2024 LiveLaw (SC) 327

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJIV KHANNA; J., DIPANKAR DATTA; J.
24th April, 2024.
CIVIL APPEAL NO. _____ OF 2024 [ARISING OUT OF SLP (CIVIL) NO.13398/2022]
MAYA GOPINATHAN *versus* **ANOOP S.B. & ANR.**

Married women's right to 'Stridhan' – Absolute right over 'Stridhan' – The properties gifted to a woman before marriage, at the time of marriage or at the time of bidding of farewell or thereafter are her stridhan properties. It is her absolute property with all rights to dispose at her own pleasure. The husband has no control over it and may only use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. *(Para 21)*

Indian Evidence Cat, 1872 – Standard of proof – In civil cases including matrimonial disputes of a civil nature, the standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable. Inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. If there are no positive proved facts - oral, documentary, or circumstantial - from which the inferences can be drawn, the method of inference would fail and what would remain is mere speculation or conjecture. Held, weighing the evidence on preponderance of probabilities, it is the appellant who has established a stronger and more acceptable case. *(Para 19, 20 & 35)*

Indian Penal Code, 1860; Section 406 – Dishonest misappropriation of 'Stridhan' – Entrustment of stridhan property with dominion over such property to the husband or to any member of his family as well as dishonest misappropriation of or conversion to his own use the said property by the husband or such other member of his family is an offence under Section 406 – Held, admittedly there is no criminal offence claimed and, therefore, proof on balance of probabilities would be sufficient. *(Para 21)*

For Petitioner(s) Mr. Harikumar V., AOR Mr. Anupam Mishra, Adv. Ms. Rajnandini, Adv.

For Respondent(s) Mr. Boby Augustine, Adv. Ms. Iram Naaz, Adv. Mr. Sriram P., Adv. Mr. Vishnu Shankar M., Adv. Ms. Athira G. Nair, Adv. M/S. Lawfic, AOR

J U D G M E N T

DIPANKAR DATTA, J.

Leave granted.

2. The present appeal assails the final judgment and order dated 5th April, 2022 of the High Court of Kerala ("High Court", hereafter) in a matrimonial appeal[1]. The High Court partly allowed the appeal of the respondents and set aside the relief granted to the appellant by the Family Court, Alappuzha, Kerala ("Family Court", hereafter).

3. We have noticed that the second respondent passed away on 11th July, 2022 during the pendency of this appeal; hence, the first respondent, surviving as the sole contesting respondent in the present *lis*, has opposed the appeal.

[1] Matrimonial Appeal No. 847 of 2011

4. Although the parties before the Family Court were at issue on several fronts, the ambit of the dispute before us is limited as would unfold hereafter. The brief factual matrix relevant for a decision on the present appeal, discerned from the records, is as follows:

I. Marriage of the appellant and the first respondent was solemnised according to Hindu rites and customs on 4th May, 2003. For both of them, it was their second marriage. While the appellant was a widow, the first respondent was a divorcee. According to the appellant, 89 sovereigns of gold were gifted to her by her family at the time of marriage. Additionally, after the wedding, the appellant's father ("P.W.2", hereafter) made over to the first respondent a sum of Rs. 2,00,000/- (Rupees two lakh) through a demand draft dated 26th July, 2004.

II. According to the appellant, on the first night of marriage (i.e., on 4th May, 2003) itself, the first respondent took custody of all her jewellery and entrusted the same to the second respondent under the garb of safekeeping. It was also the case of the appellant that all such jewellery stood misappropriated by the respondents to discharge their pre-existing financial liabilities.

III. In course of time, owing to *inter-se* disputes and differences, the spouses drifted apart. In 2009, the appellant filed an original petition[2] before the Family Court for the recovery of the value of jewellery, and the amount of Rs. 2,00,000/- (Rupees two lakh) which was paid by P.W.2 to the first respondent. The appellant also filed a petition for dissolution of marriage[3]. The respondents filed a counter claim for Rs. 70,000/- (Rupees seventy thousand) as the value of a gold ring and gold chain which the first respondent customarily gifted to the appellant during the wedding ceremony.

IV. The Family Court, *vide* common judgment dated 30th May, 2011, held that the respondents had indeed misappropriated the appellant's gold jewellery and that she was entitled to recoup the loss caused to her by the said misappropriation. The Family Court while allowing the appellant to recover Rs. 8,90,000/- (Rupees eight lakh ninety thousand) as the value of 89 sovereigns of gold from the respondents, also directed the first respondent to recompense to the appellant Rs. 2,00,000/- (Rupees two lakh) with 6% interest per annum from the date of institution of the proceedings till realisation within 3 (three) months.

V. Additionally, the Family Court by a decree of divorce dissolved the marriage between the parties and dismissed the counterclaim of the respondents as well. The Family Court held that the ring and chain presented by the first respondent to the appellant was in the nature of a gift and the appellant could not be compelled to surrender it to the first respondent.

VI. Aggrieved by the decree of the Family Court allowing the appellant's claim with respect to recovery of the value of the gold jewellery as well as directing the first respondent to return Rs. 2,00,000/- (Rupees two lakh) to the appellant with 6% interest, the respondents moved the High Court in appeal. There was, however, no challenge to the decree for dissolution of marriage.

VII. The High court, *vide* the impugned judgment, while partly setting aside the relief granted by the Family Court held that the appellant had not been able to establish misappropriation of gold jewellery by the respondents. It was, *inter alia*, observed by the High Court that there was no documentary evidence to prove the acquisition of gold

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[2] O.P. (OS) No. 10 of 2009

[3] O.P. (HMA) No. 96 of 2009

jewellery by the appellant's family, and it characterised the testimony of the appellant as unreliable being riddled with inconsistencies and gaps in the narrative. However, the High Court upheld the direction of the Family Court whereby the first respondent was required to return Rs. 2,00,000/- (Rupees two lakh) to the Appellant.

5. The appellant has taken exception to this judgment of the High Court in the present appeal on multiple grounds. The task before us is limited to determining whether the appellant was able to establish misappropriation of her gold jewellery by the respondents and whether the High Court committed an error in setting aside the relief granted to the appellant by the Family Court.

6. The appellant claimed that during the pre-marriage negotiations it was agreed by and between P.W.2 and the first respondent that Rs. 2,00,000/- (Rupees two lakh) would be paid to the latter. P.W.2 also informed the first respondent that the appellant had 50 sovereigns of gold from her first marriage and such amount would be further supplemented by additional gold which will be bought by P.W.2.

7. As noticed, the appellant further claimed that on the first night of marriage all her gold jewellery were taken by the first respondent in his custody and given to the second respondent under the garb of safekeeping. Also, in keeping with his promise, P.W.2 made over Rs.2,00,000/- (Rupees two lakh) to the first respondent after marriage. At the time of marriage, the first respondent had informed the appellant's family that he conducts certain business activities in Kozhikode. Later, the appellant found out that the gold had been utilised by the respondents to discharge their pre-existing financial liabilities which arose in those business activities.

8. *Per contra*, the respondents disputed the case pleaded by the appellant. The respondents denied that any demand for dowry was made by them as it was a second marriage for both the parties. However, the respondents admitted that P.W.2 informed them of the pre-existing 50 sovereigns of gold which the appellant had and that P.W.2 had further promised the respondents that he would supplement the same. The respondents further admitted that Rs. 2,00,000/- (Rupees two lakh) was given by P.W.2 through a demand draft.

9. However, the respondents claimed through the testimony of the first respondent that they were not aware of the exact amount of gold that the appellant was carrying with her since the same was never weighed by them.

10. On the point of custody of the gold jewellery, it was the version of the respondents that on the first night of marriage the appellant kept the same in her own custody by locking it in an almirah. The appellant kept the key to the almirah under her pillow; thus, the appellant was in complete possession of her gold jewellery and the respondents were never given the custody of the said jewellery. The first respondent in his testimony stated that on the sixth day of marriage, while wearing all her gold jewellery, the appellant along with him went to P.W.2's house. The appellant justified taking all the gold with her by stating that she already had a locker facility, and it would be safer to store the gold there instead of storing it at the respondents' house where the elderly mother resides alone for the majority of the year.

11. The first respondent asserted that he was a post graduate and employed as a manager in a private company. He maintained that he never engaged in any sort of business activity and hence did not have any financial liability which needed to be discharged. Hence, the appellant's version of utilisation of gold by the respondents to discharge preexisting liabilities was not only highly improbable but completely imaginary;

moreover, the appellant failed to produce any documentary evidence to prove the existence of the alleged liabilities of either respondent.

12. Lastly, the respondents placed reliance on certain photographs from the wedding ceremony of the first respondent's brother (appellant's brother-in-law), marked Ext.B3 before the Family Court. It took place around 4 (four) months after the marriage of the parties. The respondents contended that the appellant could be seen wearing her wedding jewellery on such occasion, which appeared to be in complete contradiction to the appellant's story that her gold jewellery was taken by the first respondent on the first day of her marriage itself with him. It is significant to note that the appellant explained Ext.B3 photographs by stating that the jewellery worn by her on such occasion did not belong to her; on the contrary, the same was borrowed by her from her sister-in-law (appellant's brother's wife).

13. The Family Court undertook an exhaustive examination of the depositions rendered by the witnesses to conclude that the respondents had indeed misappropriated the jewellery entrusted to them by the appellant. The narrative of events testified by the appellant was corroborated in its entirety by P.W.2. On the contrary, it was found that the respondents did not specifically deny the appellant's allegation that she had brought with her to the matrimonial home 89 sovereigns of gold jewellery. Such an omission to specifically deny the allegation was held by the Family Court to amount to an admission. With respect to the allegation of misappropriation, the respondents had raised a twofold defence – firstly, that it was the appellant who kept all the jewellery in a bag, which was kept under lock and key in an almirah on the wedding night and was taken by her to her paternal home on the sixth day of marriage; and secondly, the fact that it was the appellant who was in possession of her wedding jewellery throughout was evidenced by the fact that she wore a selection of this very jewellery at the first respondent's brother's wedding on 12th September, 2003, photographs of which event were exhibited as Ext.B3. A comparative analysis of the photographs of the wedding of the parties (Ext.A3) with Ext.B3 was pressed by both parties, with varying contentions and differing conclusions. While the appellant argued that a comparison would show that the jewellery worn at the two events were different, the respondents submitted that a comparison would clearly show the striking similarity in the jewellery worn at the two events, thus proving that the appellant had always been in possession of her jewellery. The Family Court rejected both arguments of the respondents, with there being no evidence for the first argument and the photos on record not supporting the second argument.

14. The High Court, in exercise of its appellate powers conferred by the Code of Civil Procedure, re-examined the facts on record to arrive at a conclusion diametrically opposite to that of the Family Court, i.e., the respondents had not misappropriated the appellant's jewellery and that the same was in her possession.

15. We have heard learned counsel for the parties and perused the impugned judgment as well as the other materials on record.

16. Having taken a close look at the materials on record and the conclusions drawn by the High Court on the basis thereof, we have little doubt in our mind that the impugned judgment is legally unsustainable. This is because of an erroneous approach adopted by the High Court by demanding a standard of proof as if it were seized of a criminal trial as well as by basing its findings on assumptions and suppositions which, by no stretch of imagination, can be said to be borne from the evidence on record. Also, though the judgment of the Family Court delved deep into the evidence to arrive at reasonable findings, we have noted with some degree of distress that the High Court criticised the

judgment as one rendered without taking into consideration the factual foundations of the case and by jumping to conclusions.

17. We commence our discussion by reminding ourselves of a passage on 'Standard of Proof' found in *Halsbury's Laws of England*[4], reading thus:

19. *Standard of proof*. — To succeed on any issue the party bearing the legal burden of proof must (1) satisfy a judge or jury of the likelihood of the truth of his case by adducing a greater weight of evidence than his opponent, and (2) adduce evidence sufficient to satisfy them to the required standard or degree of proof. The standard differs in criminal and civil cases.

In civil cases the standard of proof is satisfied on a balance of probabilities. However, even within this formula variations in subject matter or in allegations will affect the standard required; the more serious the allegation, for example fraud, crime or professional misconduct, the higher will be the required degree of proof, although it will not reach the criminal standard.

In criminal cases, the standard required of the prosecution is proof beyond reasonable doubt. This standard is also requisite in cases of committal for contempt, and in pension claims cases.

In matrimonial cases it seems that proof on balance of probabilities is sufficient, although proof beyond reasonable doubt is required to rebut the presumption of the formal validity of marriage.

Once a matter is established beyond reasonable doubt it must be taken for all purposes of law to be a fact, as there is no room for a distinction between what is found by inference from the evidence and what is found as a positive fact.

(underlining ours, for emphasis)

18. We find an elucidation of 'Standard of Proof' in the seminal decision by a bench of three Hon'ble Judges of this Court in ***Dr. N.G. Dastane v. Mrs. S. Dastane***[5]. This Court eloquently settled the law in the following words:

"24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. …

25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vascillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.

26. Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case beyond

[4] Volume 17, Fourth Edition
[5] (1975) 2 SCC 326

a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is 'satisfied' on matters mentioned in Clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word 'satisfied' must mean 'satisfied on a preponderance of probabilities' and not 'satisfied beyond a reasonable doubt'. Section 23 does not alter the standard of proof in civil cases."

(underlining ours, for emphasis)

19. A bench of two Hon'ble Judges of this Court [of which one of us (Hon'ble Sanjiv Khanna, J.) was a member] in a decision of recent origin in ***Roopa Soni v. Kamalnarayan Soni***[6] applied the ratio of the decision in ***Dr. N.G. Dastane*** (supra) while reiterating that the standard of proof for disputes in the matrimonial sphere would be preponderance of probabilities and not beyond reasonable doubt.

20. Law is well-settled that inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. Since the mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole, there must be evidence - direct or circumstantial - to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the other fact which it is sought to establish. In some cases, the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases, the inferences do not go beyond reasonable probability. If there are no positive proved facts - oral, documentary, or circumstantial - from which the inferences can be drawn, the method of inference would fail and what would remain is mere speculation or conjecture. Therefore, when drawing an inference of proof that a fact in dispute is held to be established, there must be some material facts or circumstances on record from which such an inference could be drawn. In civil cases including matrimonial disputes of a civil nature, the standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable.

21. The facts are clear that the appellant did not lodge any complaint of criminal breach of trust but by initiating civil proceedings, sought return of money equivalent to her stridhan property which stood lost forever. This Court in ***Rashmi Kumar v. Mahesh Kumar Bhada***[7] [a decision by a bench of three Hon'ble Judges of this Court on a reference made by a bench of two Hon'ble Judges, who considered it necessary that a fresh look at the view expressed in a previous decision of three Hon'ble Judges in ***Pratibha Rani v. Suraj Kumar***[8] be had], after scrutiny of several treatises and precedents had the occasion to observe in paragraph 10 that the properties gifted to a woman before marriage, at the time of marriage or at the time of bidding of farewell or thereafter are her stridhan properties. It is her absolute property with all rights to dispose at her own pleasure. The husband has no control over her stridhan property. He may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhan property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof. It was also observed in paragraph 13 that to make out an offence under section 406 of the Indian Penal Code, 1860, what was required to be proved was entrustment of stridhan property with dominion over such property to the husband or to any member of his family

[6] 2023 SCC OnLine SC 1127
[7] (1997) 2 SCC 397
[8] (1985) 2 SCC 370

as well as dishonest misappropriation of or conversion to his own use the said property by the husband or such other member of his family. Admittedly, we are not concerned with any criminal offence and, therefore, proof on balance of probabilities would be sufficient.

22. It is true that a finding of fact recorded by a high court is not ordinarily disturbed by the Supreme Court but it is not a rigid rule, cast in a straitjacket formula, which can never be departed from. It is always open to this Court, in diverse situations, to test whether the conclusions of fact reached upon a consideration of the probabilities contain any serious error.

23. The impugned judgment embarking on reappreciation of evidence reveals several grounds resting whereon the High Court allowed the respondents' appeal.

24. First and foremost, we have found the High Court to have attributed lack of *bona fide* on the part of the appellant solely on account of the petition being filed in 2009 although cohabitation of the spouses had ended in 2006 itself. In concluding so, the High Court erred to take into consideration the explanation proffered by the appellant and P.W.2 that substantial amount of time after separation was spent to attempt reconciliation; and it is with the fervent hopes of such attempts at reconciliation succeeding that legal proceedings were not initiated. Matters of matrimony can rarely be said to be simple or straightforward; hence, human reaction as per a mechanical timeline before the sacred bond of marriage is severed is not what one would expect. Divorce, majorly, in Indian society is still considered a stigma, and any delay in commencement of legal proceedings is quite understandable because of the attempts made to have the disputes and differences resolved; more so, in a case of the present nature, when the appellant was faced with the imminent prospect of termination of her second marriage. Even otherwise, the appellant did not present before the Family Court a time-barred claim. Doubting the *bona fide* of the appellant, on facts and in the circumstances, was thus not called for.

25. Secondly, the High Court held the appellant's failure to lead documentary evidence to support purchase of 89 sovereigns of gold, which she allegedly brought with her to the matrimonial home, as fatal. To our mind, the approach is entirely indefensible. The version of the respondents with regard to retention of custody of jewellery by the appellant has been noticed in paragraph 10 (supra). Although we accept as probable that the jewellery had not been weighed, there is no escape from the conclusion that the respondents did admit the appellant having brought with her sufficient jewellery constituting stridhan. The dispute was raised firstly with regard to quantum and secondly, with regard to custody. How far is the version of the first respondent believable that on the night of the wedding, the appellant put her jewellery in an almirah and locked the same, with the keys being kept below the pillow? To find an answer, we pose a question to ourselves: for a person of ordinary prudence, is it reasonable to expect that a woman, who is freshly married and is intending to live in the same house and under the same roof with her husband, to keep her personal belongings like jewellery, etc. under her own lock and key, thus, showing a spirit of distrust to the husband right after the moment she gets married? The answer cannot but be in the negative. On the contrary, the circumstance that the husband had volunteered to take custody of the jewellery for safekeeping with his mother appears to be more plausible than the rival version considering the probabilities that are associated with similar such situations. The very concept of marriage rests on the inevitable mutual trust of the spouses, which conjugality necessarily involves. To assume that the appellant from day one did not trust the first respondent is rather improbable. The High Court, thus, failed to draw the right inference from facts which appear to have been fairly established. That apart, we have neither been shown nor do we know of any binding precedent that for a

claim of return of stridhan articles or money equivalent thereof to succeed, the wife has to prove the mode and manner of such acquisition. It was not a criminal trial where the chain of circumstances had to be complete and conclusively proved, without any missing link. Undisputedly, the appellant had brought to the matrimonial home sufficient quantum of jewellery, which she wore during the marriage and as is evidenced from photographs being Ext. A3 series; and, having regard thereto, the High Court committed serious error in first doubting and then disbelieving the appellant's version on the specious ground that documents proving acquisition thereof by P.W.2 had not been produced.

26. Further, the High Court grossly erred in retuning inherently contradictory findings. While casting doubt on the version of the appellant that the first respondent had never exhibited love or affection for her and that the jewellery was taken by him on the first night itself without even sparing the gold chain that was given to her, it held against the appellant by remarking that if indeed *"that be so, there was no chance for giving Rs.2 lakh to the 1st appellant (the husband) on 26.07.2004 i.e. after about one year of their marriage"* (underlining ours, for emphasis). Such a finding was recorded even though at a later stage, the High Court itself noted the admission of the first respondent of receipt of Rs. 2,00,000/- (Rupees two lakh) which he was ready to return. We regret, the High Court allowed its vision to be blurred and its focus of attention got diverted from the points in dispute.

27. On the issue of whether the first respondent misappropriated the appellant's jewellery, the High Court decided in favour of the first respondent on the basis of four conclusions – first, that the appellant had led no evidence to prove existence of financial liabilities on the first respondent's part so as to warrant the sale of her jewellery; secondly, comparison of photographs being Ext.A3 series on the one hand and Ext.B3 on the other showed that the appellant was wearing similar jewellery on both occasions, thus, establishing her continuous possession of the same; thirdly, the appellant's sister-in-law, whose jewellery the appellant claims to be wearing in Ext.B3 photographs, was not examined and this was held adversely against her; and fourthly, it was the appellant who admittedly owned a bank locker prior to her marriage, while there was no such locker owned by the first respondent, making it probable that it was the appellant who had taken the jewellery and kept them in her locker. We propose to deal with each of these conclusions individually.

28. On the aspect of the first respondent's financial liabilities and the existence of the same, we find that the High Court imposed a greater burden on the appellant than was warranted. The appellant could gain awareness of the same through multiple informal ways, whereas obtaining documentary proof would be well-nigh an impossible task especially if such liabilities pre-dated the marriage of the parties. It was in the evidence of the appellant that during the pre-marriage negotiations, the first respondent had disclosed of his involvement in business activities in Kozhikode. In view of the conduct of the first respondent subsequent to marriage, we do not consider that anything more was required to be proved by the appellant. The avarice of the first respondent is evidenced by the acceptance of Rs. 2,00,000/- (Rupees two lakh), which would not have occasioned unless a demand were made to the appellant's family. Acceptance of the said amount more than a year after the marriage, which was admitted by the first respondent, speaks volumes about his conduct. The first respondent's contention that he had not made a demand for the money and was only given the same pursuant to a pre-marriage promise made by the appellant's family, was disproved before the Family Court and against this finding the first respondent did not appeal. In view of such conduct of the first respondent, it is thus highly probable that there existed a monetary need, in fulfilment whereof, the appellant's jewellery would have been sold.

29. We now proceed to discuss the much-contested photographs being Exts.A3 and B3 series. Upon conducting a detailed scrutiny of the colour photographs on record, we cannot help but note the significant differences in the jewellery worn by the appellant on her wedding, and that on her brother-in-law's wedding. While the appellant is adorned with multiple pieces of jewellery on her own wedding as evidenced by Ext.A3, in Ext.B3 we find the appellant to be comparatively scantily ornamented, wearing a meagre two necklaces, both of which make no appearance on the appellant's person in Ext.A3. There exists a marked contrast in the jewellery worn on both occasions, and based on our appreciation of photographs being Exts.A3 and B3 series, it is the appellant's narrative of events we believe and accept to be true. Nonexamination of the appellant's sister-in-law, whose borrowed jewellery the appellant claims to be wearing in Ext.B3, is an insignificant lacuna in the appellant's case and cannot be held to be fatal to it in the light of the surrounding facts and circumstances of the case.

30. Black's Law Dictionary[9] defines entrustment as:

"To give (a person) the responsibility for something after establishing a confidential relationship".

It is the appellant's contention that she entrusted all 89 sovereigns of gold jewellery to the first respondent on the assurance that his mother would keep it safely for the appellant. What was required to be proved is entrustment of the property in the hands of the husband. 89 sovereigns is a substantial amount of gold, and as a newly-wed bride entering a new home, it would have been only natural for the appellant to trust her newly-wed husband's word and entrust the custody of such precious jewellery to him. It is evidently borne by the depositions of the witnesses that the appellant did not permanently gift or transfer the jewellery to the first respondent, and only for safekeeping that the custody of the jewellery was handed over. The Family Court, thus, rightly concluded that there being an element of entrustment, disposal and non-return of such jewellery by the first respondent would constitute misappropriation. Based on the evidence on record, we too are inclined to the view that it is indeed probable that the appellant made over possession of her jewellery to the first respondent in the firm belief that they would remain in the safe custody of his mother.

31. The fourth ground taken by the High Court, i.e., possession of the jewellery vesting in the appellant and not the first respondent, merely on the basis of the appellant admittedly owning a bank locker prior to marriage, thus giving her a place to store the jewellery, is yet again an explanation which is more conjectural than factual, for which reason we find ourselves unable to agree with it.

32. Although some doubt was cast regarding the weight of jewellery that the appellant claimed to have brought with her and there was absence of evidence (except oral) regarding its accurate weight, the High Court once again committed error in failing to resolve the issue on this front because of its prejudgment from the inception that the appellant's approach smacked of lack of *bona fide*. The appellant had been married before and it is in the evidence of P.W.2 that the appellant had 50 sovereigns of gold from her first marriage and that P.W.2 assured to supplement it. Not only could this evidence be demolished in course of cross-examination, it was corroborated by the evidence of the first respondent in the sense that he too testified having been told by P.W.2 during pre-marriage negotiation of due existence of 50 sovereigns of gold in the appellant's locker. In view of such evidence, doubt cast by the High Court even to the extent of 50 sovereigns of gold, which the appellant already had, seems to be unwarranted. It was further assumed

[9] Ninth Edition

by the High Court that it was not believable for a newly married woman to be deprived of all gold jewellery on the first night itself. We have no reason to agree with such a conclusion drawn by the High Court. Greed is a powerful motivator and has spurred humans to commit crimes far dastardlier. We, thus, do not find it outside the realm of human possibility for a husband to commit against his wife such unacceptable and undesirable acts, which were alleged. In the light of the same, it can hardly be disputed that the appellant was indeed in possession of at least 50, if not 89, sovereigns of gold jewellery when she crossed the threshold of the matrimonial home on the fateful night of 4th May, 2003.

33. It is further evident from the photographs, i.e., Ext.A3 series that the appellant is wearing a considerable amount of gold jewellery. Curiously, the respondents did not question the nature, quality, and valuation of the gold jewellery. It was never the respondents' case that the jewellery which adorned the appellant during the wedding ceremony was not gold, but merely imitation jewellery. This peculiar omission on the part of the respondents, to our minds, only lends further plausibility to the case made out by the appellant that it was gold jewellery which she wore, and that such gold jewellery could have weighed 89 sovereigns.

34. Besides, the High Court unfortunately failed to notice and appreciate what the counterclaim of the first respondent before the Family Court precisely was. Therein, he demanded the return of the ring and the gold chain gifted by him to the appellant, as was customary, at the time of marriage. It is well established that gifts made to the bride by the bride's husband or her parents or by relatives from the side of her husband or parents, at the time of marriage, constitute her stridhan. It was, thus, rightly held by the Family Court that the first respondent could lay no claim over the same, since there was nothing to suggest that the jewellery was a gift merely temporary in nature, with its return being expected in future. The first respondent's rapacious conduct, as glaringly evidenced in the counterclaim filed by him, afforded sufficient ground for the Family Court to draw adverse inference against him and the High Court patently fell in error in interfering with a well-written reasoned decision of the Family Court.

35. The case is one fit for a remand and normally we would have ordered so. However, having regard to the lapse of time since proceedings were instituted by the appellant before the Family Court (it has been in excess of a decade and a half), we considered it fit and proper not to delay a decision further which made it necessary to consider the evidence in the case. Notwithstanding the infirmities, which are not considered not too serious or significant so as to defeat the claim of the appellant, we are of the opinion that weighing the evidence on record being what they are and on a preponderance of probabilities, it is the appellant who has established a stronger and more acceptable case.

36. For the reasons aforesaid, the impugned judgment of the High Court is set aside and the judgment of the Family Court that the appellant is entitled to relief is accepted.

37. The appellant had successfully initiated action towards recovery of money *in lieu of* 89 sovereigns of gold, which in the year 2009 was valued at Rs 8,90,000/- (Rupees eight lakh ninety thousand). Mere upholding of the decree of the Family Court at this distance of time, without anything more, would bring about injustice to her. Bearing in mind the passage of time, the escalation in cost of living, and in the interest of equity and justice, we deem it fit in exercise of power conferred by Article 142 of the Constitution of India to award to the appellant a sum of Rs 25,00,000/- (Rupees twenty-five lakh). We hope and trust that such financial recompense would provide to the appellant (presently aged 50 years), comfort and security for her future life.

38. The first respondent shall pay Rs 25,00,000/- (Rupees twenty-five lakh) to the appellant within six months from date, failing which he shall be liable to pay to the appellant interest @ 6 % per annum on the said sum from this date till date of full payment. In default of payment as indicated above, the appellant will be at liberty to initiate proceedings for realisation thereof in accordance with law.

39. With the aforesaid modification of the decree of the Family Court, the appeal stands allowed to the extent mentioned before. Parties shall, however, bear their own costs.