REPORTABLE

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL No. 1080 of 2019**

**SURENDRAN ... APPELLANT**

**VERSUS**

**STATE OF KERALA ... RESPONDENT**

# JUDGMENT

**N.V. RAMANA, CJI**

**1.** The instant appeal, by way of special leave, is directed against judgment dated 12.09.2018 passed by the High Court of Kerala in Criminal Revision Petition No. 1801 of 2006, whereby the High Court partly allowed the Revision Petition filed by the appellant-husband (accused no. 5). By way of the impugned judgment, the High Court has set aside the concurrent findings of conviction of the courts below and acquitted the appellant under Section 304B of the Indian Penal Code [for short 'the IPC'] while confirming his conviction under Section 498A of the IPC. The High Court has further modified the sentence imposed on the appellant to rigorous imprisonment for one year.

**2.** The conspectus of the facts necessary for the disposal of the appeal are as follows: the appellant married the deceased on 09.04.1995. After the marriage, the deceased resided with the appellant and his family members at their matrimonial home. It is alleged that the appellant, along with his family members, started harassing the deceased soon after the marriage and was demanding additional dowry. Allegedly, the deceased attempted suicide by consuming Benzyl Hexa Chloride powder on 11.02.1996 due to the mental harassment by the accused persons. Fortunately, she was able to recover after treatment at the Government Hospital, Palakkad. Subsequent to this incident, mediation between the parties took place and a settlement was reached between the parties whereby the deceased continued to reside at the house of the accused. Despite the above agreement, it is alleged that the harassment continued and the deceased committed suicide by hanging on 21.10.1996, at her own home.

**3.** The prosecution charged the appellant, his parents and his two brothers under Sections 304B and 498A of the IPC. Pending trial, the appellant's father passed away. The Trial Court, after examining all the witnesses and perusing the documents produced by the prosecution and defence, convicted the accused persons

under Sections 304B and 498A of the IPC. *Vide* judgment dated 12.05.2006, the Appellate Court acquitted the appellant's brothers of both the offences. However, the conviction and sentence against the appellant and his mother was confirmed.

**4.** Aggrieved, the appellant and his mother filed the Criminal Revision Petition before the High Court of Kerala. As already mentioned above, *vide* the impugned judgment, the High Court partly allowed the revision petition and acquitted the appellant and his mother under Section 304B of the IPC while confirming their conviction under Section 498A of the IPC. The High Court, however, reduced the sentence imposed on the appellant to rigorous imprisonment for one year, and, that of his mother to rigorous imprisonment for one month. The appellant's mother has not filed any appeal before this Court.

**5.** The main thrust of the submissions made by the learned counsel for the appellant are two-fold. First, that the suicide note and other statements made by the deceased cannot be relied upon by the Court for convicting him under Section 498A of the IPC as they do not fall within the scope of Section 32(1) of the Indian Evidence Act, 1872 (for short 'the Evidence Act'). Second, that the evidence of PW-3 (mother of the deceased) is contradictory and

cannot be relied upon to convict the appellant. On the strength of the above two arguments, the learned counsel for the appellant attempts to persuade this Court that there is no credible evidence to convict the appellant under Section 498A of the IPC, and therefore, he should be acquitted of the same.

**6.** On the other hand, the learned counsel for the respondent-State submits that there are three concurrent finding of facts by the Courts below which do not merit any interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India. Learned counsel for the State also submits that there is sufficient evidence on record to make out a clear case for convicting the appellant under Section 498A of the IPC.

**7.** Heard the learned counsel for the appellant and the respondent-State at length.

**8.** Before we proceed, it is expedient to advert to the submissions of the learned counsel for the appellant particularly that in the present case, the appellant was acquitted under Section 304B of the IPC by the High Court in revision and therefore, the statements of the deceased could not have been relied upon by the High Court

to sustain his conviction under Section 498A of the IPC as it would not fall within the ambit of Section 32(1) of the Evidence Act.

**9.** In this context, it is appropriate to refer to certain provisions of Section 32 of the Evidence Act. Section 32 relates to the admissibility of statements made by a person who cannot be called as witness. The Section itself specifies the circumstances under which such statements become relevant. In the present case, we are concerned with one such circumstance, that is, when the person who made the statement is dead. The learned counsel for the appellant has focused predominantly on Section 32(1) of the Evidence Act in an attempt to exclude the evidence of the deceased by suggesting that it does not fall within the scope of the abovesaid sub-section and therefore, is inadmissible. The relevant portion of Section 32 of the Evidence Act is extracted below:

> **32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.** –
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> Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

> **(1) When it relates to cause of death.** - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, **in cases in which the cause of that person's death comes into question**.
>
> Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and **whatever may be the nature of the proceeding in which the cause of his death comes into question**.
>
> xxx xxx xxx

**10.** Section 32(1) of the Evidence Act is famously referred to as the "dying declaration" section, although the phrase itself does not find mention under the Evidence Act. The Courts have had occasion to consider the scope and ambit of Section 32, particularly Section 32(1) of the Evidence Act on various occasions.

**11.** To rely on Section 32(1) of the Evidence Act, one of the main conditions laid out in the sub-section is that the issue must arise "*in cases in which the cause of that person's death comes into question*". The submission of the learned counsel for the appellant is that, in the present case, with the acquittal of the appellant by the High Court under Section 304B of the IPC, and the absence of any appeal challenging the same, the present case pertains to only

Section 498A of the IPC. Therefore, the present case does not fall within the scope of the aforementioned sub-section as it is no longer a case in which the cause of the deceased's death comes into question. As such, Section 32(1) of the Evidence Act cannot be relied upon by the Court to admit the statements of the deceased to convict him under Section 498A of the IPC.

**12.** Learned counsel for the appellant has primarily relied upon the judgment of this Court in ***Gananath Pattnaik v. State of Orissa*, (2002) 2 SCC 619,** wherein the Court had observed as under:

> "10. Another circumstance of cruelty is with respect to taking away of the child from the deceased. To arrive at such a conclusion, the trial court has referred to the statement of PW 5, who is the sister of the deceased. In her deposition recorded in the court on 4-5-1990 PW 5 had stated:
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> > "Whenever I had gone to my sister, all the times she was complaining that she is not well treated by her husband and in-laws for non-fulfilment of balance dowry amount of a scooter and a two-in-one."
>
> and added:
>
> > "On 3-6-1987 for the last time I had been to the house of the deceased i.e. to her separate residence. Sworna, Snigdha, Sima Apa, Baby Apa accompanied me to her house on that day. At that time the deceased complained before us as usual

> and added to that she said that she is being assaulted by the accused nowadays. She further complained before us that the accused is taking away the child from her, and that her mother-in-law has come and some conspiracy is going against her (the deceased). She further told that *'mate au banchei debenahin'*."
>
> **Such a statement appears to have been taken on record with the aid of Section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence under Section 304-B and such statement was admissible under clause (1) of the said section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498-A of the Penal Code, 1860** and has to be termed as being only a hearsay evidence. Section 32 is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused."
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> **(Emphasis supplied)**

**13.** Although not cited by the learned counsel, the proposition put forth by him appears to be supported by three other judgments of

this Court in ***Inderpal v. State of MP*, (2001) 10 SCC 736, *Bhairon Singh v. State of Madhya Pradesh*, (2009) 13 SCC 80** and ***Kantilal Martaji Pandor v. State of Gujarat*, (2013) 8 SCC 781**. All of these judgments also appear to follow the same line of reasoning as followed by this Court in ***Gananath Pattnaik* case** (*supra*), *i.e.*, that once the Court has acquitted an accused of the charge relating to the death of an individual, the evidence of the deceased would not be admissible to prove the charge under Section 498A of the IPC *simpliciter* as then the case would no longer relate to the death of the deceased.

**14.** It may bear mentioning that the phrase "*cases in which the cause of that person's death comes into question*" is broader than merely referring only to cases where there is a charge of murder, suicide, or dowry death. There have been instances where Courts have used Section 32(1) of the Evidence Act to admit statements in a case where the charge is of a different nature or even in a civil action. This is abundantly clear from the second part of Section 32(1) of the Evidence Act which specifies that such statements are relevant "*whatever may be the nature of the proceeding in which the cause of his death comes into question*". Illustration (a) to Section 32 of the Evidence Act refers to a statement made by a deceased in a

rape case which may be admitted under the section, which was the position in India even prior to the enactment of the Evidence Act, as held by the Court in the case of ***Queen v. Bissorunjun Mookerjee*, (1866) 6 W.R. Cr. 75**.

**15.** In ***Lalji Dusadh v. King-Emperor*, AIR 1928 Pat 162,** the Patna High Court upheld the admissibility of statements made by the deceased in a case concerning charges under Sections 302, 392 and 397 of the IPC. In that case, the deceased victim was robbed and killed as a part of the same transaction. The submission of the learned counsel for the accused in that case, *inter alia*, was that the dying declaration of the deceased could not be admitted under Section 32(1) of the Evidence Act with respect to the charges under Section 392 and 397 of the IPC. Negativing this contention, the High Court observed as follows:

> "A further legal point is taken with regard to the dying declarations.
>
> It is contended that so far as the charges for the offences under sections 392 and 397 are concerned the dying declarations are not admissible under section 32(1) of the Indian Evidence Act inasmuch as the cause of the deceased's death does not come in question in the trial of those charges. It is contended that on this point the Indian law is the same as the English law and that a dying declaration as to the cause of the death is

> only admissible when the causing of the death is the subject of the charge. **I cannot agree with this view. The words of section 32 are very wide and it is not necessary that the charge should be one of homicide. The evidence as to the cause of death was relevant to the charge of robbery and consequently the cause of death that is to say the assault committed by the appellant came in question in the trial.** Before the Indian Evidence Act was enacted it was held in *Queen* v. *Bissorunjun Mookerjee* [(1866) 6 W.R. (Cr.) 75.] that there was no necessity in India for following the very narrow rule of English law and that a dying declaration could be used as evidence in a charge of rape. One of the illustrations to section 32 of the present Indian Evidence Act expressly provides for such evidence where the charge is not culpable homicide but rape."
>
> **(Emphasis supplied)**

**16.** Further, in a proceeding with multiple charges, where one directly relates to the death of a declarant and the other does not, the Court has admitted the evidence of the declarant even if the prosecution failed to prove the charge relating to death. For instance, in ***Parmanand Ganga Prasad v. Emperor*, AIR 1940 Nag 340,** the High Court of Nagpur held as follows:

> "**7.** …The prosecution story as narrated by us shows that throughout the enquiry the cause of death of Munde was material. That

being so, the **mere fact that a charge of murder failed and was not brought home to the accused would not make the statement inadmissible for the purposes of other offences which were committed in the course of the same transaction** and with which the accused were charged.

**8.** We may also observe that in all cases regarding admissibility of a particular piece of evidence the material time when the admissibility has got to be decided is the time when the Court received the evidence and not the eventual result. In this case when the statements were filed by the prosecution and proved in the case it could under no circumstances be argued that the cause of death of the deceased was not in question. The cause of death of Munde was in question as there was also a charge under S. 302, and this charge was joined with other charges in the case under Section 239(d) as forming part of the same transaction**. So, at the stage at which these statements were put up by the prosecution before the Court as admissible, it could not be argued that they were not admissible and a document once admitted in evidence remains admissible for all purposes in the case. The subsequent result of the case, viz., failure of the charge of murder should not make any difference whatsoever to the admissibility of the document.** Just as their Lordships of the Privy Council in AIR 1938 PC 130 [Babulal v. Emperor, (1938) 25 AIR PC 130 : 174 IC 1 : 65 IA 158 : 32 SLR 476 : 39 Cr LJ 452 : ILR (1938) 2 Cal 295 (PC).] stated that the relevant point of time in the proceedings at which the condition as to sameness of transaction must be fulfilled is

> the time of accusation and not that of the eventual result we think we would be justified in stating the same with respect to the admissibility of a document…"
>
> **(Emphasis supplied)**

**17.** From the above pronouncements, and the wordings of Section 32(1) of the Evidence Act, it appears that the test for admissibility under the said section is not that the evidence to be admitted should directly relate to a charge pertaining to the death of the individual, or that the charge relating to death could not be proved. Rather, the test appears to be that the cause of death must come into question in that case, regardless of the nature of the proceeding, and that the purpose for which such evidence is being sought to be admitted should be a part of the 'circumstances of the transaction' relating to the death.

**18.** The phrase 'circumstances of the transaction', as occurring in the section, has been interpreted by the Privy Council in the judgment that is considered the *locus classicus* on admissibility of evidence under Section 32(1) of the Evidence Act, ***Pakala Narayana Swami v. King-Emperor***, **AIR 1939 PC 47.** In that case, the Privy Council was dealing with a case of murder wherein one of the main pieces of evidence against the accused was the

statement made by the deceased to his wife. The defence argued that such evidence had to be excluded due to the hearsay rule. However, the said evidence was admitted under Section 32(1) of the Evidence Act and the accused was convicted. In appeal, one of the questions the Privy Council had to answer related to whether the deceased's statement was properly admitted or not. In that context, the Privy Council observed as under:

> "A variety of questions has been mooted in the Indian courts as to the effect of this section. It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the "circumstances" can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. **The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly releated to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the**

**transaction,** and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. **"Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae." Circumstances must have some proximate relation to the actual occurrence : though, as for instance in a case of prolonged poisoning, they may be related to dates at a considerable distance from the date of the actual fatal dose.**

It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that "the cause of [the declarant's] death comes into question." In the present case the cause of the deceased's death comes into question. The transaction is one in which the deceased was murdered on March 21 or 22 : and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on March 20 or 21 that he was setting out to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house, appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted."

(**Emphasis supplied**)

**19.** This principle of law has been upheld by this Court on various occasions. In ***Sharad Birdhichand Sarda v. State of Maharashtra,*** **(1984) 4 SCC 116**, this Court summarized the principles of Section 32(1) of the Evidence Act, including relating to "circumstances of the transaction":

> **"21.** Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:
>
> (1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.
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> **(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of**

**the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.**

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

**(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement**

> **would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.**"
>
> **(emphasis supplied)**

**20.** A reading of the above pronouncements makes it clear that, in some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the IPC under Section 32(1) of the Evidence Act. There are, however, certain necessary pre-conditions that must be met before the evidence is admitted.

**21.** The *first* condition is that her cause of death must come into question in the matter. This would include, for instance, matters where along with the charge under Section 498A of the IPC, the prosecution has also charged the accused under Sections 302, 306 or 304B of the IPC. It must be noted however that as long as the cause of her death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility.

**22.** The *second* condition is that the prosecution will have to show that the evidence that is sought to be admitted with respect to Section 498A of the IPC must also relate to the circumstances of the

transaction of the death. How far back the evidence can be, and how connected the evidence is to the cause of death of the deceased would necessarily depend on the facts and circumstances of each case. No specific straitjacket formula or rule can be given with respect to this.

**23.** To the above extent therefore, the judgments of this Court in ***Gananath Pattnaik*** (*supra*), ***Inderpal*** (*supra*)**,** ***Bhairon Singh*** (*supra*) and ***Kantilal Martaji Pandor*** (*supra*), wherein it has been held that the evidence of the deceased cannot be admitted under Section 32(1) of the Evidence Act to prove the charge under Section 498A of the IPC only because the accused stands acquitted of the charge relating to the death of the deceased, may not be correct. These judgments stand overruled to that limited extent.

**24.** Coming to the present case, we are of the opinion that it is not necessary for this Court to undertake the exercise to determine whether the statement of the deceased can be admitted under Section 32(1) of the Evidence Act. As the learned counsel for the State rightly points out, this appeal can be decided even without considering this aspect, as the other evidence on record clearly proves the appellant's guilt beyond reasonable doubt.

**25.** The fact that the deceased's wife was being harassed is clear from the evidence of PW-3 (mother of the deceased). She had specifically stated in her chief-examination that within few days of their marriage, the appellant brought the deceased back to her parental home with the threat that if extra dowry was not given, he would leave her and marry another "beautiful" girl. As a result of such harassment, the deceased allegedly attempted suicide for the first time by consuming poison. While she was being treated in the hospital, a settlement was reached between the parties, to which appellant was also a part, wherein it was agreed that no further demands for dowry would be made. This agreement was exhibited before the Trial Court as Ext P-3. Although the High Court indicated that the said settlement was not admissible in evidence, the fact of its existence has been deposed by PW-9, who is an independent witness, as well as by PW-3. Further, it was stated by PW-3 in her chief-examination that even after the settlement, the appellant had continued to ill-treat the deceased. The deceased, due to the ill-treatment faced by her had ultimately committed suicide by hanging herself with a saree.

**26.** The learned counsel for the appellant, despite his best efforts, could not persuade this Court that the evidence of PW-3 was

unreliable. There are three concurrent findings of the Courts below upholding the reliability of the evidence of PW-3. The submission of the learned counsel for the appellant that the evidence of PW-3 is unreliable because she is the mother of the deceased, cannot be countenanced. It is a settled principle of law that the evidence tendered by the related or interested witness cannot be discarded on that ground alone. However, as a rule of prudence, the Court may scrutinize the evidence of such related or interested witness more carefully. This Court in ***Ilangovan v. State of T.N.,*** **(2020) 10 SCC 533** has held as follows:

> **"7.** With respect to the first submission of the counsel for the appellant, **regarding the testimonies of related witnesses, it is settled law that the testimony of a related or an interested witness can be taken into consideration, with the additional burden on the Court in such cases to carefully scrutinise such evidence (see Sudhakar v. State, (2018) 5 SCC 435).** As such, the mere submission of the counsel for the appellant, that the testimonies of the witnesses in the case should be disregarded because they were related, without bringing to the attention of the Court any reason to disbelieve the same, cannot be countenanced."

**27.** In view of the above, we see no reason to interfere with the impugned judgment passed by the High Court in confirming the conviction of the appellant under Section 498A of the IPC and sentencing him to undergo rigorous imprisonment for one year.

**28.** The appeal is, accordingly, dismissed. The appellant is on bail. His bail bonds stand cancelled and he is directed to surrender within a period of one week from today before the concerned authorities to serve out the remaining period of sentence.

**.....CJI.**
**(N.V. RAMANA)**

**.....J.**
**(A.S. BOPANNA)**

**.....J.**
**(HIMA KOHLI)**

**NEW DELHI;**
**MAY 13, 2022.**