

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1203/2016

BABOO KHAN

...APPELLANT(s)

VERSUS

STATE OF RAJASTHAN

...RESPONDENT(s)

O R D E R

This appeal assails the judgment dated 27.04.2015 passed by the High Court of Rajasthan at Jodhpur in S.B. Criminal Appeal No.243/1990 upholding the judgment of conviction and order of sentence dated 01.08.1990 passed by the learned Additional Sessions Judge, Nagaur in Sessions Case No.3/1989, whereby the appellant-accused was convicted for offences under Sections 498A and 304B of the Indian Penal Code, 1860 (for short "IPC") and was sentenced as under:

"U/s. 498A IPC:

One year's rigorous imprisonment with fine of Rs.100/-, in default of payment thereof, to further undergo 15 days' simple imprisonment.

U/s. 304B IPC:

Seven years' rigorous imprisonment."

2. Briefly stated, the facts of the case are that the appellant, Baboo Khan, married Khatoon (the deceased) in November 1986. In May 1988, a male child was born to the couple, and a customary ceremony called 'chhoochhak' was

performed. On 24.11.1988, the deceased and the child were found dead in a well.

2.1 On 25.11.1988, the father of the deceased lodged FIR No. 276/1988 at P.S. Nagaur, District Nagaur, alleging harassment and torture of the deceased over demands for a gold ring and chain at the *chhoochhak* ceremony. On 14.12.1988, Chargesheet No. 204 was filed against the appellant for offences u/s 498A and 304B of the IPC.

2.2 By judgment dated 01.08.1990, the Additional Court of Sessions, Nagaur passed its order in Sessions Case No. 3/1989, convicting and sentencing the accused/appellant to rigorous imprisonment for seven years under S.304B and to rigorous imprisonment for one year under S.498A, to run concurrently. Aggrieved by the conviction and sentences, the appellant approached the High Court of Rajasthan at Jodhpur through S.B. Crl. Appeal No. 243/1990. By impugned judgment and order dated 27.04.2015, the High Court dismissed the appeal, upholding the conviction and sentences under both Section 304B and Section 498A. Hence, the present criminal appeal.

3. We have heard learned counsel Ms. Pratiksha Sharma for the appellant and learned standing counsel Ms. Nidhi Jaswal for the respondent-State. We have perused the impugned judgment as well as the judgment of the Sessions Court as

well as the depositions which have been read out during the course of the arguments.

4. Learned counsel for the appellant firstly contended that the judgment of conviction which has been affirmed by the High Court and the sentence imposed on the appellant-accused, are incorrect and erroneous and hence submitted that in the absence of there being any concrete evidence let in the prosecution and there being no proof beyond reasonable doubt, the appellant was entitled to an honourable acquittal. In this regard, she drew our attention to the depositions of the prosecution witnesses in juxtaposition with the evidence let on behalf of the appellant herein. She contended that no offence either under Section 498A or Section 304B IPC was made out whatsoever, despite which the appellant has undergone approximately one and a half years of rigorous imprisonment and has also paid fine and but for the interim order of bail granted by this Court, the appellant would have continued to be in jail.

4.1 Alternatively, she submitted that in case this Court is not inclined to accept the argument that the appellant is entitled to an honourable acquittal, the fact that no case is made out under Section 304B IPC may be considered

inasmuch as the said Section has been erroneously invoked against the appellant herein. That prosecution could invoke Section 498A as against him wherein the punishment is a maximum of three years' imprisonment only with fine. However, under Section 498A, both the Sessions Court as well as the High Court have imposed only one year's imprisonment, whereas the appellant herein has already completed one year and five months' rigorous imprisonment with fine. In the circumstances, this Court had granted suspension of sentence and bail to the appellant herein.

4.2 Learned counsel for the appellant therefore submitted that if either of the two submissions are accepted, the appellant would be entitled to relief.

5. *Per contra*, learned standing counsel for the respondent-State strenuously submitted that the impugned judgment as well as the judgment of the Sessions Court are just and proper, which would not call for any interference at the hands of this Court. She contended that the fact there was a demand for a gold ring and a gold chain at the time of the *Chhoochhak* ceremony after the birth of the child has been proved. The said demand for the gold ornaments can be directly related to a demand for dowry, and hence the appellant was rightly convicted under Section 304B and also under Section 498A of the IPC. She contended

that the fact that the deceased along with the infant were found dead in a well would indicate that the deceased was tortured, which led her to jump into the well and end her life along with the infant. Therefore, she submitted that there is no merit in this appeal and hence the same may be dismissed.

6. By way of response, learned counsel for the appellant drew our attention to the judgment of this Court in the case of Satvir Singh vs. State of Punjab (2001) 8 SCC 633 to rebut the contention of learned standing counsel for the respondent-State, with reference to paragraph 21 thereof. Though the case made out by the prosecution is that there was a demand for a gold ring and a gold chain at the *Chhoochhak* ceremony, the fact that the said demand, when proved, was not a demand for dowry is evident on a reading of paragraph 21 of the judgment of *Satvir Singh* (supra). Therefore, invocation of Section 304B against the appellant is erroneous. It was therefore contended that this Court may set aside the conviction of the appellant under Section 304B IPC and may consider the case for an acquittal under Section 498A IPC also.

7. We have considered the arguments advanced at the bar.

We note that while affirming the judgment of conviction and sentence under Section 304B as well as Section 498A IPC, the High Court analyzed as under:

“In the present case, the prosecution has proved the fact that there was demand of golden ring and gold chain at the time of Choochhak and when the same was not fulfilled, the appellant-accused started torturing the deceased and she was not even sent to her parental house and was also not even permitted to meet them. Nainu Khan (PW-5) and Munir Khan (PW-13) also stated that she was not being kept in a good condition and they heard the voice of weeping of the deceased in the night. Thus, this case law does not help the appellant-accused.”

7.1 When the above is juxtaposed with paragraph 21 of *Satvir Singh* (supra), we find that the said demand made for gold ornaments at the time of the Chhoochhak ceremony cannot be considered to be a dowry demand. It could have been a demand which was made not in connection with the marriage of the said parties, but at the time of the birth of the child, whereas a dowry demand within the meaning and scope of 304B IPC should be any property or security given or agreed to be given in connection with the marriage.

7.2 In view of the above reasoning, we find that the invocation of Section 304B against the accused was not justified. Hence, the judgment of the High Court as well as

the Sessions Court convicting the appellant under Section 304B is set aside.

7.3 As far as the conviction and sentence under Section 498A of the IPC is concerned, we find that the prosecution has proved beyond reasonable doubt, the offences which are delineated under the said Section. For ease of reference, the said section is extracted as under:

"S. 498 A: Husband or relative of husband of a woman subjecting her to cruelty:
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."

On a juxtaposition of the ingredients of the said section with the evidence on record, we find that the High Court was justified in affirming the conviction and sentence under Section 498A of the Act.

8. We find that the Sessions Court had imposed a sentence of one year of rigorous imprisonment only under Section 498A on the appellant and a fine of Rs.100/-. It is stated to have been paid. The appellant has undergone rigorous imprisonment for five months longer than what has been imposed on him under Section 498A of the IPC. This Court, by interim order dated 06.12.2016, had released the appellant on suspension of sentence and bail. Consequently, since his incarceration has been much more than what had

been imposed by the Sessions Court, and was affirmed by the High Court, we find that it is not just and proper to impose any further sentence on the appellant herein. Consequently, the appellant's conviction under Section 304B IPC is set aside but the conviction under Section 498A IPC is sustained. Since the appellant is on suspension of sentence and bail, the bail bonds stand cancelled.

9. The appeal is allowed in part in the aforesaid terms.
Pending application(s), if any, shall stand disposed of.

....., J.
(B.V. NAGARATHNA)

....., J.
(R. MAHADEVAN)

NEW DELHI;
NOVEMBER 27, 2025

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCRIMINAL APPEAL NO(S). 1203/2016

BABOO KHAN

Appellant(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

Date : 27-11-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) Ms. Pratiksha Sharma, AOR
Mr. Ankit Acharya, Adv.
Mr. Ayush Jain, Adv.
Mr. Mukesh Kumar, Adv.
Ms. Ritu Chaudhary, Adv.

For Respondent(s) Mr. Shiv Mangal Sharma, A.A.G.
Ms. Nidhi Jaswal, AOR
Ms. Awanitika, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is allowed in part in terms of the signed order.
2. Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
ASTT. REGISTRAR-cum-PS(DIVYA BABBAR)
COURT MASTER (NSH)

(Signed order is placed on the file)