REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 696 OF 2009

Mangat Ram .. Appellant

Versus

State of Haryana .. Respondent

J U D G M E N T

K. S. Radhakrishnan, J.

1. The appellant Mangat Ram, a member of SC community, married the deceased Seema, a member of the Aggarwal community on 13.7.1993 at Ambala. Few months after the marriage, on 15.9.1993, according to the prosecution, the appellant sprinkled kerosene oil on the body of the deceased and set her on fire, having failed to meet the dowry demand. On hearing the hue and cry, neighbours assembled and took her to the Civil Hospital, Gohana and, later, she was shifted to the Medical College and Hospital, Rohtak, where she died on 17.9.1993. The

appellant, along with his parents and sister, were charge-sheeted for the offences punishable under Sections 498-A and 304-B IPC.

2. The prosecution, in order to bring home the offences, examined PWs 1 to 7 and also produced various documents. On the side of defence, DWs 1 to 5 were examined and the accused appellant got himself examined as DW6. After the evidence was closed, the accused was questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.), who denied all the incriminating statements made against him. The trial Court, after appreciating the oral and documentary evidence, came to the conclusion that an offence under Section 498-A IPC was made out against the appellant, but not against the other three accused persons. The trial Court also found that no offence under Section 304-B IPC was made out against the accused persons, including the appellant. However, it was held that an offence under Section 306 IPC was made out against the appellant, though no charge was framed under that section. After holding the appellant guilty, the trial Court convicted the appellant under Section 498-A IPC and

sentenced him to undergo imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to further undergo rigorous imprisonment (RI) for six months. The appellant was also convicted under Section 306 IPC and sentenced to undergo imprisonment for a period of seven years and to pay a fine of Rs.4,000/-, in default, to further undergo RI for two years.

3. Aggrieved by the conviction and sentence awarded by the trial Court, the appellant preferred Criminal Appeal No. 592-SB of 1997, which when came up for hearing before the Division Bench of the High Court on 3.5.2007, the Court passed the following order:

> "Present: Mrs. Ritu Punj, DAG, Haryana
>
> Mrs. Harpreet Kaur Dhillon, Advocate
> is appointed as Amicus Curiae.
>
> Heard
>
> Dismissed, reasons to follow."

4. Aggrieved by the said order, the appellant preferred SLP (Criminal) No. 7578 of 2007 which was later converted into Criminal Appeal No. 182 of 2008. The criminal appeal came up for hearing before this Court on 25.1.2008 and this

Court deprecated the practice of the High Court in disposing of the criminal appeals without recording reasons in support of its decision. Placing reliance on the judgments of this Court in ***State of Punjab and others v. Jagdev Singh Talwandi*** (1984) 1 SCC 596, ***State of Punjab and others v. Surinder Kumar and others*** (1992) 1 SCC 489 and ***Zahira Habibulla H. Sheikh and another v. State of Gujarat and others*** (2004) 4 SCC 158, this Court set aside the judgment of the High Court and directed the High Court to hear the appeal on merits.

5. The High Court then considered the criminal appeal and dismissed the same on merits vide its judgment dated 27.5.2008 confirming the conviction and sentence awarded against the accused by the trial Court. Aggrieved by the same, this appeal has been preferred.

6. Mr. Satinder S. Gulati, learned counsel appearing for the appellant, took us elaborately through the oral and documentary evidence adduced by the parties and submitted that the judgment of the trial Court as well as the High Court is based on conjunctures, full of contradictions

and surmises and there is no evidence to substantiate the charges levelled against the accused. Learned counsel submitted that there was a complete misreading of the oral and documentary evidence and, at every stage, the Courts below adopted its own strange reasoning which was not brought out from the deposition of the witnesses. Learned counsel pointed out that, throughout the judgment of the trial Court as well as the High Court, one can notice that the Courts below were prejudiced to the accused for having entered into an inter-caste marriage and opined that the plight of such marriages would be discontentment and unhappiness. Learned counsel pointed out that there is sufficient evidence to conclude that the deceased was suffering from Epilepsy for the last few years of the incident and that death might have been caused by accident and, in any view, it was not a homicidal death. Further, it was pointed out that the prosecution could not prove that the appellant was at home when the incident had happened. Learned counsel also submitted that the trial Court has committed an error in altering the offence to that of Section 306 IPC after finding the accused not guilty under Section

304-B IPC. Learned counsel pointed out that the ingredients of the offence under Section 304-B as well as Section 306 IPC are entirely different and the trial Court has committed a grave error in convicting the appellant under Section 306 IPC. Learned counsel also pointed out that there is absolutely no evidence of dowry demand and the conviction recorded under Section 498-A IPC is also without any material. In support of his various contentions, learned counsel also made reference to few judgments of this Court, which we will deal in the latter part of this judgment.

7. We did not have the advantage of hearing any counsel on the side of the State, even though, the hearing was going on for a couple of days. Learned counsel appearing for the appellant took us through the depositions of the witnesses examined on the side of the prosecution as well as the defence, as also the documentary evidence placed before the Court.

8. We may first examine whether an offence under Section 498-A IPC has been made out against the appellant. Admittedly, the marriage between the appellant and the

deceased was an inter-caste love marriage and, after few months of the marriage, she died of burn injuries on 17.9.1993 at her matrimonial home. The question is whether immediately before and during the period between the date of marriage and the date of incident, was there any dowry demand on the side of the accused. In order to establish the ingredients of Section 498-A IPC, the prosecution examined PW4, the maternal grand-father of the deceased, who had brought up her on the demise of her parents. On a plain reading of the deposition of PW4, it is clear that he was against the inter-caste marriage of her grand-daughter with the appellant, who belonged to the Scheduled Caste community, while the deceased belonged to the Aggarwal community. PW4, in his cross-examination, stated that he had agreed for the marriage since the deceased was adamant to marry the appellant. PW4 also stated that he had not participated in Tikka ceremony held in the house of accused appellant. Further, it was also stated that he had not contacted any other member of the family of the accused before the marriage. PW4, in the cross-examination, stated that he had gone to Madhuban

prior to the marriage to dissuade the appellant from entering into such a marriage and, for the said purpose, he met the DSP, Madhuban, who then called Mangat Ram, but he was adamant to marry Seema. We have to appreciate the evidence of PW4 in the light of the fact that he was totally against the inter-caste marriage between the accused and the deceased. PW4 also deposed that the accused persons had demanded a dowry of Rs.10,000/- and a scooter and, on 14.8.1993, PW4 gave Rs.10,000/- in cash to the accused and had also promised to make arrangement for the purchase of a scooter.

9. PW5, a distant relative of PW4, also stated that after 15-20 days of the marriage, the deceased came along with the accused to the residence of PW4 and, at that time, the deceased had told PW4 and others that the accused was harassing her since she had not brought dowry. PW5 also deposed that articles like cooler, fridge, sofa, double bed were given to the accused by way of dowry. PWs 4 and 5 had deposed that a demand of dowry was made not only by the accused Mangat Ram, but also by his parents and sister. The trial Court recorded a clear finding that the

prosecution had failed to bring home the guilt as against the parents and sister of the accused under Section 498A, 304-B IPC, which was not questioned by the prosecution. However, if that part of the evidence of PWs 4 and 5 could not be believed against the rest of the accused, then we fail to see how it could be put against the accused alone, especially when PWs 4 and 5 had stated that the demand for dowry was made by all the accused on 13.8.1993. The evidence of PWs 4 and 5 has to be appreciated in the light of the fact that they were against the inter-caste marriage, since the appellant belonged to Scheduled Caste community and the deceased belonged to Aggarwal community, a forward community. Alleged dowry demand of Rs.10,000/- and the demand of scooter, stated to have been made by the accused, could not be established not only against the other three accused persons, but also against the appellant as well.

10. We may now examine, apart from the dowry demand, had the appellant treated the deceased with cruelty and abetted the deceased in committing suicide. We have already found on facts that the prosecution could not

establish that there was any dowry demand from the side of the appellant. Once it is so found, then we have to examine what was the cruelty meted out to the deceased so as to provoke her to end her life. It has come out in evidence that when the deceased sustained burn injuries, the accused was not at home. In this connection, we may refer to para 25 of the trial Court judgment, which reads as follows:

> "25. Secondly, Seema died un-natural death. The most crucial point which the prosecution was bound to establish, whether Seema was subjected to cruelty and harassment on account of paucity of dowry or there was a fresh demand of dowry, there is no such evidence on the file that she was subjected to cruelty and harassment. Bidhi Chand and Avinash Chander both appeared. They did not state that Seema was subjected to cruelty and harassment for paucity of dowry given at the time of marriage....."
>
> [Emphasis Supplied]

11. The trial Court itself says that there was no such evidence on the file that she was subjected to cruelty or harassment. But, in para 26 of its judgment, the trial Court, adopted a strange reasoning to hold that the accused had treated the deceased with cruelty, which is as follows:

> "26. ..... An educated girl of business community was left in a village life and in the house of a lower community people whose way of living, whose way of talking, whose way of behaviour is not at par with the family members of Seema, since deceased. As such, Seema was feeling perplexed agitated. She expected from Mangat Ram that she must be kept with him at his place of posting and not to be left in a village life in the company of rustic persons and that appeared the cause of discontentment and unhappiness. It has been experienced that such marriage meets ill fate, like the present one. From statement of Bidhi Chand and letters Ex.PE and PF an inference can be easily drawn that Seema was fully unhappy and dis-contended from the behaviour of Mangat Ram accused, since he had left her in village life at the mercy of her mother-in-law Jiwni and that is why, she had been calling her grand maternal father to come for her rescue, but Bidhi Chand, as explained by him, could not rush to village Baroda because his son and his wife met with an accident at Chandigarh and he went there."
>
> [Emphasis Supplied]

12. Further, in para 31, the trial Court has stated that the conduct of Mangat Ram keeping and leaving Seema in Baroda at his home amounted to causing cruelty and harassment to Seema. In para 32, the trial Court has also recorded a very strange reasoning, which is as follows:

> "32. Accused was very safely entered into defence and led defence evidence that Seema had been suffering from epilepsy prior to her marriage. In case, if this fact would have been

> in the knowledge of Mangat Ram, he would have never solemnised marriage with Seema. After enjoying sex with her, he must have deserted this lady....."

13. We fail to see how the Court can come to the conclusion that having known the deceased was suffering from Epilepsy, he would not have married the deceased. If the Court's reasoning is accepted, then nobody would or could marry a person having Epilepsy. Another perverse reasoning of the trial Court which, according to the trial Court, led to the act of suicide, is as follows:

> "33. ..... She has been brought up by her grand maternal father Bidhi Chand and he contracted a love marriage with her. But in spite of that, he quenched his lust of sex by enjoying Seema and then left her in a rustic life of village. Seema, out of frustration and discontentment, wanted to get rid of that life. When her maternal grand father did not reach for her rescue, she being fully harassed, sprinkled kerosene oil on her body and took her life. ....."
>
> [Emphasis Supplied]

14. The underlined portion indicates that the deceased had committed suicide out of frustration and discontentment and due to the reason that her maternal grandfather did not reach for her rescue. Reference to few letters sent by the deceased to her maternal grand father in

this respect is apposite. In her letter dated 18.8.1993 (Annexure P-17) to PW4, there is absolutely no indication of any harassment or dowry demand by the accused. The letter would only indicate that she was home-sick and wanted very much to see her grand father, the operative portion of the same reads as follows :

> "…. But you should come it is very important work. If you will not come on 25th or 26th then I will give my life. Therefore both of you should come. Even if Somnath mama will say no for you to go to Baroda but both of you should come, it is important work. If you will not come then your daughter will give her life. What more should I write you are wise enough. If there is any mistake in the letter then forgive me. I sent a letter to Bandoi also. That day we reached Baroda at 3 O'clock. Both of us wish Namaste to all of you. Give love to Rahul, Sahul. I miss all of you a lot. Daddyji after getting my letter come to Baroda on 25th or 26th immediately, it is important work. If you will not come I will give my life therefore you and mamaji should come. I am closing my letter. I am writing again that Daddyji you should come. It is very important work. If you will not come on 25th or 26th then on 27th you will get a telephone call of my death. …."

15. Reference may also be made to another letter dated 11.9.1997 sent by her to PW4. In that letter also, there was no complaint of any harassment or dowry demand. On the other hand, the letter would further reemphasize that she

was home-sick and very much wanted to see her maternal grand father, the operative portion of the letter reads as follows:

> "…. Daddyji you may not come for a night but you should come to meet me for an hour or two. It is very important work. Daddyji you keep on replying to my letter I feel very happy. I miss Rahul, Sahul, Raju, Sonu, Shalu and Rachit, Sapna, Aarti and all of you. I keep on crying the whole day and whole night by remembering you. I want to meet all of you. Nanaji come to Baroda immediately after reading my letter on 17th or 18th date, it is very important work. If you love me then you should come. Daddy if you will not come even after reading my letter then I take your vow that I will give my life. Reply to the letter on getting it. From my side and from my mother in law's side and from Mangat's side we wish Namaste to all of you. Give love to children. Writer of letter your daughter. (Seema)"

16. The picture that emerges from the conduct of the deceased was that she was very home-sick at her matrimonial home and was very much attached to PW4 and her friends and relatives at her home. The accused being a Police Constable had to serve at various places away from his village and, then necessarily he had to leave his wife at his home in the care and protection of his parents. Not taking the wife along with him, itself was, however, commented upon by the trial Court stating that the

accused had left his wife, an educated girl belonging to a business community, in a village and in the house of a lower community people, whose way of life, whose way of talking, whose way of behaviour would not be at par with the family members of the deceased. On this reasoning, the trial Court concluded that the deceased was feeling perplexed, agitated and expected that the accused would take her at his place of posting, rather than leaving in a village in the company of rustic persons which, according to the Court, led to discontentment and unhappiness.

17. We fail to understand how a judicially trained mind would come out with such a reasoning and, at least, we expected that the High Court would have set right that perverse reasoning, but we are surprised to note that the High Court adopted yet another strange reasoning, which reads as follows:

> "When deceased had contracted marriage with the appellant-accused on her own accord against the wish of her maternal grandfather then, deceased was not expected to commit suicide because she was to stay with the appellant-accused. On the other hand, appellant-accused being employee had not kept the deceased with him at the place of his posting. Deceased was staying with the parents of the appellant-accused. So, actions of

> the appellant-accused abetted the deceased to commit suicide."

18. We fail to see how the failure of a married person to take his wife along with him to the place where he is working or posted, would amount to cruelty leading to abetment of committing suicide by the wife. Taking wife to place of posting depends upon several factors, like the convenience of both, availability of accommodation and so many factors. In the instant case, the accused had left the wife in the matrimonial home in the company of his parents and we fail to see how that action would amount to abetment to commit suicide.

19. We may point out that the High Court itself after placing reliance on the letters – Exh. PE and PF - written by the deceased to her maternal grandfather, has noted that there was no reference at all in these letters of the demand of dowry by the accused, but stated that the deceased was unhappy and upset over the behaviour of the accused, having left her in the company of his parents. We have gone through those letters and, in those letters, there is nothing to show that the deceased was upset by the

behaviour of the accused. On the other hand, the letters only expose that the deceased was extremely home sick and wanted the company of her maternal grandfather. We are surprised to note that the High Court found fault with the accused for leaving the deceased "at the mercy of his parents". Again, the High Court made another strange reasoning, which reads as follows:

> "Immediately after marriage, two letters were written in the months of August and September, 1993. Appellant-accused being employee should have kept the deceased with him. No prudent man is to commit suicide unless abetted to do so. Actions of the appellant-accused amounts to cruelty compelling the deceased to commit suicide. Conviction under Section 306 IPC was rightly recorded by the trial Court. No question of interference. If husband is given a benefit of doubt on the allegation that no direct evidence, no circumstantial evidence, when the marriage was inter-caste, then what type of evidence deceased or complainant was to collect. ."
>
> [Emphasis Supplied]

20. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so." A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and

need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.

21. We fail to see how the High Court can say that the accused being a police man should have kept his wife with him at his workplace. Further, the High Court then posed a wrong question to itself stating that if there is no direct evidence, no circumstantial evidence, then what type of evidence the deceased or complainant was to collect, when the marriage is inter-caste, a logic we fail to digest.

22. We are sorry to state that the trial Court as well as the High Court have not properly appreciated the scope of Sections 498-A and 306 IPC. Section 498-A IPC, is extracted below for an easy reference:

> "**498-A.** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> *Explanation.*- For the purposes of this section, 'cruelty' means-
>
> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury

or danger to life, limb or health (whether mental or physical) of the woman; or

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

23. Explanation to Section 498-A gives the meaning of 'cruelty', which consists of two clauses. To attract Section 498-A, the prosecution has to establish the wilful conduct on the part of the accused and that conduct is of such a nature as is likely to drive the wife to commit suicide. We fail to see how the failure to take one's wife to his place of posting, would amount to a wilful conduct of such a nature which is likely to drive a woman to commit suicide. We fail to see how a married woman left at the parental home by the husband would by itself amount to a wilful conduct to fall within the expression of 'cruelty', especially when the husband is having such a job for which he has to be away at the place of his posting. We also fail to see how a wife left in a village life "in the company of rustic persons", borrowing language used by the trial Court, would amount

to wilful conduct of such a nature to fall within the expression of 'cruelty'. In our view, both the trial Court as well as the High Court have completely misunderstood the scope of Section 498-A IPC read with its explanation and we are clearly of the view that no offence under Section 498-A has been made out against the accused appellant.

24. We have already indicated that the trial Court has found that no offence under Section 304-B IPC has been made out against the accused, but it convicted the accused under Section 306 IPC, even though no charge had been framed on that section against the accused. The scope and ambit of Section 306 IPC has not been properly appreciated by the Courts below. Section 306 IPC reads as under:

> "**306.** 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."

Abetment of suicide is confined to the case of persons who aid or abet the commission of the suicide. In the matter of an offence under Section 306 IPC, abetment must attract the definition thereof in Section 107 IPC. Abetment is constituted by instigating a person to commit an offence

or engaging in a conspiracy to commit, aid or intentional aiding a person to commit it. It would be evident from a plain reading of Section 306 read with Section 107 IPC that, in order to make out the offence of abetment or suicide, necessary proof required is that the culprit is either instigating the victim to commit suicide or has engaged himself in a conspiracy with others for the commission of suicide, or has intentionally aided by act or illegal omission in the commission of suicide.

25. In the instant case, of course, the wife died few months after the marriage and the presumption under Section 113A of the Evidence Act could be raised. Section 113A of the Evidence Act reads as follows:

> "**113A.** *Presumption as to abetment of suicide by a married woman.*- when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband and subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

26. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act. In this connection, we may refer to the judgment of this Court in

Hans Raj v. State of Haryana (2004) 12 SCC 257, wherein this Court has examined the scope of Section 113A of the Evidence Act and Sections 306, 107, 498-A etc. and held that, unlike Section 113B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113A of the Evidence Act. This Court held that, under Section 113A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC.

27. We are of the view that the circumstances of the case pointed out by the prosecution are totally insufficient to

hold that the accused had abetted his wife to commit suicide and the circumstances enumerated under Section 113A of the Evidence Act have also not been satisfied. In ***Pinakin Mahipatray Rawal v. State of Gujarat*** (2013) 10 SCC 48, this Court has examined the scope of Section 113A of the Evidence Act, wherein this Court has reiterated the legal position that the legislative mandate of Section 113A of the Evidence Act is that if a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, as per the presumption defined in Section 498-A IPC, the Court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by the husband or such person. The Court held that, though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498-A IPC is on the prosecution. The Court held that the burden is on the prosecution to establish the fact that the deceased committed suicide and the accused abetted the suicide. In the instant case, there is no evidence to show whether it

was an accidental death or whether the deceased had committed suicide.

28. We have every reason to believe that, in the instant case, the death was accidental, for the following reasons.

- Though not proved in her dying declaration, it has come out in evidence that the deceased was suffering from Epilepsy for the last three years i.e. before 15.3.1993, the date of incident. This fact is fortified by the evidence of Dr. Kuldeep, who was examined as DW1. He deposed that the deceased was suffering from Epilepsy and was under his treatment from 23.12.1992 to 2.4.1993 at Kuldeep Hospital, Ambala City. His evidence was brushed aside by the trial Court on the ground that Dr. Kuldeep was not a Psychiatrist. It may be noted that Epilepsy is not a Psychiatrist problem. It is a disease of nerves system and a MD (Medicine) could treat the patient of Epilepsy. The reasoning given by the trial Court for brushing aside the evidence of DW1 cannot be sustained. Therefore, the possibility of an accidental death, since she was suffering from Epilepsy, cannot

be ruled out. Evidently, she was in the kitchen and, might be, during cooking she might have suffered Epileptic symptoms and fell down on the gas stove and might have caught fire, resulting her ultimate death.

- DW2, ASI Ram Mohan, the Investigating Officer of the case, deposed that he had recorded the statements of the deceased wherein she had stated that she was suffering from Epilepsy for the last three years before the incident and that on 15.9.1993 while she was preparing meals on stove, she had an attack of fits and fell on the stove and caught fire. She had also deposed at that time that her husband was away at duty at Madhuban, Karnal. In our view, the evidence of DW2 has to be appreciated in the light of overall facts and circumstances of the case.

29. Taking into consideration all aspects of the matter, we are of the view that the prosecution has not succeeded in establishing the offence under Section 498-A and Section 306 IPC against the appellant. Consequently, the appeal is

allowed and the conviction and sentence awarded by the trial Court and confirmed by the High Court, are set aside.

.....J.
(K. S. Radhakrishnan)

.....J.
(Vikramajit Sen)

New Delhi,
March 27, 2014.