. The facts narrated hereinabove would suffice for examining as to whether the orders of the courts below requires to be sustained or modified or set aside. Elaborate narration of factual aspects would only burden this judgment and as such we desist from doing so, except to the extent required.

9. The solemnisation of marriage between second respondent and Mrs. Akkamahadevi on 16.05.2010 is not in dispute. She having died on 24.12.2010 due to burn injuries sustained on 20.12.2010 is also not in dispute.

9.1 The gist of the prosecution case is that there was consistent demand for dowry and deceased was tortured for additional dowry and unable to sustain the physical and mental torture meted out to her, she had committed suicide by self-immolation viz, by pouring kerosene and lighting herself.

9.2 The complainant, PW-24 who is the father of the deceased has not supported the case of the prosecution and he has deposed that accused had looked after the deceased well. Long and short of the deposition of PW-24 (father of deceased) is that he did not support the case of the prosecution. PW-1 witness to the inquest panchanama too has turned hostile. The neighbours of the house where the deceased was residing namely PW-3 and PW-4 have turned hostile. PW-5 and PW-21 whom the prosecution claimed of having known the fact of ill-treatment given by the accused to the deceased have turned hostile. The persons who are said to have advised the accused not to ill-treat the deceased have also turned hostile. The persons who were present during the marriage talks of the deceased and accused No.1 namely PW-7 to PW-9 have also not supported the case of the prosecution.

Other witnesses namely PW-10, 11, 12, 19, 18, 30 as well as the mother of the deceased PW-22 have not supported the case of the prosecution. Dr. Suresh Basarkod (PW.26) who tendered the case sheet attested by casualty medical officer of Kumareshwar Hospital, Bagalkot, where deceased was admitted, has deposed that Dr. Pramod Mirji (PW-31) and Dr. Vishwanath are competent to speak about medical treatment extended to Mahadevi (deceased). However, Dr. Vishwanath was not examined.

9.3 Dr. Pramod Mirji has been examined as PW-31 and he has stated that deceased was conscious and she was complaining of pain. He has further deposed to the following effect:

> "The patient was conscious and she was complaining of pain. There were burn injuries over entire body excepted face. The injured has burn injuries of 70% -80%. The patient was in a position to speak. She was under my treatment till she died on 24.12.2010 at about 5.15 a.m. Now I see Ex.P-46 and it is Xerox copy of case sheet of the said injured. In case sheet Ex.P-46 I have mentioned that the patient was under agony due to pain and pulse not filed and B.P. was not recordable and therefore I have opined that general condition of patient was poor."

Perusal of his cross-examination would indicate that he had treated the deceased for four days and the pulse rate and blood pressure was not recorded on the day of admission and it is kept blank in the case sheet Ex.P-46. He also admits that entries in the case sheet would reflect that the general condition of the deceased was poor. He further admits that blood pressure of the deceased was not recordable and pulse was feeble. He further admits that deceased was suffering from breathlessness as per the entries found in Ex.P-46 (case sheet). He has also admitted that even though patient was conscious at times the patient had not been in a position to talk.

9.4 Dr. Mahalingappa Kori (PW32) who was CMO at Kumareshwar Hospital, Bagalkot during the relevant period when the dying declaration (Ex.P-45) was recorded has deposed that he was working as casualty medical officer at the hospital on 20.12.2010 from 2:00 PM to 8:00 PM. He has further deposed that Tahasildar (PW25) had expressed his intention to record the dying declaration of injured Mahadevi and he had requested him to be present at the time of recording of the statement. He states that he examined Mahadevi at

that time and she was conscious and in a condition to speak. He also states that the statement of Mahadevi was recorded between 4:20 PM to 5:15 PM. He has identified his endorsement and signature at Ex-P45(b) on the dying declaration.

10. Taluka executive Magistrate Basappa Laxmappa Gothe PW-25 is said to have recorded the dying declaration of the deceased as per Ex.P-45, based on which the accused has been convicted by the trial court and affirmed by the High Court. PW25 who was the Tahasildar at Bagalkot during the relevant period has deposed that he was working as Tahasildar in Bagalkot from 08/07/2009 to 27/04/2011. He has deposed that Dr. Mahalingappa Kori (PW32) was present when he recorded the statement of Mahadevi from 4:20 PM to 5:15 PM. He further deposes that Dr. MC Kori had talked to the deceased and found that she was in a fit condition to give statement. He further deposes that he was also convinced that Mahadevi was fit to give statement. He has identified the statement recorded by him as Ex-P45 and also the LTM of the deceased found in Ex-P45. He has deposed that doctor was present throughout the time of recording of statement

and the signature & endorsement of the doctor marked as Ex-P45(b) has been identified. PW25 had also conducted inquest panchnama (Ex.P-1) & recorded the statement of Renavva Chandappa Guli (PW22) and he has identified his signature found on the statement of PW22 (Ex.P40) as Ex.P-40(a). He has denied the suggestion that deceased Mahadevi had not given any statement.

11. The learned Sessions judge has referred to the judgment of this Court in the case *of* ***Salim Gulab Pathan vs. State of Maharashtra (2012) 6 SCC 606*** whereunder it has been held that dying declaration can be the sole basis of conviction if it inspires full confidence of the court. Yet another judgment of this Court in the case of ***Atbir vs. Government (2010) 9 SCC 1*** which is to the same effect has also been relied upon by the Sessions Judge to convict the accused, whereunder it has been held that dying declaration can be the sole basis for conviction.

> "(a) If it satisfies the conscience of the court that deceased was in a fit state of mind at the time of making the statement and that it was not a case of prompting or imagination;

(b) It is true and voluntary and no further corroboration is required;
(c) It is not suspicious."

It has also been observed therein that rule requiring corroboration is merely a rule of prudence. If the dying declaration discloses that deceased was unconscious or could never have made any statement, the conviction cannot be sustained. Even non-mentioning of minute details cannot be a ground to reject the said declaration and brief statement would suffice. If the evidence on record would suggest that the deceased was not in a fit condition to make statement or declaration, the medical opinion cannot prevail.

12. In the instant case, we notice from the facts that the deceased had self-immolated. A plain reading of the dying declaration Ex.P-45 recorded by PW-25 would indicate that reason for self-immolation by the deceased was on account of her inability to tolerate the torture meted out by the accused persons and she was not able to withstand the same and as such she self-immolated in the agricultural land. The physical disability suffered by her on account of the burn injuries

sustained would not disentitle her to make statement, if said statement had been made consciously knowing the consequences thereof and such statement or declaration cannot be brushed aside only on the ground of burn injuries (in the instant case 70% to 80%) having been sustained by her. As such, the contention raised by the learned advocates appearing for the appellants cannot be accepted or in other words the dying declaration cannot be brushed aside. The acceptance of the dying declaration by the court below is just a proper and under similar circumstances, this Court, in the case of ***Kamlavva And Anr*** *Vs.* ***State of Karnataka*** *(2009) 13 SCC 614* has held that even in circumstances where the burn injuries was to the extent of 70% to 80% the dying declaration can be accepted and it has been further held to the following effect.

> "20. The next and the most vital issue which was raised is regarding the admissibility of the dying declaration stated to have been made by the deceased before her death. Before dealing with the factual aspect of the dying declaration, it would be necessary to know the exact legal position which has been laid down and reiterated by this Court time and again.
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> 21. The question as to admissibility of a dying declaration came up before this Court in several cases. In Laxman v. State of Maharashtra, wherein also a question regarding the admissibility of the dying declaration was raised, the

Constitution Bench held that the Court must decide that the declarant was in a fit state of mind to make the declaration, but where the eyewitnesses' evidence including the evidence of a Magistrate who had recorded the dying declaration to that effect was available, mere absence of doctor's certification as to the fitness of the declarant's state of mind, would not ipso facto render the dying declaration unacceptable. It was further held that the evidentiary value of such dying declaration would depend upon the facts and circumstances of each particular case.

22. In para 3 of the said judgment in Laxman case, this Court discussed the juristic theory regarding acceptability of a dying declaration in the following manner: (SCC p. 713)

"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement."

23. The Constitution Bench in Laxman case also referred to an earlier decision of this Court in Koll Chunilal Savjl v. State of Gujarat wherein it was held that the ultimate test with regard to the admissibility of a dying declaration is whether the dying declaration can be held to be a truthful one and voluntarily given. In the said decision it was also held that before recording the declaration, the officer concerned must find that the declarant was in a fit condition to make the statement. The aforesaid ratio of Koli Chunilal Savji case was affirmed by the Constitution Bench in Laxman case[1].

24. In Vikas v. State of Maharashtra this Court elaborately discussed the previous relevant decisions governing the legality of dying declaration and observed in para 45 as follows: (SCC pp. 529-30) 45. The Court, referring to earlier case law, summed up principles governing dying declaration as under: (Paniben case, SCC pp. 480-81, para 18)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(vii) Equally, merely because it is a brief statement, it is not to be discarded.

On the contrary, the shortness of the statement itself guarantees truth. (ix) Normally the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

> (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.
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> 25. After referring to the decision of this Court in Khushal Rao v. State of Bombay, this Court in Vikas reiterated the legal position that where a dying declaration is recorded by a competent Magistrate, it would stand on a much higher footing inasmuch as a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the court."

13. In the light of above discussion, we are of the considered view that the dying declaration Ex.P-45 in the instant case which came to be accepted by the courts below cannot be found fault with, particularly, in the backdrop of the evidence tendered by the person who recorded the same as per Ex.P-45 and he having stood to his ground in the cross-examination and having spoken about her mental capability to make such statement and that too consciously. Dr. M.C. Kori PW-32 in whose presence the dying declaration Ex.P-45 came to be recorded by PW-25 has categorically stated that deceased Mahadevi was conscious and she was in a condition to speak. There is no prescribed format for recording the dying declaration. The perusal of the dying declaration in the instant case clearly suggests the same to be genuine

and the maker has stated the true story. On going through the same, it appears to our mind as it appeared to the trial court and the High Court to be genuine, true and not tainted with doubt or shrouded with mystery. The contents of the dying declaration Ex.P-45 suggests the possible explanation of the occurrence of the incident and it also appears to be the truthful version of the maker.

14. The incidental question that would also arise for our consideration is: whether the conviction of the accused under Section 304B would be sustainable? The ingredients to be satisfied for convicting an accused for the offence punishable under Section 304B are:

> "**(i)** The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
>
> **(ii)** Such a death should have occurred within seven years of her marriage.
>
> **(iii)** She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
>
> **(iv)** Such cruelty or harassment should be for or in connection with demand of dowry.
>
> **(v)** Such cruelty or harassment is shown to have been meted out to the woman soon before her death."

15. This Court in the case of ***Bansilal vs. State of Haryana (2011) 11 SCC 359*** has held that, to attract the provision of Section 304B of the IPC, 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 of dowry". It has been further held:

> **"20.** Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression "soon before her death" has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. (Vide *T. Aruntperunjothi* v. *State* ; *Devi Lal* v. *State of Rajasthan* ; *State of Rajasthan* v. *Jaggu Ram* ; *Anand Kumar* v. *State of M.P.* and *Undavalli Narayana Rao* v. *State of A.P."*

16. In ***Sher Singh Alias Partapa*** **vs** ***State of Haryana*** **(2015) 1 SCR 29 it has been held:**

> **"16.** As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304-B to distinguish this provision from the others. In actuality, however, it is

well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word "shown" is used as synonymous to "prove" and the word "presume" as freely interchangeable with the word "deemed". In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word "deem" to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin* v. *Shanmugha Vilas Cashewnut Factory* [AIR 1953 SC 333] and *State of T.N.* v. *Arooran Sugars Ltd.* [(1997) 1 SCC 326] , requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word "deemed" so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word "shown" in Section 304-B IPC as to, in fact, connote "prove". In other words, it is for the prosecution to prove that a "dowry death" has occurred, namely,

(*i*) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(*ii*) within seven years of her marriage,

(*iii*) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(*iv*) in connection with any demand for dowry, and

(*v*) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

> We are aware that the word "soon" finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word "deemed" was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC."

17. In the instant case as noticed hereinabove, the parents of the deceased and other witnesses who had recorded their statement before the I.O. with regard to alleged demand of dowry have retraced their steps or in other words have turned hostile and have not supported the

prosecution and have denied of having made any such statement before police. Be that as it may. This Court having arrived at a conclusion that the dying declaration made by the deceased as per Ex.P-45 being genuine and when said declaration is perused it would not suggest that there was any proximate nexus to the act of committing suicide on account of preceding demand for dowry or in other words the demand of dowry on any particular date having triggered the deceased to commit the suicide or forced her to self-immolate. This proximate link not being available in the facts obtained in the present case, we are of the considered view that conviction of the accused under Section 304B cannot be sustained.

18. In the aforesaid analysis of law, when we turn our attention to the facts on hand it would emerge from the records that appellants-accused persons have been convicted for the offences punishable under Sections 498A, 304B of IPC and Section 3 and 4 of Dowry Prohibition Act. Section 498A of IPC prescribes imprisonment which may extend to 3 years and the Explanation thereunder has two parts. The first part would relate to subjecting a married woman to cruelty

for any willful conduct which is of such a nature as is likely to drive her to commit suicide or to cause grave injury or danger to life, limb, or health (whether mental or physical). Second Part i.e. Clause (b) of Section 498A would indicate that cruelty would encompass harassment of a married woman where such harassment is with a view to pressurize her or any person related to her to meet any unlawful demand for any property or valuable security on account of failure by her or any person related to her to meet such demand.

19. In **Dinesh Seth v State of NCT of Delhi (2008) 14 SCC 94**, this Court has examined the width and scope of two Sections i.e., 304B & 498A and was held to be different. Section 304B deals with cases of death as a result of cruelty or harassment within 7 years of marriage. Whereas Section 498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet any unlawful demand of property

or valuable security. We have already discussed hereinabove as to there being no nexus for the deceased to self-immolate herself on account of such demand having preceded immediately before her death. As such we have opined that convicting the accused/appellants under Section 304B was improper or the prosecution had failed to establish that the death had occurred and soon before her death she was subjected to cruelty or harassment by the appellants.

20. It has been held in ***Dinesh Seth's*** (Supra) Case

> **"24.** Section 498-A was added to IPC by amending Act 46 of 1983 in the backdrop of growing menace of dowry related cases in which the women were subjected to cruelty and harassment and were forced to commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation appended to this section defines the term "cruelty" to mean 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 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.

> **25.** After three years, Section 304-B was inserted by amending Act 43 of 1986 to deal with cases involving dowry deaths occurring within seven years of marriage. Sub-section (1) of Section 304-B IPC lays down that 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. By virtue of Explanation appearing below sub-section (1), the word "dowry" used therein carries the same meaning as is contained in Section 2 of the Dowry Prohibition Act, 1961.
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> **26.** The ingredient of cruelty is common to Sections 304-B and 498-A IPC, but the width and scope of the two sections is different, inasmuch as Section 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498-A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet unlawful demand for property or valuable security."

21. Section 498A having a wider scope, it will have to be examined as to whether the accused is to be convicted for the offence punishable under Section 498A or in other words, the order of

conviction passed by Sessions Court and affirmed by High Court deserves to be affirmed, notwithstanding the conviction under Section 304B having been set aside. Irrespective of the fact that accused have been acquitted for the offence punishable under Section 304B, Section 498A would cover the cases in which the wife is subjected to cruelty by husband or relatives of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical). In the light of dying declaration (Ex.P-45) having been accepted to have been made by the deceased and the contents of the same disclosing that she was unable to withstand the torture meted out, which resulted in her committing suicide would suffice to convict the accused for the offence punishable under Section 498A.

22. This takes us to the next question as to whether the accused can be convicted for the offence punishable under Section 306 IPC though not charged for said offence. Similar situation arose before this Court in ***Dalbir Singh vs State of U.P. (2004) 5 SCC 334*** where a charge for the offence under Section 306 had not been framed against the

accused though accused had faced trial in respect of the charges under Section 302, 498A and 304B IPC as has happened in the instant case where the accused have been tried for the offences punishable under Section 498A, 304B IPC and Section 3 and 4 of DP Act and this Court had answered in the affirmative in Dalbir Singh's case by arriving at the following conclusion:

> **"17.** There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangaraboina Sreenu* [(1997) 5 SCC 348 : 1997 SCC (Cri) 690] was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.
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> **18.** The facts and circumstances of the present case may now be examined in the light of the principle discussed above. The trial court and also the High Court have recorded a clear finding and with which we are in complete agreement, that the accused had started making a demand of dowry soon after marriage. Even after his father-in-law had given him a colour TV, a scooter and money for purchasing the flat, he did not feel satisfied and continued

to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his seven-year-old daughter on several occasions. It was in such circumstances that Vimla took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one-year old. The letter written by Vimla just before taking such an extreme step speaks volumes about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution. These features of the prosecution case were sought to be established by the prosecution in order to substantiate the charge under Section 498-A IPC and also for showing that the accused had a motive to commit the crime of murder for which he was actually charged. The cross-examination of the witnesses shows that every effort was made to demolish the aforesaid aspect of the prosecution case, namely, that neither was any demand of dowry made nor were any gifts or presents or money received by the accused at a subsequent stage and that Vimla had not been subjected to any kind of harassment or ill-treatment. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under Section 313 CrPC. His statement runs into six pages where every aspect of the prosecution case referred to above was put to him. He also gave a long written statement in accordance with Section 233(2) CrPC wherein he admitted that Vimla committed suicide. He also admitted that the scooter and colour TV were subsequently given to him by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. We are, therefore, of the opinion that in view of the material on record, the conviction under Section 306 IPC can safely be recorded and the same would not result in failure of justice in any manner. The record shows that the accused was taken into custody on 29-3-1991 and was released from jail after the decision of the High Court on 20-3-1997 and thus he has undergone nearly six years of imprisonment. In our opinion, the period

> already undergone (as undertrial and after conviction) would meet the ends of justice."

22. In ***Dinesh Seth's case*** (supra) it has been held that in certain situations, an accused can be convicted for an offence with which he may not have been specifically charged and an error, omission or irregularity in framing of charge is, by itself not sufficient for upsetting the conviction. The only exception to this general rule as can be noticed from Section 464 of Cr.P.C. is, unless the accused is able to demonstrate a failure of justice has in fact been occasioned thereby. It has been held thereunder as:

> **"21.** The ratio of the abovenoted judgments is that in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate, confirming or revisional court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned."

23. After noticing the meaning to be attached to the plain language of Section 221 and Section 464 of Cr.P.C. this Court in Dinesh Seth-supra has opined:

> **"11.** A reading of the plain language of Sections 221(1) and (2) shows that if a single act or a series of acts constitute several offences and the prosecution is not certain about the particular offence then the accused can be charged with the allegation of having committed all, some or any of the offences. In such a case the accused can be convicted of the offence with which he may not have been specifically charged but evidence produced by the prosecution proves that such an offence has, in fact, been committed.
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> **12.** Section 222(1) lays down that when a person is charged with an offence consisting of several particulars and combination of only some of the particulars constituting a minor offence is proved then he can be convicted of the minor offence with which he may not have been charged. Section 222(2) lays down that when a person is charged with an offence but the facts proved constitute a minor offence then he can be convicted of the minor offence despite the fact that he may not have been charged with that offence. Sub-section (3) of Section 222 lays down that a person charged with an offence, can be convicted of an attempt to commit such offence even though a separate charge may not have been framed on that account.
>
> **13.** Section 464(1) lays down that any error, omission or irregularity in the framing of charge including any misjoinder of charges, will not invalidate a finding, sentence or order by a court of competent jurisdiction unless the higher court comes to a conclusion that failure of justice has been occasioned. Sub-section (2) of Section 464 specifies the modes which can be adopted by the court of appeal, confirmation or revision, if such court is of the opinion that a failure of justice has been occasioned on account of non-framing of charge or any error, omission or irregularity in the framing of charge."

24. In the light of aforesaid analysis, the question that would arise is: whether the accused in the instant case can be convicted for the

offence punishable under Section 306 IPC? Section 306 reads as under:

> "**306**. **Abetment of suicide**. —If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The basic ingredients of an offence under Section 306 is suicidal death and its abetment thereof. To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide would be necessary.

25. It would be necessary at this juncture itself to note the statement made by the deceased in her dying declaration Ex.P-45 which is to the following effect:

> "I have been given in marriage xxx for the dowry all of them were harassing me by saying my father had given less dowry and customary gifts to the groom. **As I couldn't tolerate the torture, I have set fire to myself by pouring on me at the shade situated in our land on 20.12.2010 in early morning at about 6:30 to 7:00.** My husband xxx Bagalkot city."
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> **(Emphasis supplied by us)**

26. The court below had formulated point No.1 for its adjudication which is to the effect: whether the deceased Akkamahadevi died

suicidal death? and, answered the same in the affirmative by opining that deceased died due to burn injuries which she had suffered on account of self-immolation. The act of cruelty has been spelt out by none else than the victim herself in her dying declaration Ex.P-45. She has in clear words stated all the accused were harassing her by stating that her father had given less dowry and customary gifts to her husband and being unable to tolerate this mental torture, she had set fire to herself on the fateful day. The accused being the husband, father-in-law & mother-in-law are said to have harassed the deceased, subjected her to cruelty and the deceased has in clear terms stated in her dying declaration that she could not tolerate the same. Thus, the torture which has taken place within the four walls is supported by the statement of the victim and stands proved by virtue of dying declaration having been accepted by us. It is this act of torture which led the deceased to commit suicide and these acts have forced the deceased to commit suicide.

27. Omission to frame charge does not disable the court from convicting the accused for the offence which is found to have been

proved on the evidence on record. The code has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 304B and in the alternative Section 306, it is clear that all the facts and ingredients for framing the charge for offence under Section 306 existed. The mere omission on the part of the trial judge to mention Section 306 IPC with 498A would not preclude this Court from convicting the accused for the said offence when found proved. In the charge framed under Section 304B of IPC, it has been clearly mentioned that the accused has subjected the deceased to such cruelty and harassment as to drive her to commit suicide by self-immolation and as such non-framing of the specific charge would not be fatal in the instant case as no injustice is being caused to the accused.

28. This court in **K. Prema S. Rao & anr v. Yadla Srinivasa Rao and others (2003) 1 SCC 217** has held that mere omission or defect in framing of charge would not be fatal if from the statement of charge under Section 304B and in the alternative Section 498A, it is clear that

all facts and ingredients for framing of charge under Section 306 existed in the case, same would suffice. It was further held that:

> **"22.** Mere omission or defect in framing charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 304-B and *in the alternative* Section 498-A IPC (as quoted above) it is clear that all facts and ingredients for framing charge for offence under Section 306 IPC existed in the case. The mere omission on the part of the trial Judge to mention Section 306 IPC with Section 498-A IPC does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498-A IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 CrPC take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence. Section 221 CrPC needs reproduction:
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> "221. *Where it is doubtful what offence has been committed*.—(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.
>
> (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

23. The provision of sub-section (2) of Section 221 read with sub-section (1) of the said section can be taken aid of in convicting and sentencing Accused 1 of offence of abetment of suicide under Section 306 IPC *along with or instead of Section 498-A IPC*.

24. Section 215 allows the criminal court to ignore any error in stating either the offence or the particulars required to be stated in the charge, if the accused was not, in fact, misled by such error or omission in framing the charge and it has not occasioned a failure of justice. See Section 215 CrPC which reads:

"215. *Effect of errors*.—No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

25. As provided in Section 215 CrPC omission to frame charge under Section 306 IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the trial court for framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306 IPC and a consequent failure of justice. The same facts found in evidence, which justify conviction of the appellant under Section 498-A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304-B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption under Section 113-A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498-A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498-A IPC."

29. In the aforesaid background and the evidence on record as already noticed by us hereinabove, it can be safely noted that High Court ought to have examined as to whether accused could have been convicted for an offence for which no charge was framed and not undertaking of such an exercise would result in failure of justice? Thus, it will have to be seen from the facts unfolded in the present case as to whether the accused was aware of the basic ingredients of the offence for which they are being tried and whether the main facts sought to be established against them were explained to them clearly and whether they got a fair chance to defend themselves. If the answer is in the affirmative, then necessarily this Court will have to proceed further and examine as to whether accused can be convicted for the offence not charged and if the answer is in the negative it would result in acquittal of the accused for said offence. In the instant case the dying declaration of the deceased would clearly indicate that deceased was mentally traumatized and she was unable to tolerate the torture and harassment meted out by the accused person on account of which she committed suicide. It is this taunting or mental torture which she

could not withstand and forced her to commit suicide by self-immolation. In that view of the matter, we are of the considered opinion that accused persons are liable to be convicted for the offence punishable under Section 306 IPC though charge was not framed. The accused (appellant Nos.1 and 2) are now aged about 66 and 61 years respectively. They have already spent one year, one month and 27 days in prison. They do not have any past history of criminal record. Hence, a lenient view has to be taken while imposing the sentence.

30. For the reasons afore-stated the appeal is allowed in part. The judgment and order of conviction passed by the Sessions Court in SC No.35 of 2011 dated 14.09.2012 as affirmed in Criminal Appeal No.2847 of 2012 by judgment dated 20.07.2022 is hereby modified. The appellants are acquitted for the offences punishable under Section 304B IPC and Section 3 and 4 of Dowry Prohibition Act and convicted for the offence punishable under Section 306 and Section 498A read with Section 34 IPC and sentenced to imprisonment for the period already undergone with fine of Rs.5000/- each and in default to

pay the fine to undergo one month simple imprisonment for each of the offence.

…….J.
(S. Ravindra Bhat)

……..……J.
(Aravind Kumar)

New Delhi,
October 19, 2023