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SONI DEVRAJBHAI BABUBHAI
v.
STATE OF GUJARAT AND ORS.

AUGUST 28, 1991

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[LALIT MOHAN SHARMA AND J.S. VERMA, JJ.]

Indian Penal Code, 1860: Section 304-B (As inserted by Act 43 of 1986)—Scope and object of—Dowry death—Death occurring prior to insertion of Section 304-B—Section 304-B held prospective and consequently inapplicable—It contains a substantive provision creating a new offence and does not merely effect a procedural change for trial of pre-existing substantive offence.

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Indian Evidence Act, 1872: Section 113-B. Presumption as to dowry death—Section 113-B contains rule of evidence to prove the offence of dowry death.

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Dowry Prohibition Act, 1961: Purpose of.

Constitution of India, 1950: Article 20(1) Protection against conviction for a new offence created subsequent to the commission of offence.

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Appellant's daughter was married to respondent No. 2 on 15.12.1984. She died on 13.8.1986. The appellant filed a criminal complaint against the respondents viz. daughter's husband and his relatives for an offence under section 498-A, triable by a Magistrate of First Class, read with section 34 of the Indian Penal Code, 1860 alleging that

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his daughter's death was unnatural resulting from torture by her husband and his relatives. By Act No. 43 of 1986, the Indian Penal Code was amended and Section 304-B, offence of dowry death, was inserted in the Code w.e.f. 19.11.1986. Since the newly inserted offence of dowry death was triable by a Court of Session, the appellant filed an application before the Magistrate for committing the case to the Court of

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Session for trial of offence under section 304-B. The Magistrate dismissed his application by holding that the amendment being prospective was inapplicable to the case because the death had occurred prior to the amendment. Thereafter the appellant filed an application in the High Court for a direction to commit the case of dowry death to the Court of Session. The High Court also dismissed his application by holding that

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since the offence was committed prior to the date of insertion of section

304-B, the section was not applicable to the case. In appeal to this Court on the question whether section 304-B of the Indian Penal Code was applicable to a case of dowry death where the death has occurred prior to the insertion of Section 304-B, it was contended on behalf of the appellant that section 304-B of the Indian Penal Code does not create a new offence and contains merely a rule of evidence.

Dismissing the appeal, this Court,

HELD: 1. The offence of dowry death punishable under section 304-B of the Indian Penal Code is a new offence inserted in the Code with effect from 19.11.1986 when Act No. 43 of 1986 came into force. The said offence is punishable with a minimum sentence of seven years which may extend to life imprisonment and is triable by Court of Session. The corresponding amendments made by Act No. 43 of 1986 in the Code of Criminal Procedure and the Indian Evidence Act relate to the trial and proof of the offence. Section 498-A inserted in the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983 is an offence triable by a Magistrate of the First Class and is punishable with imprisonment for a term which may extend to three years in addition to fine. The offence of dowry death punishable under section 304-B provides for a more stringent offence than section 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. The rule of evidence to prove the offence of dowry death is contained in section 113-B of the Indian Evidence Act providing for presumption as to dowry death which was a simultaneous amendment made in the Indian Evidence Act for proving the offence of dowry death. The fact that the Indian Evidence Act was so amended simultaneously with the insertion of section 304-B in the Indian Penal Code by the same Amendment Act is another pointer in this direction. Therefore, it cannot be held that section 304-B does not create a new offence and contains merely a rule of evidence. [818D-F, 819C-D]

2. The respondents are being tried in the Court of Magistrate of the First Class for the offence punishable under section 498-A which was in the statute book on the date of death of Appellant's daughter. Their trial and punishment for the offence of dowry death provided in section 304-B of the Indian Penal Code with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death would clearly deny to them the protection afforded by clause (1) of Article 20 of the Constitution. Accordingly, the view taken by the High Court that the respondents cannot be

- A** tried and punished for the offence provided in section 304-B of the Indian Penal Code which is a new offence created subsequent to the commission of the offence attributed to the respondents does not suffer from any infirmity. [818E, G, 819E]

- B** CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 533 of 1991.

From the Judgment and Order dated 10.1.1989 of the Gujarat High Court in Miscellaneous Criminal Application No. 32 of 1989.

H.S. Zaveri for the Appellant.

- C** Dushayant Dave, Ashish Verma and Anip Sachthey for the Respondents.

The Judgment of the Court was delivered by

- D** VERMA, J. Petitioner's daughter Chhaya was married to Respondent No. 2 Satish on 5.12.1984 and they started living together in their marital home at Bagasara. On 13.8.1986, Chhaya died at Bagasara. The petitioner and his wife got some vague information about their daughter Chhaya and went to Bagasara, the same day but were unable to meet or see their daughter who had died. The
- E** petitioner suspected that their daughter's death was unnatural resulting from torture by her husband and his relatives. The petitioner filed a criminal complaint against Respondent Nos. 2 to 5, who are the husband, his parents and sister which was transferred to the Court of Judicial Magistrate First Class at Dhari and registered as Criminal Case No. 382 of 1988 for an offence under section 498-A read with
- F** section 34 I.P.C. The petitioner filed an application for committing the case to the Court of Session for trial for an offence punishable under section 304-B I.P.C. which was inserted in the Indian Penal Code by Act No. 43 of 1986 w.e.f. 19.11.1986. On 29.11.1988, the Learned Magistrate dismissed the petitioner's application holding that this amendment being prospective was inapplicable to a death which occurred on 13.8.1986, prior to the amendment. Aggrieved by this order,
- G** the petitioner moved an application (Misc. Criminal Application No. 32 of 1989) in the High Court of Gujarat for a direction to commit this case of dowry death to the Court of Session since an offence punishable under section 304-B is triable by the Court of Session. By the impugned order dated January 10, 1989, the High Court has dismissed
- H** that application. Hence this special leave petition.

Leave is granted.

The point arising for our decision is the applicability of section 304-B of the Indian Penal Code to the present case where the death alleged to be a dowry death occurred prior to insertion of section 304-B in the Indian Penal Code. This is the only ground on which the appellant claims trial of the case in the Court of Session.

The reason given by the High Court to support its view is that the offence was committed prior to the date of insertion of section 304-B in the Indian Penal Code on account of which the section can have no application to the present case. None of the courts below has examined the applicability of any other pre-existing more stringent provision even if section 304-B does not apply. As such affirmation of the view that section 304-B does not apply, will not preclude the appellant from contending that any other more stringent provision is attracted on the accusation made. If that point is raised, the courts below will have to decide the same on merits on the basis of accusation made. It is in this background that the point raised by the appellant regarding applicability of section 304-B is decided by us.

Section 304-B and the cognate provisions are meant for eradication of the social evil of dowry which has been the bane of Indian society and continues unabated in spite of emancipation of women and the women's liberation movement. This all prevading malady in our society has only a few lucky exception in spite of equal treatment and opportunity to boys and girls for education and career. Society continues to perpetuate the difference between them for the purpose of marriage and it is this distinction which makes the dowry system thrive. Even though for eradication of this social evil, effective steps can be taken by the society itself and the social sanctions of the community can be more deterrent, yet legal sanctions in the form of its prohibition and punishment are some steps in that direction. The Dowry Prohibition Act, 1961 was enacted for this purpose. The Report of the Joint Committee of Parliament quoted the observations of Jawaharlal Nehru to indicate the role of legislation in dealing with the social evil as under:

"Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape."

A The enactment of Dowry Prohibition Act, 1961 in its original form was found inadequate. Experience shows that the demand of dowry and the mode of its recovery takes different forms to achieve the same result and various indirect and sophisticated methods are being used to avoid leaving any evidence of the offence. Similarly, the consequences of non-fulfilment of the demand of dowry meted out to the unfortunate bride takes different forms to avoid any apparent causal connection between the demand of dowry and its prejudicial effect on the bride. This experience has led to several other legislative measures in the continuing battle to combat this evil.

C The Criminal Law (Second Amendment) Act, 1983 (No. 45 of 1983) was an act further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. Section 498-A was inserted in the Indian Penal Code and corresponding amendments were made in the Code of Criminal Procedure which included section 198A therein and also inserted section 113A in the Indian Evidence Act, 1872. Thereafter, the Dowry Prohibition (Amendment) Act, 1986 (No. 43 of 1986) was enacted further to amend the Dowry Prohibition Act, 1961 and to make certain necessary changes in the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

Two of the salient features of the Dowry Prohibition (Amendment) Act, 1986 (No. 43 of 1986) stated in the Statement of Objects and Reasons of the Bill are as under:

“(e) Offences under the Act are proposed to be made non-bailable.

F “(g) A new offence of “dowry death” is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed.”

G Accordingly by section 7 of the Amendment Act, section 8 of the Dowry Prohibition Act, 1961 was amended to make every offence under this Act non-bailable while continuing it to be non-compoundable. By sections 10, 11 and 12, amendments were made in the Indian Penal Code, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, as part of the same scheme as follows:

"10. In the Indian Penal Code, after, section 304-A, the following section shall be inserted, namely:

'304-B. Dowry death. (1) 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.

Explanation-For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life'."

"11. In the Code of Criminal Procedure, 1973, in the First Schedule after the entries relating to section 304-A, the following entries shall be inserted, namely:

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
1	2	3	4	5	6
"304-B	Dowry death	Imprisonment of not less than seven years but which may extend to imprisonment for life.	Ditto	Non-bailable	Court of Session."

"12. In the Indian Evidence Act, 1872, after section

A 113-A, the following section shall be inserted, namely:-

B “113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connecting with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

C Explanation.-For the purpose of this section, “dowry death” shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).”

D It is clear from the above historical background that the offence of dowry death punishable under section 304-B of the Indian Penal Code is a new offence inserted in the Indian Penal Code with effect from 19.11.1986 when Act No. 43 of 1986 came into force. The offence under section 304-B is punishable with a minimum sentence of seven years which may extend to life imprisonment and is triable by Court of Session. The corresponding amendments made in the Code of Criminal Procedure and the Indian Evidence Act relate to the trial and proof of the offence. Section 498-A inserted in the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983 (Act No. 46 of 1983) is an offence triable by a Magistrate of the First Class and is punishable with imprisonment for a term which may extend to three years in addition to fine. It is for the offence punishable under section 498-A which was in the statute book on the date of death of Chhaya that the respondents are being tried in the Court of Magistrate of the First Class. The offence punishable under section 304-B, known as dowry death, was a new offence created with effect from 19.11.1986 by insertion of the provision in the Indian Penal Code providing for a more stringent offence than section 498-A. Section 304-B is a substantive provision creating a new offence and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. Acceptance of the appellant's contention would amount to holding that the respondents can be tried and punished for the offence of dowry death provided in section 304-B of the Indian Penal Code with the minimum sentence of seven years' imprisonment for an act done by them prior to creation of the new offence of dowry death. In our opinion, this would clearly deny to them the protection afforded by clause (1) of Article 20 of the Constitution which reads as under:

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“20. Protection in respect of conviction for offences. A

—(1) No person shall be convicted of any offence except
for violation of the law in force at the time of the commis-
sion of the act charged as an offence, nor be subjected to a
penalty greater than that which might have been inflicted
under the law in force at the time of the commission of the
offence.” B

In our opinion, the protection given by Article 20(1) is a complete
answer to the appellant's contention. The contention of learned
counsel for the appellant that section 304-B inserted in the Indian
Penal Code does not create a new offence and contains merely a rule
of evidence is untenable. The rule of evidence to prove the offence C
of dowry death is contained in section 113-B of the Indian Evidence Act
providing for presumption as to dowry death which was a simultaneous
amendment made in the Indian Evidence Act for proving the offence
of dowry death. The fact that the Indian Evidence Act was so amended D
simultaneously with the insertion of section 304-B in the Indian Penal
Code by the same Amendment Act is another pointer in this direction.
This contention is, therefore, rejected.

In follows that the view taken by the High Court that the respon-
dents cannot be tried and punished for the offence provided in section
304-B of the Indian Penal Code which is a new offence created subse- E
quent to the commission of the offence attributed to the respondents
does not suffer from any infirmity. However, as earlier indicated, in
case the accusation against the respondents discloses commission of
any other more stringent pre-existing offence by the respondents than
section 498-A of the Indian Penal Code, the appellant would be
entitled to raise that question and the Court will then consider and
decide it on that basis. No such argument having been advanced before F
us or any of the courts below so far, the same does not arise for
consideration in the present proceeding. With these observations, the
appeal is dismissed.

T.N.A.

Appeal dismissed.