

The enactment of Dowry Prohibition Act, 1961 in its original form was found inadequate which led to several other legislative measures in the continuing battle to combat this evil.

[Case Brief] Soni Devrajbhai Babubhai Vs. State Of Gujarat And Ors.

Case name: Soni Devrajbhai Babubhai Vs. State Of Gujarat And Ors.

Case number: 1991 SCR (3) 812

Court: Supreme Court Of India

Bench: Verma, (J)
Jagdish Saran (J)

Decided on: 28/08/1991

Relevant Act/Sections: Constitution of India, 1950: Article 20(1),
Indian Penal Code, 1860: Section 304-B, Section 498-A,
Indian Evidence Act, 1872: Section 113-B,
Dowry Prohibition Act, 1961,
Code of Civil Procedure, 1973

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. Appellant's daughter Chhaya was married to Respondent No. 2 Satish on 05/12/1984 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 petitioner suspected that their daughter's death was unnatural resulting from torture by her husband and his relatives.
2. The petitioner filed a criminal complaint against Respondent Nos. 2 to 5, who are the husband,

his parents and sister. The criminal complaint was transferred to the Court of Judicial Magistrate First Class at Dhari and was registered for an offence under section 498-A read with 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.

3. Aggrieved by this order, the petitioner moved an application 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. The application was dismissed and hence this special leave petition was filed.

➤ **ISSUE BEFORE THE COURT:**

1. The question was regarding the applicability of section 304-B of the Indian Penal Code to the case where the death alleged to be a dowry death occurred prior to insertion of section 304-B in the Indian Penal Code.

➤ **RATIO OF THE COURT**

1. It was contended by 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 and respondents should be convicted under it.
2. But the court opined that the enactment of Dowry Prohibition Act, 1961 in its original form was found inadequate which led to several other legislative measures in the continuing battle to combat this evil. Through the Criminal Law (Second Amendment) Act, 1983, the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 were amended and section 498-A was inserted in the penal code.
3. 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. 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. Section 304-B which is dowry death was added to the Indian Penal Code and accordingly the Code of Civil Procedure,

1973 and the Indian Evidence Act, 1872 were amended. Section 113-B was added to the IEA, 1872 which is a presumption as to dowry death. It was clear from the historical background that offence of dowry death under section 304-B was a new offence.

4. Clause (1) of Article 20 provide protection against conviction for any offence except for violation of the law in force at the time of the commission of the act charged as an offence.
5. The court held that, acceptance of the contention of appellant would deny the respondent with the protection afforded by clause (1) of Article 20. The contention of the 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.
6. 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 and the contention is therefore rejected.

➤ **DECISION HELD BY COURT:**

The appeal by the appellant was dismissed by the court with the above observations.