

D. JAYANA  
v.  
STATE OF KARNATAKA  
(Criminal Appeal No. 79 of 2003)

MAY 06, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR G  
ANGULY, JJ.]

*Penal Code, 1860:*

*ss. 304-B and 498-A – Conviction by trial court – Sentence of life imprisonment imposed – High Court, maintaining conviction, reduced the sentence to seven years – HELD: Though the evidence is sufficient to bring in application of s.498-A, there is definite inadequacy to attract s. 304-B – Conviction u/s 304-B set aside – Conviction u/s 498-A maintained, but sentence reduced to the period already undergone which was about 3<sup>1/2</sup> years.*

**The appellant was convicted by the trial court of the offences punishable u/ss 304-B and 498-A IPC. He was sentenced to imprisonment for life u/s 304-B IPC. No separate sentence u/s 498-A was awarded. On appeal, the High Court maintained the conviction under both the provisions but reduced the sentence to seven years u/s 304-A and further imposed a sentence of three years imprisonment u/s 498-A IPC.**

**In the instant appeal filed by the accused, it was contended for the appellant that accusation against him with regard to s. 304-B IPC could not be substantiated.**

**Allowing the appeal in part, the Court**

**HELD: The only evidence relatable to s.304B IPC was that of a neighbour who was examined after about two**

A months of the alleged occurrence. Though the evidence  
appears to be sufficient to bring in application of s.498A,  
there is definite inadequacy to attract s.304B IPC. In that  
view of the matter, the conviction so far as it related to  
s.304B IPC is set aside, and that in relation to s.498A IPC  
B is maintained. It is stated that the appellant has already  
suffered custody of about three and half years. That  
being so, the appellant need not surrender to custody.  
[Para 2] [981-G-H; 982-A-B]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 79 of 2003.

From the Judgment & Order dated 16.07.2002 of the High  
Court of Karnataka at Bangalore in Criminal Appeal No. 568/  
1999.

D Kiran Suri for the Appellant.

The Judgment of the Court was delivered by

E DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is  
the order passed by a Division Bench of the Karnataka High  
Court upholding the conviction of the appellant for offences  
punishable under Section 304 B and 498 A of the Indian Penal  
Code, 1860 (in short 'IPC). Learned 1st Additional Sessions  
Judge, Chitradurga had imposed life sentence for the first  
F offence but no separate sentence was imposed for the later  
offences. The appellant A-1 is the husband of Rekamma  
(hereinafter referred to as the 'deceased'). The marriage  
between A-1 and the deceased took place on 27.3.1991.  
Accused No. 2 Gangama is the mother of A1 and A3 and A4  
G were the brothers and A5 is the sister of the accused. The trial  
court held that out of the five accused persons who faced trial  
for alleged commission of offences punishable under Section  
304, 498A read with Section 34 IPC and Sections 3, 4 and 6  
of the Dowry Prohibition Act (in short 'DP Act') read with Section  
H 34. Only present appellant was guilty of offences punishable

under Sections 304B & 498A IPC. The trial court placed reliance on the prosecution evidence as tendered and held that the accusations were clearly made out so far as the present appellant is concerned. In appeal, the High Court while maintaining the conviction reduced the sentence to seven years and the High Court also imposed sentence of three years in respect of offence punishable under Section 498 A IPC. The sentences were directed to run concurrently.

2. In support of the appeal learned counsel for the appellant submitted that for substantiating commission of an offence under Section 304B dowry death has not be established. Section 304B was introduced w.e.f. 19.11.1986. Simultaneously Section 113B of the Indian Evidence Act, 1872 ( in short the 'Evidence Act') was introduced. Presumption is available to be drawn under Section 113B, if the evidence in that regard is established. It is to be noted that the High Court held that the there was no proof of any demand of dowry to bring in application under the DP Act. The High Court held that the view of the trial court in that regard was not correct. Even though there was no challenge by State questioning the acquittal of offence relatable to Sections 3, 4 and 6 of the DP Act, the High Court found that the prosecution has proved the charges imposed against the accused in relation to the said offence. Having done so, the High Court did not impose any sentence in respect of the offence relatable to the DP Act. Learned counsel for the appellant submitted that the factual scenario goes to show that the offences relatable to Section 304B are not established. Learned counsel for the respondent on the other hand submitted that in view of the Explanation (a) and (b) of Section 4908A IPC, cruelty has to be clearly established. The only evidence relatable to Section 304B was that of a neighbour who was examined after about two months of the alleged date of occurrence. Though the evidence appears to be sufficient to bring in application of Section 498A, there is definite inadequacy to attrach Section 304B IPC. In that view of the matter we set aside the conviction so far it relates to

- A Section 304B IPC and maintain that in relation to Section 498A IPC. It is to be noted that there is sufficient evidence relating to demand of dowry though for the purpose of Section 304B, the evidence is not sufficient. The appeal is allowed to the aforesaid extent. It is stated that the appellant has already
- B suffered custody of about three and half years. That being so, the appellant need not surrender to custody. The bail bonds furnished to give effect to the order dated 20.01.2009 shall stand discharged.

R.P.

Appeal partly allowed.