LEADING CASES ON
DOWRY

HRLN

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Compiled and Edited by:
Anita Rao, Svetlana Sandra Correya

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Foreword

The institution of dowry prevalent in India cuts across all religions, castes, races and socio-economic groups. It is seen as a religious obligation of the father to part with authority over his daughter and, in the course of fulfillment of this 'dharma', the husband and his family are endowed with monetary and other benefits bestowed by the bride's family. Usually the demand made is far beyond the capacity of the woman's family, resulting in huge debts incurred in order to fulfill this religious duty. This custom is so deeply embedded in the larger framework of the society that, more often than not, this phenomenon is seen as a regular social practice, surpassing the enormity and threat that it poses to the delicate structure of a healthy and balanced society.

Quite often the form and nature of dowry differs, making it impossible to recognize any one distinct method of transaction that would constitute the giving or taking of dowry. Therefore in addition to the traditional payments made to the groom and his family, the amount or valuables paid to the husband or his relatives subsequent to the marriage is also regarded as dowry, the underlying premise being that the transaction is made in connection with marriage.

Appallingly but not surprisingly, a major proportion of violence against women is in relation to and in connection with the failure to pay the amount demanded as dowry. As the phenomenon is not restricted to demands made solely on the occasion of marriage but long after the sacrament has been solemnized, there have been instances where torture of the bride and 'bride burning' have been reported years after the couple have cohabited together under the institution of marriage.

To combat the growing menace of dowry, the legislature enacted the Dowry Prohibition Act in 1961. Though the Act was the first major step by the legislature to deal with the ever increasing and variant forms of dowry, several legal infirmities within the Act have prevented it from achieving what was intended of it, which necessitated further steps being taken to combat the problem.

As a result the legislature added Section 304-B to the Indian Penal Code, 1860, which made 'dowry death' a specific offence punishable with a minimum sentence of imprisonment for seven years and a maximum sentence of imprisonment for life. Although this provision, when read in conjunction with section 113B of the Evidence Act 1872, has enabled the conviction of many who were not caught by the Dowry Prevention Act, it too has failed to fully combat the menace of dowry. Perhaps in response to this failure, a recent trend of the judiciary has been to include a charge under Section 302 IPC, a murder charge, in addition charges under Section 304-B IPC, as this allows courts to impose the death penalty on the perpetrators of the offence. It remains to be seen whether this trend will continue but it is our sincere hope that it will not – Whilst the crime of dowry death is indeed a heinous and terrible crime, the implementation of the death penalty for those convicted does no justice to either party.

In light of this background, this book is an endeavor to consolidate the leading judgments of the Apex Court on the various laws relating to dowry and to fathom the reasoning given by the Court in an easy and comprehendible manner. It is our hope that by making the law more accessible, our readers will benefit from an increased understanding of the measures that already exist to protect them and how to implement them, and will be able to pass on this knowledge so that society as a whole understands more clearly the social evil dowry causes. Only with society's wider acceptance that dowry is deeply damaging can the menace that it presents be truly eradicated.

Introduction

This book is a compilation of the leading judgments from the Supreme Court of India on the laws relating to dowry. An attempt has been made to analyze the approach of the Apex Court in interpreting the scope and ambit of the provisions that apply when dealing with the offence of dowry.

Demands for dowry are a stark manifestation of the gender inequality prevalent in society, the dominance of gender-biased laws and the existence of oppressive social practices which have for centuries added to the plight of women across the country. Often perceived as burdens to their families, women across all social strata are generally seen as a liability to be discharged by their families in marriage. The commodification of women as objects and property to be monetarily valued has ensured the sustenance and development of the phenomenon of giving and taking dowry.

Though prominent in the eyes of the legislature, the menace caused by the practice of dowry remained largely unaddressed for several years after independence, with the provisions under the Penal Code proving insufficient to tackle the offence. The rigidity of laws caused huge problems in leading evidence against the accused because often the circumstances in which the crime was committed left the prosecution with little or no ground to lead direct evidence. This in many cases prevented a successful case from being presented before the Court. The already broken victim and her family had no option but to refrain from haggling with the already prejudiced laws and their scope.

The advent of women's movement in India and awareness among progressive groups in the country has created a space conducive to addressing this issue at a macro level. Sustained pressure from rights groups and activists to ensure basic justice for the victims of this brutal social indulgence prompted the legislature to enact the Dowry Prohibition Act, 1961. The Act makes the giving and taking of dowry a punishable offence under Section 3, providing imprisonment for a term not less than 5 years and fine not less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. In addition to being the first concrete step by the legislature to provide for specific laws against the practice of dowry, the Act attempted to consolidate for the first time the definition of 'dowry'. Under Section 2 of the Act, any property or valuable security given or agreed to be given either directly or indirectly by the parties to the marriage in connection with marriage constitutes dowry. The definition of dowry as given under the Act aims to do away with the ambiguity relating to valuables that are given not only at the time of marriage but also during any period subsequent to the marriage. The Supreme Court has upheld the spirit of this provision in a catena of cases in which it has reiterated and clarified the relationship between the time period when the demand is made and constitution of the offence itself. In *S. Gopal Reddy v. State of Andhra Pradesh, (1996) 4 SCC 596)*, for example, the Apex Court observed that "The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security 'made at or after the performance of marriage'…The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act."

Though the Act is viewed as a major remedial step in dealing with the issue, certain loopholes within the Act itself have robbed the legislation of much of what was expected of it and making the arrest of the accused non-cognisable has watered down the prowess of the Act.

The civil society movement of the late 70's and 80's, armed with increased political awareness due to the undemocratic methods of suppression of all forms of political activities, protests and demands for rights during emergency, gave rise to the present women's movement. Sensing inefficiency in dealing with dowry deaths and bride burning under the existing provisions of the Code, the general realization was that it was necessary to bring in provisions to deal with the barbaric acts of causing the death of a woman in relation to demands for dowry. By introducing Section 304-B through the 1986 amendment to the Indian Penal Code, the legislature in its wisdom rightly decided to create a presumption of dowry death where the death of a woman is caused within seven years of marriage and it is proved that soon before her death, she was subjected to cruelty or harassment by her husband or his relatives in connection with demand for dowry, thereby extending the liability of the accused even to cases where demand for dowry by the husband or his family members drives the woman to commit to suicide. This presumption is corroborated by the provision of Section 113 B of the Evidence Act, which shifts the burden on the accused to prove that the victim was not subjected to cruelty or harassment soon before her death in relation to demand for dowry. In *The State of Andhra Pradesh Vs. Raj Gopal Asawa and Anr, (2004) 4 SCC 470*, the Supreme Court convicted the accused under section 304-B IPC, where the victim had committed suicide within seven years from her marriage and it was proved that she was subjected cruelty in relation to demand for Dowry soon before her death. Therefore under the provisions of Section 304-B, the argument that the husband or his relatives can be held liable only where they have directly participated in the commission of the offence holds no ground.

The legislature had also introduced another offence at Section 498-A of the Indian Penal Code in 1983, thereby making cruelty inflicted on a woman in relation to coercing her or any person related to her to meet any unlawful demand for any property or valuable security a non-bailable and non-compoundable offence. In doing this, the legislature attempted to demonstrate its intention to come down heavily on the

increasing graph of dowry-related crime against women.

Though it has taken now several decades and massive effort on the part of women's organizations and rights groups to develop an strategy to deal with dowry and its repercussions on society, certain sections of the society have argued that this development has been misused. However, the vague and lame arguments on the misuse of Section 498-A IPC forces one to wonder if we are missing the woods for the trees! Surprisingly even the Supreme Court has in *Sushil Kumar Sharma Vs. Union of India (UOI) and Ors, JT 2005 (6) SC 266* declared Section 498-A as 'Legal Terrorism', holding "But by misuse of the provision (IPC 498a -Dowry and Cruelty Law) a new legal terrorism can be unleashed." This has created a new arena for the already existing debate of how efficacious the existing provisions are in dealing with the offence, thereby shifting the focus from the crux of the issue to something comparatively inconsequential. It is our hope that this discussion does not prevent the legislature and society from taking further steps to eradicate this considerable social evil.

CHAPTER ONE

THE INTERPRETATION OF 'DOWRY'

A relic of a historical tradition no longer relevant, the institution of dowry is one of the most pervasive and damaging features of India's modern social fabric. It is one of the main causes of violence against women and has caused scores of men to treat women like mere property that can be owned and disposed of, rather than human beings to be respected. While dowry may have initially been seen as a way to help the newly-married couple set up their home, greedy husbands and their families have used it to reduce marriage to a business arrangement where the element of money takes precedence over all other considerations. This greed has led to the horrific and painful death of thousands of women all over India, who have not been able to meet their husband's family's ever-increasing demands for dowry and is continuing to do so. In order to combat this clear social evil, in 1961 Parliament took the step of introducing legislation to combat it by enacting the Dowry Prohibition Act 1961. This was the first law that made the giving of dowry, the taking of dowry and the demanding of dowry criminal offences.

A key part of all of these newly-created offences was the concept of 'dowry' and what it included. Therefore, at Section 2 of the Dowry Prohibition Act 1961, the legislature introduced the following definition of dowry:

2. Definition of 'dowry' - In this act, `dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

> ***Explanation*** *- The expression `valuable security' has the same meaning as in Sec. 30 of the Indian Penal Code (45 of 1860).*

Because of the potentially extensive application of this definition, the Supreme Court has sought to refine and clarify what a demand for 'dowry' in fact consists of in several of its judgments.

Certain judgments have sought to clarify the time within which a demand for gifts/property/money etc. constitutes a demand for 'dowry'. In *S. Gopal Reddy Vs. State of Andhra Pradesh*[1], the Supreme Court was of the opinion that the phrase demand for 'dowry' was to be flexibly interpreted. In this case, this meant that any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the ambit of 'dowry' under the Act, even where the demand is not properly referable to any legally recognised claim and is in consideration of marriage. Marriage in this context included a proposed marriage and, more particularly, where the non-fulfilment of the demand of dowry leads to the marriage not taking place at all.

Several other cases have sought to confirm the kinds of gifts/property/money that when demanded will constitute demands for 'dowry'. In *Bachni Devi & Anr. Vs. State of Haryana, Through Secretary, Home Department*[2], the Supreme Court held that the appellants' demand for a motorcycle for use for the second appellant's business was a demand for dowry. It was particularly important to the Court in deciding this case that the victim, who died by committing suicide, had been harassed and ill-treated once the demand for the motorcycle was not met. Further, in *Ashok Kumar Vs. State of Haryana*[3], the Supreme Court confirmed that where a husband has demanded a specific sum from his father-in-law and on it not being given, has tortured and harassed his wife, this will qualify as a demand for 'dowry'.

1 (1996) 4 SCC 596
2 (2011) 4 SCC 427
3 AIR 2010 SC 2839

The Court has also indicated what will NOT be considered a 'demand for dowry' in the following cases. In *Baldev Singh Vs. State of Punjab*[4], the Court held obiter that a husband's demand for the victim's share in her ancestral property would not constitute a 'demand for dowry'. Similarly, in *Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar*[5] and *Anil Kumar Gupta Vs. State of U.P.*[6], demands for gifts/money after the birth of a male child were held distinct from a demand for 'dowry'. Further, in *Appasaheb and Anr. Vs. State of Maharashtra*[7] the Court held that because the appellants' demands for money were motivated by 'financial stringency' and the need to meet 'some urgent domestic expenses', their demands could not be termed 'demands for dowry'.

More generally, the Court has been unwilling to endorse a strictly verbatim interpretation of the offences relating to dowry. It has instead sought to interpret all aspects of the dowry legislation purposively in order to ensure that justice is done. One example can be found in the Court's reasoning in *Reema Aggarwal Vs. Anupam and Ors.*[8]. In this case, the respondents (the appellant's husband, mother-in-law, father-in-law and brother-in-law) were charged under section 498A IPC, having forced the appellant to ingest a poisonous substance. At trial however, they were acquitted on the grounds that there was no evidence presented that the appellant and first respondent were legally married. Both parties were in fact on their second 'marriages'. The Supreme Court however held that this interpretation of the legislation frustrated it's intentions. Here it was appropriate to construe the expression 'husband' to cover a person who entered into marital relationship and 'under the colour of such proclaimed or feigned status of husband'. By doing this, the Court made sure that both offences were interpreted flexibly so as to bring about justice.

4 (2008) 13 SCC 233
5 (2005) 2 SCC 388
6 (2011) 3 SCALE 453
7 (2007) 9 SCC 721
8 (2004) 3 SCC 199

IN THE SUPREME COURT OF INDIA

S. GOPAL REDDY
VERSUS.
STATE OF ANDHRA PRADESH

ANAND, A.S. (J), MUKHERJEE M.K. (J)

DR. ANAND,J.

…

2. This appeal by special leave filed by the appellant is directed against the order of the High Court of Andhra Pradesh dated 16.10.1990 dismissing the Criminal Revision Petition filed by the convicts. The brother of the appellant filed SLP (Crl.) 2336 of 1990 against the revisional order of the High Court but that S.L.P. was dismissed by this Court on 15.2.1991.

3. The prosecution case is as follows :

   The appellant (hereinafter the first accused) is the younger brother of the petitioner (hereinafter the second accused) in S.L.P. (Crl.) No.2336 of 1990, which as already noticed was dismissed on 15.2.1991 by this Court. The first accused had been selected for Indian Police Service and was undergoing training in the year 1985 and on completion of the training was posted as an Assistant Superintendent of Police in Jammu & Kashmir Police force. His brother, the second accused, was at the relevant time working with the Osmania University at Hyderabad. P.W.1, Shri G. Narayana Reddy, the complainant, was practising as a lawyer at Hyderabad. PW1 has four daughters. Ms. Vani is the eldest among the four daughters. She was working as a cashier with the State Bank of India at Hyderabad. PW 1 was looking for marriage alliance for his daughter Ms.Vani. A proposal to get Ms. Vani married to the first accused was made by P.W.2, Shri Lakshma Reddy, a common friend

of the appellant and PW1…It is alleged that as per the terms settled between the parties, P.W.1 agreed to give to his daughter (1) house at Hyderabad (2) jewels, cash and clothes worth about at rupees one lakh and (3) a sum of Rs 50,000/- in cash for purchase of a car...According to the prosecution case 'Varapuja' was performed by PW1 and his other relatives at the house of the second accused on 31.10.1985 At that time P.W.1 allegedly handed over to the first accused, a document Exhabit P-13 dated 12.10.1985, purporting to settle a house in the nameof his daughter Ms.Vanialongwith a bank pass book, ExhibitP-12 showing a cash balance of Rs.50,881/- in the name of Ms.Vani. The first accused is reported to have, after examining the document Exhibit P-13, flared up saying that the settlement was for a Double Storeyed House and the document Exhibit P-13 purporting to settle the house in the name of Ms. Vanl was only a single storey building. He threatened to get the marriage cancelled if P.W.1 failed to comply with the settlement as arrived at on the earlier occasions. The efforts of P.W.1 to persuade the first accused not to cancel the marriage did not yield any results and ultimately the marriage did not take place. The first accused then returned all the articles that had been given to him at the time of 'Varapuja'. Aggrieved, by the failure of the marriage negotiations, P.W.1 on 22.1.1986 sent a complaint to the Director of National Police Academy where the first accused was undergoing training Subsequently, PW.1 also went to the Academy to meet the Director when he learnt from the personal assistant to the Director of the Academy that the first accused was getting married to another girl on 30th of March, 1986 at Bolaram and showed to him the wedding invitation card…The Inspector of Police P.W.7, registered the complaint as Crime Case No.109/1986 and took up the investigation. During the investigation, various letters purported to have been written by the first accused to Ms. Vani were sent to the handwriting expert P.W.3, who gave his opinion regarding the existence of similarities between the specimen writings of the first accused and the disputed writings. Both the first accused and his

brother, the second accused, were thereafter charge sheeted and tried for offences punishable under section 420 I.P.C. read with an offence punishable under section 4 of the Act and convicted and sentenced as noticed above.

4. Mr. P. P. Rao the learned senior counsel appearing for the appellant submitted that the courts below had committed an error in not correctly interpreting the ambit and scope of section 4 of the Dowry Prohibition Act, 1961 read with the definition of 'dowry' under section 2 of the said Act. According to the learned counsel, for "demand" of dowry to become an offence under Section 4 of the Act, it must be made at the time of marriage and not during the negotiations for marriage. Reliance in this behalf is placed on the use of the expressions 'bride' and 'bridegroom' in Section 4 to emphasise that at the stage of pre-marriage negotiations, the boy and the girl are not 'bridegroom' and 'bride' and therefore the 'demand' made at that stage cannot be construed as a 'demand' of dowry punishable under Section 4 of the Act…

5. Learned counsel for the respondent-State, however, supported the judgment of the trial court and the High Court and argued that the case against the appellant had been established beyond a reasonable doubt and that this court need not interfere in exercise of its jurisdiction under Article 136 of the Constitution of India with findings of fact arrived at after appreciation of evidence by the courts below. According to Mr. Prabhakar, the interpretation sought to be placed by Mr. Rao on Section 4 of the Act would defeat the very object of the Act, which was enacted to curb the practice of "demand" or acceptance and receipt of dowry" and that the definition of 'dowry' as contained in Section 2 of the Act included the demand of dowry 'at or before or after the marriage'.

6. The curse of dowry has been raising its ugly head every now and then but the evil has been flourishing beyond imaginable proportions. It was to curb this evil, that led the Parliament to enact The Dowry Prohibition Act in 1961. The Act is intended to prohibit

the giving or taking of dowry and makes its 'demand' by itself also an offence under Section 4 of the Act. Even the abetment of giving, taking or demanding dowry has been made an offence. Further, the Act provides that any agreement for giving or taking of dowry shall be void and the offences under the Act have also been made non-compoundable vide Section 8 of the Act. Keeping in view the object which is sought to be achieved by the Act and the evil it attempts to stamp out, a three Judges Bench of this court in L.V. Jadhav vs. Shankar Rao Abasaheb Pawar & Others (1983 4 SCC 231) opined that the expression "Dowry" wherever used in the Act must be liberally construed.

...

8. The definition of the term 'dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become 'dowry' punishable under the Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".

9. Section 4 of the Act aims at discouraging the very "demand" of "dowry" as a 'Consideration for the marriage' between the parties thereto and lays down that if any person after the commencement of the Act, "demands", directly or indirectly, from the parents or guardians of a 'bride' or 'bridegroom', as the case may be, any 'dowry', he shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs.5,000/- or with both. Thus, it would be seen that section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under section 3 of the Act punishable with imprisonment for a term which shall not be less than five years and with fine which

shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

10. The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security 'made at or after the performance of marriage' as is urged by Mr. Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any "demand" of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all… Dowry as a quid pro for marriage is prohibited and not the giving of traditional presents to the bride or the bride groom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection on regard, would not fall within the mischief of the expression 'dowry' made punishable under the Act.

…

17. Therefore, interpreting the expression 'dowry' and 'demand' in the context of the scheme of the Act, we are of the opinion that any

demand of 'dowry' made before, at or after the marriage, where such demand is made as a consideration for marriage would attract the provisions of Section 4 of the Act.

…

20. There is no dispute that the marriage of the appellant was settled with Ms. Vani, daughter of PW1 and ultimately it did not take place and broke down. According to PW1, the reason for the brake down of the marriage was his refusal and inability to comply with the "demand" for enhancing the 'dowry' as made by the appellant and his brother, the second accused. The High Court considered the evidence on the record and observed:

"From the evidence of PW1 it is clear that it is only the 2nd petitioner that initially demanded the dowry in connection with the marriage of his younger brother, the first petitioner. He alone was present when PW1 agreed to give a cash of Rs. 50,000/- for purchase of car, a house, jewels, clothing and cash valued at rupees one lakh…"

21. The High Court further observed :

"Thus the demand for dowry either initially or at later stage emanated only from the second petitioner, the elder brother for the first petitioner. From the evidence it would appear that the petitioners come from a lower middle class family and fortunately the first petitioner was selected for I.P.S. and from the tone of letters written by the first petitioner to Kum. Vani particularly from Ex. P-6 letter it would appear that he was more interested in acting according to the wishes of the respondent who he probably felt was responsible for his coming up in life. The recitals in Ex.P-6 would show that he did not like to hurt the feelings of the second petitioner and probably for that reason he could not say anything when his elder brother demanded for more dowry. We cannot say how the first petitioner would have acted if only he had freedom to act according to his wishes. But the first petitioner was obliged to act according to the wishes of his elder brother in asking for

more dowry. However, I feel that this cannot be a circumstances to exonerate him from his liability from demand of dowry under Section 4 of the Dowry Prohibition Act." (Emphasis supplied)

...

32. To us it appears that the demand of dowry in connection with and as consideration for the marriage of the appellant with Ms. Vani was made by the second accused the elder brother of the appellant and that no such demand is established to have been directly made by the appellant. The High Court rightly found the second accused, guilty of an offence under Section 4 of the Act against which S.L.P. (Criminal) No. 2336 of 1990, as earlier noticed stands dismissed by this court on 15.2.1991. The evidence on the record does not establish beyond a reasonable doubt that any demand of dowry within the meaning of Section 2 read with Section 4 of the Act was made by the appellant. May be the appellant was in agreement with his elder brother regarding 'demand' of 'dowry' but convictions cannot be based on such assumptions without the offence being proved beyond a reasonable doubt. The courts below appear to have allowed emotions and sentiments, rather than legally admissible and trustworthy evidence, to influence their judgment. The evidence on the record does not establish the case against the appellant beyond a reasonable doubt. He is, therefore, entitled to the benefit of doubt. This appeal, thus, succeeds and is allowed. The conviction and sentence of the appellant is hereby set aside. The appellant is on bail. His bail bonds shall stand discharged.

This Judgment is also reported at (1996) 4 SCC 596.

IN THE SUPREME COURT OF INDIA

REEMA AGGARWAL
VERSUS
ANUPAM AND ORS.

DORAISWAMY RAJU, J. & ARIJIT PASAYAT, J.

ARIJIT PASAYAT, J.

…

3. …On 13.7.1998 information was received from Tagore Hospital, Jalandhar that Reema Aggarwal the appellant had been admitted on having consumed poisonous substance. On reaching hospital, ASI Charanjit Singh obtained opinion of the doctor regarding her fitness to make a statement. Appellant stated before Investigating Officer that she was married to Anupam the respondent no.1 on 25.1.1998 and after the marriage, she was harassed by her husband-respondent no.1, mother-in-law, father-in-law and brother-in-law (respondents 2, 3 and 4) respectively for not bringing sufficient and more dowry. It was also disclosed that it was the second marriage of both the appellant and respondent no.1. On the date of incident at about 5.00 p.m. all the four accused persons forced her to take something to put an end to her life and forcibly put some acidic substance in her mouth. She started vomiting and was taken to the hospital in an unconscious state. The first information report was registered accordingly and on completion of investigation the charge sheet was placed and charges were framed for offences punishable under Sections 307 and 498-A of the Indian Penal Code, 1860 (for short the 'IPC')…

4. Before the trial Court the accused persons put the plea that charge under Section 498-A was thoroughly misconceived as both Sections 304-B and 498-A IPC pre-suppose valid marriage of the alleged victim-woman with the offender husband...Since it was admitted

that the appellant had married during the lifetime of the wife of respondent no.1, what happened to his first marriage remained a mystery. Prosecution has failed to establish that it stood dissolved legally…Reliance was placed on a decision of the Madhya Pradesh High Court in Ramnarayan & Ors. v. State of M.P. (1998 (3) Crimes 147 M.P.) The Trial Court held that the accusations, so far as Section 307 is concerned, were not established and in view of the legal position highlighted by the accused persons vis-'-vis Section 498-A the charge in that regard was also not established...

…

6. In view of the dismissal of the State's application for grant of leave, criminal revision application which was filed by the appellant before the High Court was dismissed with the following orders:-

   "Vide our separate order of even date in Crl. Misc. No. 580 MA of 2002, we have not granted permission to the State to file the appeal. In these circumstances, there is no merit in this criminal revision which is hereby dismissed."

7. In support of the appeal, learned counsel for the appellant submitted that the High Court was not justified to dispose of the application for grant of leave as well as the revision filed by the appellant by such cryptic orders. Important questions of law are involved. In fact, various High Courts have taken view different from the one taken by the Madhya Pradesh High Court in Vungarala Yedukondalu v. State of Andhra Pradesh (1988 Crl.L.J. 1538 (DB)) and State of Karnataka v. Shivaraj (2000 Crl.L.J 2741). The Andhra Pradesh High Court and the Karnataka High Court have taken different view. According to him the expressions "husband" and "woman" appearing in Section 498-A IPC are to be read in a manner so as to give full effect to the purpose for which Section 498-A was brought into the statute. The restricted meaning as given by the Madhya Pradesh High Court in Ramnarayan case (supra) does not reflect the correct position of law. On the other hand, contrary view expressed by the Karnataka and Andhra Pradesh High Courts reflect the correct view.

8. In response, learned counsel for the respondents submitted that to constitute a marriage in the eye of law it has first to be established that the same was a valid marriage. Strong reliance was placed on Bhaurao Shankar Lokhande and Anr. v. The State of Maharashtra and Anr. (AIR 1965 SC 1564) in that context…

9. The marriages contracted between Hindus are now statutorily made monogamous. A sanctity has been attributed to the first marriage as being that which was contracted from a sense of duty and not merely for personal gratification. When the fact of celebration of marriage is established it will be presumed in the absence of evidence to the contrary that all the rites and ceremonies to constitute a valid marriage have been gone through. As was said as long as 1869 "when once you get to this, namely, that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law". (See Inderun Valungypooly v. Ramaswamy (1869 (13) MIA 141.) So also where a man and woman have been proved to have lived together as husband and wife, the law will presume, until contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. (See Sastry Velaider v. Sembicutty (1881 (6) AC 364) following De Thoren v. Attorney General (1876 (1) AC 686) and Piers v. Piers (L.R.(2) H.L.C. 331)…To constitute bigamy under Section 494 IPC, the second marriage had to be a valid marriage duly solemnized and as it was not so solemnized it was not a marriage at all in the eye of law and was therefore invalid. The essential ingredient constituting the offence of Bigamy is the "marrying" again during the lifetime of husband or wife in contrast to the ingredients of Section 498A which, among other things, envisage subjecting the woman concerned to cruelty. The thrust is mainly "marrying" in Section 494 IPC as against subjecting of the woman to cruelty in Section 498A. Likewise, the thrust of the offence under Section 304B is also the "Dowry Death". Consequently, the evil sought to be curbed are distinct and separate from the persons committing the offending acts and there could be no impediment

in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married but also anyone who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabitate and exercise authority as such husband over another woman…

10. The presumption may not be available in a case, for example, where the man was already married or there was any insurmountable obstacle to the marriage, but presumption arises if there is strong evidence by documents and conduct. Above position has been highlighted in Mayne's Hindu Law and Usage.

11. The question as to who would be covered by the expression 'husband' for attracting Section 498A does present problems... In Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. (AIR 1988 SC 644) a woman claimed maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short the 'Cr. P.C.'). This Court applied the provision of the Marriage Act and pointed out that same was a law which held the field after 1955, when it was enacted and Section 5 lays down that for a lawful marriage the necessary condition that neither party should have a spouse living at the time of the marriage is essential and marriage in contravention of this condition therefore is null and void. The concept of marriage to constitute the relationship of 'husband' and 'wife' may require strict interpretation where claims for civil rights, right to property etc. may follow or flow and a liberal approach and different perception cannot be an anathema when the question of curbing a social evil is concerned.

…

14. The definition of the term 'dowry' under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would

become 'dowry' punishable under the Dowry Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage."

…

16. The definition of the expression 'dowry' contained in Section 2 of the Dowry Act cannot be confined merely to be 'demand' of money, property or valuable security' made at or after the performance of marriage. The legislature has in its wisdom while providing for the definition of 'dowry' emphasized that any money, property or valuable security given, as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognized claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfillment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression "dowry" under the Dowry Act has to be interpreted in the sense which the statute wishes to attribute to it. The definition given in the statute is the determinative factor… Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional

nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Dowry Act.

…

18. … If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically…Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions…The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent... It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions. Sections 304B/498A, whatever be the legitimacy of the

marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.

…

27. The High Court was not justified in summarily rejecting the application for grant of leave. It has a duty to indicate reasons when it refuses to grant leave. Any casual or summary disposal would not be proper. (See State of Punjab v. Bhag Singh (2003 (8) Supreme 611). In the circumstances, we set aside the impugned order of the High Court and remit the matter back to the High Court for hearing the matter on merits as according to us points involved require adjudication by the High Court. The appeal is allowed to the extent indicated.

This Judgment is also reported at (2004) 3 SCC 199.

IN SUPREME COURT OF INDIA

KAMESH PANJIYAR @ KAMLESH PANJIYAR
VERSUS
STATE OF BIHAR

ARIJIT PASAYAT & S.H. KAPADIA

ARIJIT PASAYAT, J.

…

3. Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Patna High Court upholding his conviction for offences punishable under Section 304-B of the Indian Penal Code, 1860 (in short the 'IPC'), while reducing sentences to seven years rigorous imprisonment from ten years imprisonment as was awarded by learned Sessions Judge, Sitamarhi.

4. Prosecution version as unfolded during trial is as follows :

   Jaikali Devi (hereinafter referred to as the deceased) was sister of the informant, Sudhir Kumar Mahto (PW-6). She was married to appellant in 1988. Duragaman was subsequently performed in the month of August, 1989. A sum of Rs. 40,000 was demanded in dowry at the time of marriage and the same was paid. Subsequently, demand for a she-buffalo was made by the appellant at the time of Duragaman which could not be fulfilled. Informant Sudhir Kumar Mahto (PW-6) went several times to the house of her sister and made request for Bidagari of her sister, but the same was not allowed, and on the contrary demand of she-buffalo was pressed. The deceased complained of ill-treatment and torture at the hands of the appellant and other members of his family. The informant was also abused. On 28.11.1989 at about 7.00 a.m., the informant heard some rumour in the village that her sister- the deceased was murdered by the appellant and his family members, and they were contemplating to dispose of the dead body…

5. … In order to further its version prosecution examined 9 witnesses… Three witnesses were examined by the accused to substantiate his plea that the deceased had rheumatic disease and she died because of this. The trial Court considered the evidence on record and came to hold that the presumption in terms of Section 113(B) of the Indian Evidence Act, 1872 (in short 'the Evidence Act') was to be drawn and since the deceased did not die a natural death as claimed, the accused was guilty of offence in terms of Section 304-B IPC. It was noticed that there was no evidence to show that the deceased suffered from any rheumatic disease. The evidence of DWs was found to be unreliable. Accordingly, conviction in terms of Section 304-B was recorded and ten years sentence was imposed.

6. Questioning the conviction and the sentence as awarded by the learned trial Judge, the accused filed an appeal before the High Court. As noted above, the High Court upheld the conviction but reduced the sentence.

7. In support of the appeal, learned counsel for the appellant submitted that the doctor (PW-8) had categorically stated that the causes of death was not ascertainable. The trial Court and the High Court were not justified in applying Section 304-B IPC to the facts of the case. There was no live link established between the alleged demand of dowry and the purported unnatural death. That being so, the conviction as recorded is not tenable.

…

13. Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under :-

    Section 2. Definition of 'dowry' - In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly –

    (a) by one party to a marriage to the other party to the marriage;or

    (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I - For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II - The expression 'valuable security' has the same meaning in Section 30 of the Indian Penal Code (45 of 1860)."

14. The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression "dowry". (See Satvir Singh v. State of Punjab, [2001] 8 SCC 633 As was observed in said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused .....or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC.

15. In the instant case, great stress has been laid on the opinion of the doctor that possible cause of death was not ascertainable. As noted by the trial Court and the High Court, black stained rough skin on both sides of neck was found. It has also been noticed by the doctor who conducted the post-mortem examination that blood stained fluid was trickling from the side of mouth and brain matters were

found congested. The doctor unfortunately did not consider the effect of the marks on the neck and trickling of blood stained fluid from the mouth. The I.O. (PW-9) had seized a blood stained pillow. There was no evidence that the death was due to normal reasons. Evidence of PWs 1, 3 and 6 amply established demand of dowry and ill treatment of the deceased shortly before the date of occurrence. The trail Court and the High Court were justified in drawing the conclusion about guilt of the accused. Though attempt was made to show that had the accused been guilty he along with family members would not have tried to get treatment for the deceased. The reason for this is not far too seek. The accused person and others were typing to create a smokescreen. If the death was normal as claimed by the accused, nothing was brought on record to explain injuries on the neck of the deceased. The evidence on record clearly establishes the commission of offence by the accused. Therefore, the conviction and the modified sentence as imposed by the High Court do not suffer from any infirmity to warrant interference.

16. The appeal is dismissed.

This Judgment is also reported at (2005) 2 SCC 388.

IN THE SUPREME COURT OF INDIA

APPASAHEB AND ANR.
VERSUS
STATE OF MAHARASHTRA

G.P. MATHUR, J. & R.V. RAVEENDRAN, J.

G.P. MATHUR, J.:

1. This appeal, by special leave, has been preferred against the judgment and order dated 23.2.2005 of Bombay High Court (Aurangabad Bench), by which the appeal preferred by the appellants was dismissed and their conviction under Section 304-B read with Section 34 IPC and sentence of 7 years RI imposed thereunder by the learned Sessions Judge, Aurangabad, was affirmed.

2. The deceased Bhimabai was daughter of PW.1 Tukaram Eknath Tambe resident of village Sanjkheda and she was married to appellant no. 1 Appasaheb son of Sheshrao Palaskar about two and half years prior to the date of incident which took place on 15.9.1991. The appellant no. 2, Kadubai is the mother of the appellant no. 1 and both the appellants were residing in the same house in village Palshi. According to the case of prosecution, a sum of Rs. 5000 and some gold ornaments had been given at the time of marriage of Bhimabai. For about six months Bhimabai was treated well but thereafter the accused started asking her to bring Rs. 1,000-1,200 from her parents to meet the household expenses and also for purchasing manure. Whenever Bhimabai went to her parental home, she used to tell her parents that her husband and mother-in-law (accused appellants) were harassing her and used to occasionally beat her...The case of the prosecution futher is that in the evening of 15.9.1991 a person came from village Palshi on a motorcycle and informed PW.1 Tukaram that Bhimabai was unwell. PW.1 then immediately went to the house of the accused along

with some of his relatives. There he saw that Bhimabai was lying dead and froth was coming out of her mouth which indicated that she had consumed some poisonous substance…

3. … The learned Sessions Judge after consideration of the material on record acquitted the appellants of the charges under Sections 498-A and 306 read with Section 34 IPC but convicted them under Section 304-B IPC and imposed a sentence of 7 years RI thereunder. The appeal preferred by the appellants was dismissed by the High Court by the judgment and order dated 23.2.2005.

…

6. The specific case of the prosecution is that Bhimabai ended her life by consuming poison because of harassment caused to her by the appellants for or in connection with demand of dowry. It is, therefore, necessary to briefly examine the evidence of the prosecution witnesses. PW. 1 Tukaram, father of the deceased, has given details of the prosecution version of the incident in his statement in Court. He has deposed that in the marriage he had given Rs. 20,000 as dowry. Initially, Bhimabai was treated well for about six months, but thereafter the appellants started ill-treating her. Whenever Bhimabai came to her parental home, she used to complain that for some domestic reasons she was being harassed. When she had visited her parental home on the last occasion, she had said that her husband Appasaheb had asked her to bring Rs. 1,000-1,200 for domestic expenses and for purchasing manure as he had no sufficient money...He has also deposed that it was after about 1-1/2 years of marriage that Bhimabai first complained to him about the harassment being caused to her. There used to be some bickering in the marital life of Bhimabai and her husband on trifling matters. He has admitted that it was appellant no. 1 who had sent a person on motorcycle who had given information regarding Bhimabai being unwell and that both the appellants were present at the time of her funeral… PW.5 Sumanbai is the mother of the deceased Bhimabai. She has stated in her examination-in-chief that

Bhimabai was being ill-treated by the appellants and the reason for ill-treatment was that they were demanding money to be brought from her parental home…She further stated that it will be correct to say that her daughter was receiving ill-treatment as a result of "domestice cause". The learned trial Judge then sought clarification from the witnessses by putting the following question. :-

"Que:- What do you mean by "domestic cause"?

Ans.:- What I meant was that there was demand for money for defraying expenses of manure etc. and that was the cause."

In the very next paragraph she stated as under :-

"It is not true to suggest that in my statement before the police I never said that ill-treatment was as a result of demand for money from us and its fulfillment. I cannot assign any reason why police did not write about it in my statement."

…

9. Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under :-

"2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does

not include dowry or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody coversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses of for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.

…

11. In view of the discussion made above, the appeal is allowed. The judgment and order dated 23.2.2005 of the High Court and the judgment and order dated 4.1.1993 of the learned Sessions Judge

convicting the appellants under Section 304-B IPC are set aside and the appellants are acquitted of the said charge. The appellant no.1 is in custody. He shall be released forthwith unless wanted in some other case. The appellant no. 2 is on bail. The sureties and bail bonds furnished by her are discharged.

This Judgment is also reported at (2007) 9 SCC 721.

IN THE SUPREME COURT OF INDIA

BALDEV SINGH
VERSUS.
STATE OF PUNJAB

ARIJIT PASAYAT J. & HARJIT SINGH BEDI J.

Dr. Arijit Pasayat, J.

…

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed by the appellant, while directing acquittal of the co-accused Narinder Kaur. Learned Sessions Judge, Amritsar, had convicted both, the present appellant and Surjit Kaur for the offence punishable under Section 304- B of the Indian Penal Code, 1860 (in short "IPC") and had sentenced each of them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default of payment of fine to further undergo rigorous imprisonment for three months…

3. The case of the prosecution is as under:-

   Satwant Kaur @ Bholi was the sister of Rachhpal Singh (PW-4) and was married with Baldev Singh accused on 8.6.1991. Within about a month of their marriage, differences cropped up between the deceased and her husband as the mother-in-law and husband of the deceased started demanding a fridge and a T.V…On 2.9.1992 Rachhpal Singh had received a letter written by Satwant Kaur. This letter had been brought from Amritsar to Chandigarh by the wife of Amrik Singh, who in turn, had taken it to Pinjore to deliver the same to Rachhpal Singh. After going through the letter Rachhpal Singh had become very upset and had left for Amritsar and reached there about 7-8 P.M. During the night, he had stayed at the house of his second sister and in the morning of 3.9.1992 he had gone to

the house of Satwant Kaur along with his brother-in-law Narinder Singh. On reaching the house, he found that Satwant Kaur was lying on a cot while her husband, sister-in-law and mother-in-law were standing nearby. On seeing him, Satwant Kaur had again indicated that the accused had harassed and beaten her regarding her inability to bring more money. She had also told Rachhpal Singh (PW-4) that she had consumed some poisonous substance as a result of which, she would die and requested him to ensure that the accused did not escape the rigours of law…

Assistant Sub Inspector Amrik Singh (PW-7) had gone to Guru Nanak Dev Hospital, Amritsar after receipt of information regarding the death of Satwant Kaur and on reaching the hospital, had met Rachhpal Singh (PW-4) and recorded his statement. He thereafter made his endorsement thereon and sent the same to the police station for recording the formal FIR, Ex. PW-7/B…

The trial court relied upon the evidence of PW.4 and PW.5 and found that their evidence was clear and cogent to the effect that the deceased was being harassed for not bringing adequate dowry and though some of the demands were satisfied by the relatives, the demands persisted. On account of such persistent demands, the deceased felt harassed and consumed poison and had ultimately died as a result thereof. With reference to the evidence of Dr. R.K. Gorea, PW.1, it was noted that the death of the deceased was as a result of consuming organo phosphorus group of insecticide and the death was unnatural and had taken place within 7 years of the date of marriage. The trial court, accordingly, found the appellant and Surjit Kaur guilty while directing acquittal of Narinder Kaur.

In appeal, the stand taken by the appellant was that with a view to falsely implicate the accused persons, the case was lodged. It was submitted that the deceased was deprived of her legitimate share in the ancestral property and because of this she was in mental depression leading to her committing suicide…The prosecution, on the other hand, relied on the evidence of PW.4 and PW.5 to show

that the demand was not restricted only to the share in the ancestral properties but also to the other demands which were nothing but dowry demands. The High Court found substance in the plea of the prosecution and upheld the conviction.

…

10. Explanation to Section 304-B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is : what is the periphery of the dowry as defined therein? The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in Pawan Kumar and Ors. v. State of Haryana (1998 (3) SCC 309).

11. The offence alleged against the respondents is under Section 304-B IPC which makes "demand of dowry" itself punishable…The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other

ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

…

14. It is true that demanding of her share in the ancestral property will not amount to a dowry demand, but the evidence of PW.4 and PW.5 shows that the demands were in addition to the demand for her share in the ancestral property. Certain letters which were brought on record clearly establish the demand for dowry. The conviction as recorded by the trial court and upheld by the High Court does not warrant any interference. However, the custodial sentence appears to be on the higher side. The same is reduced to the minimum prescribed i.e. 7 years. In the ultimate result, with the modification of sentence, the appeal stands disposed of.

This Judgment is also reported at (2008) 13 SCC 233.

IN THE SUPREME COURT OF INDIA

ASHOK KUMAR
VERSUS
STATE OF HARYANA

Swatanter Kumar, J.

1. Inter alia but primarily the appellant has raised a question of law in the present appeal. The contention is, that every demand by the husband or his family members cannot be termed as 'dowry demand' within the meaning of Section 2 read with Section 4 of the Dowry Prohibition Act, 1961 (for short referred to as 'the Act') and consequently, the death of the deceased cannot be termed as a 'dowry death' within the ambit and scope of Section 304-B of the Indian Penal Code (for short 'the Code') and, as such, the conviction and order of sentence passed against the appellant is liable to be set aside.

…

3. Vipin @ Chanchal @ Rekha, the deceased and Ashok Kumar, the appellant herein, were married on 9th October, 1986. Harbans Lal, the father of the deceased had given sufficient dowry at the time of her marriage according to his means, desire and capacity. … One week prior to the date of occurrence, the deceased came to the house of her father at Kaithal and narrated the story. She specifically mentioned that her husband wanted to set up a new business for which he required a sum of Rs. 5,000/-. The father of the deceased could not manage the same due to which the appellant and his family members particularly, Lajwanti and Mukesh alleged to have burnt the deceased by sprinkling kerosene oil on her as a result of which the deceased died in the hospital at about 4.00 p.m. on 16.05.1988. …

…

5. The learned Trial Court by a detailed judgment dated 13.01.1989/ 16.01.1989 held all the three accused viz., Ashok Kumar, Mukesh Kumar and Lajwanti, guilty of the offence punishable under Section 304-B of the Code and vide order of the same date, sentenced the accused to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for 3 months.

6. Aggrieved by the aforesaid judgment and order of sentence passed by the Trial Court, the accused filed an appeal before theHigh Court of Punjab and Haryana at Chandigarh, which was partially accepted. Lajwanti and Mukesh, the mother and brother of the accused Ashok Kumar, were acquitted of the offence under Section 304-B of the Code while the conviction of Ashok Kumar, accused was upheld and the order of sentence was also maintained by the High Court.

7. Aggrieved by the judgment of the High Court dated 16th December,2003, Ashok Kumar, the appellant herein, has filed the present appeal. …

…

10. …The definition of dowry under Section 2 of the Act reads as under:

"In this Act, "dowry" means any property or valuable security given or agreed to be give neither directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

***Explanation II.**--The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."*

11. …All the expressions used under this Section are of a very wide magnitude. The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties' were introduced by amending Act 63 of 1984 and Act 43 of 1986 with effect from 02.10.1985 and 19.11.1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression 'in connection with the marriage' cannot be given a restricted or an arrower meaning. The expression 'in connection with the marriage' even in common parlance and on its plain language has to be understood generally. The object being that everything,which is offending at any time i.e. at, before or after the marriage,would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.

12. At this stage, it will be appropriate to refer to certain examples showing what has and has not been treated by the Courts as 'dowry'. This Court, in the case of Ram Singh v. State of Haryana [(2008) 4 SCC 70], held that the payments which are customary payments, for example, given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression 'dowry'.Again, in the case of Satbir Singh v. State of Punjab [AIR 2001 SC 2828], this Court held that the word 'dowry' should be any property or valuable given or agreed to be given in connection with the marriage. The customary payments in connection with birth of a child or other ceremonies are not covered within the ambit of the word 'dowry'. This Court, in the case of Madhu Sudan Malhotra v. K.C. Bhandari [(1988) Supp. 1 SCC 424], held that furnishing of a list of ornaments and other household articles such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time

of settlement of the marriage, prima facie amounts to demand of dowry within the meaning of Section 2 of the Act. The definition of 'dowry' is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands, was the dictum of this Court in the case of State of Andhra Pradesh v. Raj Gopal Asawa [(2004) 4 SCC 470].

13. The Courts have also taken the view that where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of 'dowry' under the Act. Section 4 of the Act is the penal Section and demanding a 'dowry', as defined under Section 2 of the Act, is punishable under this section. As already noticed, we need not deliberate on this aspect, as the accused before us has neither been charged nor punished for that offence. We have examined the provisions of Section 2 of the Act in a very limited sphere to deal with the contentions raised in regard to the applicability of the provisions of Section 304-B of the Code.

….

16. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression 'demand for dowry' will have to be construed *ejusdem generis* to the word immediately preceding this expression. Similarly, 'in connection with the marriage' is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties. These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. …

17. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of

law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.

…

20. Similarly, reference was also made to the judgment of this Court in the case of Appasaheb v. State of Maharashtra [(2007) 9 SCC 721], to substantiate the contention that there was no co-relation between giving or taking of the property with the marriage of the parties and, as such, the essential ingredients of Section 2 of the Act were missing. Accordingly, it is argued that there was no demand of dowry by the appellant but it was merely an understanding that for his better business, at best, the amounts could be given voluntarily by the father of the deceased….

21. On the contrary, the learned counsel appearing for the State while relying upon the judgment of this Court in Devi Lal v. State of Rajasthan [(2007) 14 SCC 176], argued that the relatives and, particularly the father of the deceased, had specifically mentioned the acts of harassment and, in any case, the statement of the sister of the deceased, who was produced by the accused as his defence witness, itself clinches the entire issue and, therefore, the offence under Section 304-B of the Code is made out. It was also contended that an absolute accuracy in the statement of witnesses is not a

condition precedent for conviction. He relied upon the following dictum of the Court in Devi Lal's case (supra):

"25.Indisputably, before an accused is found guilty for commission of an offence, the court must arrive at a finding that the ingredients thereof have been established. The statement of a witness for the said purpose must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the section of a statute. What is needed is to find out as to whether the evidences brought on record satisfy the ingredients thereof."

…

24. From various answers given by the accused to the Court in his statement recorded under Section 313 of the Cr. P.C., it appears that the death of the deceased is not disputed. The allegation with regard to cruelty was denied. However, besides denying the case of the prosecution, the appellant took the stand that he was falsely implicated in the crime. According to him, the deceased was not happy with the marriage inasmuch as she was in love with some other boy and wanted to marry him which was not permitted by her family and that is why she committed suicide. As would be evident from this admitted position, the death of the deceased by burning is not an issue. The limited question was whether the deceased committed suicide simplicitor for the reasons given by the accused or in the alternative, the prosecution story, that it was a dowry death relatable to the harassment and cruelty inflicted upon her by the accused and his family members, is correct.

25. In the postmortem report it was noticed that the cause of death was shock and dehydration which resulted from extensive burn injuries, which were ante-mortem. The postmortem report (Ex. PO)and the body sketch (Ex. PO/1) clearly demonstrate that practically the entire body had been affected by the burn injuries. The prosecution had examined Harbans Lal, the father of the deceased (PW-1), who stated that immediately after the marriage of deceased with the accused, both were living happily and he had given dowry according

to his capacity, but six months after her marriage, her husband and her in-laws started teasing her and giving taunts that she had not brought T.V. and Fridge etc. in the dowry and whenever she used to come to him she mentioned about the same and 20 days prior to her death she had told him that she was being troubled for a sum of Rs. 5,000/- so that her husband could change to a new business and while consoling her, he told her that he would arrange for the money in some time and took her at the house of her in-laws 7-8 days prior to her death. …He voluntarily stated that his son in-law (the accused) used to deal in vegetables but he wanted to change to Kariyana business, and that is why he wanted a sum of Rs. 5,000/- . Smt. Krishna Rani, the mother of the deceased, was examined as PW-2. She admitted that a child was born from the marriage. She had also corroborated the statement of PW 1. According to her, Lajwanti told that the deceased had expired. Subhash Chand (PW-3) stated that he had informed Harbans Lal (PW-1) about the death of the deceased due to burn injuries and stated that they (the husband of the deceased and her in-laws) used to ill-treat the deceased and were demanding dowry. However, he did not refer to the demand of Rs. 5,000/, as stated by other witnesses. To prove the case Karta Ram, SI (PW-6), Darshan Lal, H.C. (PW-7), Ranbir Mohan, SI (PW-8), the police officials, were also examined by the prosecution apart from Kharati Lal, Kariyana Merchant (PW-4). Dr. Manjula Bansal, Medical Officer, Civil Hospital, Jind (PW-5), was examined to prove the death of the deceased which was caused by burn injuries.

26. …But, the most important witness examined by the accused was Vijay Laxmi (DW-3), who is the daughter of Harbans Lal, aged about 14 years. She mentioned that the letter (Ex. DJ) was written by her and she stated that sometimes Ashok Kumar, the accused used to take the deceased to her father's house. She admitted that two days prior to writing of the letter (Ex. DJ), her sister and sister's son had come to her house and she stated that whatever is written in the letter is correct. But, in her cross-examination, she

stated as under:

"Whenever my sister visited our home after marriage, she would complain that her husband and in-laws demanded dowry and also they used to give her beating. She came to our home 20 days prior to her death. At that time she told that her in-laws etc. Were demanded a T.V. and Rs.5,000/-. My father took her to her husband's home. My sister was not suffering from my disease. She was having good health."

27. The above statement of this witness (DW-3) in cross examination,in fact, is clinching evidence and the accused can hardly get out of this statement. The defence would be bound by the statement of the witness, who has been produced by the accused, whatever be its worth. In the present case, DW-3 has clearly stated that there was cruelty and harassment inflicted upon the deceased by her husband and in-laws and also that a sum of Rs. 5,000/- was demanded. The statement of this witness has to be read in conjunction with the statement of PW-1 to PW-3 to establish the case of the prosecution. There are certain variations or improvements in the statements of PWs but all of them are of minor nature. Even if, for the sake of argument, they are taken to be as some contradictions or variations in substance, they are so insignificant and mild that they would no way be fatal to the case of the prosecution.

28. This Court has to keep in mind the fact that the incident had occurred on 16.05.1988 while the witnesses were examined after some time. Thus, it may not be possible for the witnesses to make statements which would be absolute reproduction of their earlier statement or line to line or minute to minute correct reproduction of the occurrence/events. The Court has to adopt a reasonable and practicable approach and it is only the material or serious contradictions/variations which can be of some consequence to create a dent in the case of the prosecution. Another aspect is that the statements of the witnesses have to be read in their entirety to examine their truthfulness and the veracity or otherwise. It will neither be just nor fair to pick up just a line from the entire

statement and appreciate that evidence out of context and without reference to the preceding lines and lines appearing after that particular sentence. It is always better and in the interest of both the parties that the statements of the witnesses are appreciated and dealt with by the Court upon their cumulative reading.

29. As already noticed, the expression 'soon before her death' has to be accorded its appropriate meaning in the facts and circumstances of a given case. In the present case, there is definite evidence to show that nearly 20-22 days prior to her death the deceased had come to her parental home and informed her father about the demand of Rs. 5,000/- and harassment and torture to which she was subjected to by the accused and her in-laws. Her father had consoled her ensuring that he would try to arrange for the same and thereafter took her at her matrimonial home 7-8 days prior to the incident.

30. On face of the aforesaid evidence read in conjunction with the statement of DW-3, we are convinced that ingredients of Section 304B have been satisfied in the present case. It was for the accused to prove his defence. He had taken up the stand that the deceased was in love with another boy and did not want to marry the accused and the marriage of the deceased with the accused being against her wishes was the real cause for her to commit the suicide. However, he has led no evidence in this regard and thus, the Court cannot believe this version put forward by the accused.

…

32. Having found no infirmity in the concurrent judgments of the learned Sessions Judge and the High Court, we see no reason to interfere in these judgments in law or on facts. Thus, we sustain the conviction of the accused.

…

34. The appeal is disposed off in the above terms.

This Judgment is also reported at AIR 2010 SC 2839.

IN THE SUPREME COURT OF INDIA

ANIL KUMAR GUPTA
VERSUS
STATE OF U.P.

B SUDERSHAN REDDY, J. & SURINDER SINGH NIJJAR, J.

B. SUDERSHAN REDDY, J.

1. The appellant along with four others was tried for the charges punishable under Sections 498A and 304B, IPC and Section 3/4 of Dowry Prohibition Act, 1961. The learned Sessions Judge, Muzaffarnagar acquitted all of them of the said charges. The State preferred appeal against acquittal in the High Court of Judicature at Allahabad. The High Court confirmed the order of acquittal of all other accused except the appellant herein. The High Court accordingly convicted the appellant herein for the offences punishable under Section 498A, IPC and sentenced him to undergo rigorous imprisonment for two years with a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months, and for the offence punishable under Section 304B, IPC, he was sentenced to undergo rigorous imprisonment for ten years. The High Court also convicted the appellant for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961 and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.15,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year, whereas under Section 4 of the Dowry Prohibition Act, 1961, the appellant was sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- and in default of payment of fine, he should further undergo rigorous imprisonment for one month. The substantive sentences of imprisonment were however directed to run concurrently. Hence this appeal.

…

3. The appellant is the husband of the deceased Poonam. The incident is stated to have taken place in the intervening night of 6th/7th June, 1988 in Mohalla Kambalwala Bagh, Muzaffarnagar and a report was lodged on 7.6.1988 at 8.50 a.m. by Dharmendra Kumar Jain (PW 1), father of the victim. The parents of the victim Poonam (deceased) are the residents of Khatauli, a town nearby Muzafarnagar. The deceased Poonam was married to the appellant Anil Kumar Gupta on 20th April, 1987. Soon after the marriage, the appellant and other accused (since acquitted) allegedly started harassing and torturing the deceased to bring more dowry. She was subjected to both mental and physical cruelty repeatedly…

…

5. … The trial Court, meticulously analyzed the evidence available on record and recorded the following findings:

   …

   (iii) The trial Court did not accept the evidence of Dharmendra Kumar Jain (PW 1), father of the victim on the ground that the evidence given by him is full of contradictions. As per the evidence of PW 1 and as well as in FIR, there is no mention of any demand for dowry before or after the marriage. The alleged demand was made only after the birth of a male child. The letters produced by the prosecution do not prove any demand for dowry. The letters (Exts. Ka-2 and Ka-3) do not mention that the accused have demanded any dowry either in the form of Camera or Scooter. On the other hand, letter (Ext. Ka-13) written by Smt. Poonam (deceased) from her father's house to the appellant only showed family matters, about the love and affection between the husband and wife and how painful it was to stay away from her husband.

6. The trial Court further found that the suicide note (Ext. Ka-78) stands proved to have been written by the deceased, as established by the Handwriting and Finger Print Expert.

7. The High Court, while reappreciating the evidence available on record, did not discuss that portion of the evidence which was taken into consideration by the trial Court. However, the High Court concluded that the deceased died an unnatural death by poisoning within about 14 months of her marriage with the appellant and there was consistent demand of dowry by him after the marriage. The High Court also observed that the victim was treated with cruelty by the appellant over the demand for dowry…

8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant...The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.

…

10. In *Ramesh Babulal Doshi*, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable…

11. In *Dwarka Das*, this Court following the decision in *Ramesh Babulal Doshi*, further observed that "there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view…

…

13. Therefore, keeping the above principles in mind, we have to first ascertain whether there are any reasons recorded by the High Court in order to observe that the findings of the trial Court are unsustainable. The High Court in its judgment expressed that "the acquittal is wholly unjustified" and that the learned trial Judge failed to make proper analysis of the evidence adduced by the prosecution and other surrounding circumstances. There is no finding recorded as such by the High Court to the effect that the trial Court misread the evidence and its findings therefore were perverse in their entirety…

14. …The High Court has mainly taken one singular circumstance into account, namely, that on the fateful night, the appellant alone was nearest to the victim and therefore, the inference is inescapable that it is he who administered poison to her…

15. It appears to us that the High Court very conveniently ignored the exchange of letters between the deceased Poonam and her mother which disclosed cordial relations between the two families…

…

21. We are satisfied that the trial court, for good and cogent reasons, acquitted all the accused including the appellant and it is the High Court which committed error in reversing the well-considered judgment of the trial court so far as the appellant is concerned…

…

23. The appeal is allowed.

This Judgment is also reported at (2011) 3 SCALE 453.

IN THE SUPREME COURT OF INDIA

BACHNI DEVI & ANR.
VERSUS
STATE OF HARYANA

AFTAB ALAM, J. & R.M. LODHA, J.

R.M. LODHA, J.

…

2. Kanta died within 3 months of her marriage. On August 11, 1990, she was found dead by hanging from a ceiling fan in the appellants' house. Kanta hailed from a poor family. Her father, Pale Ram (PW-8) is a Rikshawpuller. A-2 and Kanta got married on May 12, 1990. About 20 days prior to Kanta's death, A-1 had gone to the house of PW-8 and told him that her son A-2 wanted to start milk vending business and for that a motorcycle is needed for carrying the milk to the city. She demanded a motorcycle for A-2 to be purchased by PW-8. PW-8 did not accede to her demand and told A-1 that he was not in a position to purchase motorcycle as demanded by her. A-1 warned PW-8 that if he failed to provide a motorcycle to A- 2, then Kanta would not be allowed to stay in the matrimonial home. PW-8 called Amar Singh (PW-10) and Mam Chand (DW-1) to his house and told them about the demand made by A-1. A-1 reiterated the demand and warning in their presence and left the house of PW-8.

3. This was the beginning of Kanta's end. A-1 and A-2 started harassing and ill-treating her…

4. …On August 12, 1990, PW-8 was informed by some villager that Kanta was dead. PW-8 then went to the house of A-1 and A-2 along with few persons and saw the dead body of Kanta lying in a room. It appeared to PW-8 that Kanta's death had occurred some 2/3 days earlier.

5. Kanta's death having taken place in unnatural circumstances, PW-8 reported the matter to the police immediately and a First Information Report (FIR) was registered on that very day (August 12, 1990) at Police Station Ladwa under Section 304B IPC…

…

7. The trial court vide its judgment dated March 6, 1991 held that the prosecution has been able to establish that the death of Kanta was within seven years of her marriage and otherwise than under normal circumstances; that before her death she was subjected to cruelty and harassment by A-1 and A-2 in connection with the demand of motorcycle and that A-1 and A-2 were guilty of causing dowry death.

…

9. Learned counsel for the appellants argued that there was no evidence of demand of motorcycle by A-2. He further argued that in any case the demand of motorcycle for the purposes of the business does not qualify as a 'demand for dowry' and, therefore, no offence under Section 304-B IPC can be said to have been made out against the appellants. In this regard, he relied upon a decision of this Court in *Appasaheb & Anr.* v. *State of Maharashtra(2007 (9) SCC 721)*.

…

15. 1961 Act was enacted to prohibit the giving or taking of 'dowry' and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for 'dowry' before marriage, at the time of marriage or any time after the marriage is an offence…In *S. Gopal Reddy* v. *State of A.P. (1996(4) SCC 596)*, this Court stated as follows :

"9. The definition of the term 'dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the

said parties" would become 'dowry' punishable under the Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".

….

16. While dealing with the term 'dowry' in Section 304B IPC, this Court in the case of *Kamesh Panjiyar @ Kamlesh Panjiyar* v. *State of Bihar (2005 (2) SCC 388)*held as under:

"14. The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused ... or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC."

17. Learned counsel for the appellants heavily relied upon the following observations made by this Court in the case of *Appasaheb:*

"A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood".

The above observations of this Court must be understood in the context of the case. That was a case wherein the prosecution evidence did not show 'any demand for dowry' as defined in Section 2 of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. *Appasaheb* cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some

business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial.

18. In the backdrop of the above legal position, if we look at the facts of the case, it is clearly established that Kanta died otherwise than under normal circumstances. There is no dispute of fact that death of Kanta occurred within seven years of her marriage. That Kanta was subjected to harassment and ill-treatment by A-1 and A-2 after PW-8 refused to accede to their demand for purchase of motorcycle is established by the evidence of PW-8 and PW-9. …

19. The High Court has also examined the matter thoroughly and reached the finding that A-1 and A-2 had raised a demand for purchase of motorcycle from PW-8; this demand was made within two months of the marriage and was a demand towards 'dowry' and when this demand was not met, Kanta was maltreated and harassed continuously which led her to take extreme step of finishing her life. We agree with the above view of the High Court. There is no merit in the contention of the counsel for the appellants that the demand of motorcycle does not qualify as a 'demand for dowry'. …

20. For the foregoing reasons, we find no merit in the appeal and it is dismissed accordingly. Two months' time is given to A-1 to surrender for undergoing the sentence awarded to her.

This Judgment is also reported at (2011) 4 SCC 427.

CHAPTER TWO

SECTION 304-B IPC

Finding that the Dowry Prohibition Act 1961 was not as effective in combating the social practice of dowry, in 1986 the legislature decided to create a criminal offence that made the 'dowry death' of a woman a criminal offence for which the person responsible could be prosecuted. Parliament did this by inserting section 304-B to the Indian Penal Code (IPC), which came into force on 19 November 1986. Section 304-B IPC states:

(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.

The prosecution must therefore establish the following three elements beyond reasonable doubt in order to secure a conviction for this offence:

1. 'Death of a woman by burns, bodily injury or otherwise than under normal circumstances'. A non-natural and non-accidental death is therefore required.
2. This must occur within seven years of the woman's marriage.
3. It must be established by evidence that soon before the woman's death, she was subject to cruelty and/or harassment by her husband and/or any of his relatives in relation to demand(s) for dowry.

This has been clearly stated in several Supreme Court judgments including *Dasrath Vs. State of M.P*[1].

As the cases in this chapter indicate, the Court has found dealing with the first and second elements of this offence generally unproblematic. The majority of cases in this area have therefore concerned the third element: That the wife must have suffered cruelty and/or harassment at the hands of her husband and/or his relatives in connection with demands for dowry soon before her death [Please note that the 'soon before' aspect of this requirement is dealt with in Chapter 3].

Many cases have sought to clarify the meaning of demands for 'dowry': Several of these cases can be found in the Chapter 1 because the term 'dowry' within this section carries the same meaning as it does under section 2 of the Dowry Prevention Act 1961. However the Court has also decided certain other cases focussing exclusively on the meaning of 'dowry' for the purposes of section 304-B. In *The State of Andhra Pradesh Vs. Raj Gopal Asawa and Anr.*[2], for example, the victim committed suicide which resulted in her brother-in-law, mother-in-law and husband being charged under Section 304-B IPC. The victim's brother-in-law and husband were convicted of this offence at trial but their convictions were overturned in the High Court partly because the demands were made after the victim's marriage. The Supreme Court however considered that demands for dowry after a marriage had occurred were to be considered a 'demand for dowry' within the section 304-B offence. In *Tarsem Singh Vs. State of Punjab*[3], the Court added that where the reason the victim dies is her husband's 'ego problem', as it was in this case, rather than any 'demand for dowry', he cannot be convicted under section 304-B IPC.

The Supreme Court has made clear, through several of its judgments, that the legal definition of 'cruelty' under section 304-B is the same as it

1 (2010) 12 SCC 198
2 (2004) 4 SCC 470
3 AIR 2009 SC 1454

is under section 498-A IPC. The Court has also taken the opportunity to better articulate what this has meant in practice in the following cases. In *G.V. Siddaramesh Vs. State of Karnataka*[4], it held that cruelty could be either mental or physical and was difficult to precisely define because of its relative nature. Where mental 'cruelty' is involved however, the Court sought to define it further as 'such that if the wronged party continues to stay with his/her spouse there is reasonable apprehension of injury to the wronged party'. As an indication, in *Dhain Singh and Anr. Vs. State of Punjab*[5] the Court held that the victim had clearly suffered cruelty and harassment in line with section 304-B where the first appellant sent her away from his house, allowed her back to his house only after a mediation and death occurred within a period of two months thereafter.

The Court, as with all the other dowry death offences, has been strongly inclined to interpret the section 304-B offence widely so that the purposes of justice can be served and the right people are convicted. This is because the dowry death legislation is designed to combat a social evil so needs to be flexibly construed by the courts if it is to be effective. An example of this approach can be found in *State of Karnataka Vs. M.V. Manjunathegowda & Anr.*[6]. In this case the victim was discovered dead in a well and found to have died because of severe head injuries. The first respondent was convicted of offences under sections 302 and 201 IPC, but these were set aside in the High Court because of inconsistencies in some of the prosecution witnesses' testimonies. On appeal however, the Supreme Court reinstated the first respondent's conviction stating that that 'minor discrepancies' in evidence would not be allowed to prevent a conviction where that would result in a 'grave miscarriage of justice'.

The Court has also used its judgments to compare section 304-B with section 302 IPC. In *Sanjay Kumar Jain Vs. State of Delhi*[7] for example, it

4 (2010) 3 SCC 152
5 (2004) 7 SCC 759
6 (2003) 2 SCC 188
7 AIR 2011 SC 363

dealt with the comparison between section 302 IPC and section 304-B IPC and held that the section 304-B offence was more easily established than the offence of murder under section 302 IPC. [For an in-depth comparison between Sections 304-B IPC and 498-A IPC, please refer to Chapter 4]

In *Dharam Chand Vs. State of Punjab and Ors.*[8], the Court further decided on the issue of whether State authorities hold the power to remit defendants' sentences where the defendant is convicted under section 304-B. In this case, the appellant was the victim's brother and he sought to challenge a High Court order that released the victim's husband, who had been convicted of a section 304-B IPC offence, before the expiry of his seven-year sentence. On discovering that the victim's husband had been released pursuant to a Government Order issued by the State of Punjab, the Court held that he should not have been released. This is because the legislation conferring this power of sentence remission on State Authorities (Section 432 of the Code of Criminal Procedure, 1973 and Article 161 of the Constitution) explicitly states that it cannot be used where the defendant is charged with a section 304-B offence.

8 (2008) 15 SCC 513

IN THE SUPREME COURT OF INDIA

STATE OF KARNATAKA
VERSUS
M.V. MANJUNATHEGOWDA & ANR.

Y.K. SABHARWAL, J.& H.K. SEMA, J.

SEMA, J.

…

2. The deceased-Kamalamma got married with accused No. 1 on 17.5.1987. On 14.11.1987, she was murdered and her body was found in a dry well. There is no dispute that the death was unnatural. The death of the deceased occurred within 7 years of her marriage with accused No.1.

3. Accused No.1 (respondent No.1 herein) was tried along with accused Nos. 2 and 3 in the Court of Sessions Judge, Chikmagalur, for the offence under Section 302 IPC and in the alternate under Section 304B IPC. They were also charged under Section 201 read with Section 34 IPC. Accused Nos. 1 and 2 were also charged under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 (hereinafter the Act) read with Section 34 IPC. All the accused belong to Manimakki village. …

4. The learned Sessions Judge, after concluding the trial, found that A-1 was the sole perpetrator of the crime and convicted A-1 under Sections 302 and 201 IPC and sentenced him to undergo life imprisonment and two years' RI respectively. The learned Sessions Judge also found him guilty under Sections 3, 4 and 6 of the Act and sentenced him to undergo 5 years' RI and a fine of Rs.15,000/-, six months' RI and a fine of Rs.3000/- and six months RI and a fine of Rs.5000/- on each count under Sections 3, 4 and 6 of the Act and in default of payment of fine, to undergo RI for six months. All the sentences were ordered to run concurrently. …

…

6. The case set up by the accused before the Trial Court was that the death of the deceased was a suicidal death. It was pleaded that the deceased slipped into the well while going to fetch water from the well. The plea of suicidal death was completely ruled out both by the Trial Court and the High Court. Both the Courts held that the death of the deceased was homicidal. …

…

10. The High Court did not accept the demand of dowry and the payment of dowry, as according to the High Court, there were discrepancies in the statements of PW-1 brother of the deceased and PW-6 father of the deceased. It may be noted that PW-1 had stated that Rs.7000/- was paid as against the testimony of PW-6 that Rs.8000/- had been paid. The High Court had considered this discrepancy to be fatal in nature…We are of the view that this finding of the High Court is clearly perverse and against the weight of evidence on record. The High Court, in our opinion, has failed to consider the evidence on record in its proper perspective…One should not fail to take note that the witnesses are rustic villagers. It is difficult to expect them to remember the events with mathematical precision after a lapse of more than two years. It is a common knowledge that ordinarily human memories are apt to blur with the passage of time. More so in the present case, when witnesses are rustic villagers. In such a situation, there are bound to occur certain discrepancies, which are in the form of omission and they cannot be considered as fatal to their evidentiary value, otherwise trustworthy. At the same time, they are unexposed to the technicalities of urban life and they speak plainly what they saw and did. They are straight forward looking people, truthful and trustworthy. Their testimony cannot be thrown out on the ground that it lacks spontaneity…

…

16. The next and important question to be considered is as to whether A-1 is liable for conviction under Section 304B IPC. As already

noticed, an alternate charge was framed under Section 304B but the Sessions Court as well as the High Court did not record any findings under this count. The Sessions Judge did not record any separate finding under this section presumably because the accused was convicted under Section 302 IPC. The High Court did not record any conviction under this section as the High Court was of the view, which according to us is erroneous, that no demand of dowry and payment of dowry has been established. We have already held that there is over-whelming evidence against A-1 with regard to demand and receipt of part of dowry.

17. The Dowry Prohibition Act, 1961 (Act 28 of 1961) was enacted by the Legislature effective from 20th May, 1961…

18. Ever since the Act came into being, there is a sea of change by various amendments so as to make the Act more purposeful and punishment deterrent. Realising that despite the Dowry Prohibition Act, the evil practice of giving and taking of dowry remains unabated and the dowry related offences were menacingly on the increase, the Act was amended by Act No. 63 of 1984… The Act was further amended vide Act No. 43 of 1986…

…

20. Consequent upon the aforesaid amendment Section 304B IPC was inserted in the Indian Penal Code and Section 113B was inserted in the Indian Evidence Act respectively.

…

23. The aforesaid legal position, as it stands now, is that in order to establish the offence under Section 304B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 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. Such harassment and cruelty must be in connection with any demand for dowry.

24. If the prosecution is able to prove the aforesaid circumstances then the presumption under Section 113B of the Evidence Act will operate. It is the rebutable presumption and the onus to rebut shifts on the accused.

25. The accused was examined under Section 313 Cr.P.C. The defence of the accused was a total denial. Therefore, the presumption as to dowry death envisaged under Section 113B of the Evidence Act remains unrebutted. We have already held that there is overwhelming evidence against the accused with regard to the demand of dowry and acceptance of a part of dowry… The only question remains to be answered is as to whether the deceased was subjected to cruelty or harassment by the accused in connection with any demand of dowry soon before her death or not. To answer this question, it will be profitable to refer to the testimony of PW-1, the brother of the deceased and PW-6, father of the deceased. From the prosecution of evidence on record, it will clearly appear that the remaining balance of dowry was Rs.2000/- and three sovereigns of gold. PW-1 had stated that four days earlier to Diwali festival she came to the parental house and asked them to clear the dowry due and she also said that she was tortured by her husband and her mother-in-law on the dowry issue. To this, PW-1 replied that he would pay in January after the harvest. But the deceased told him that she would not go back to her husband's house as her husband (accused) and her mother-in-law would torture her if she went back without money and gold. She was persistent that she would not go back after Diwali festival. Then PW-1 also stated that his father PW-6 went along with her sister (deceased) and stayed there over-night and came back the following morning. Thereafter, on 14.11.1987 they received information that his sister had been murdered…

…

26. Despite various amendments providing deterrent punishment with a view to curb the increasing menace of dowry deaths, the evil

practice of dowry remains unabated. The Court cannot be oblivion to the intendment of the legislature and the purpose for which the enactment of the law and amendment has been effected. Every court must be sensitized to the enactment of the law and the purpose for which it is made by the legislature, keeping in view the evil practice of giving and taking dowry, which is having a deleterious effect on the civilized society. It must be given a meaningful interpretation so as to advance the cause of interest of the society as a whole. No leniency is warranted to the perpetrator of the crime against the society. Keeping these overall accounts and circumstances in the background, we are of the view that a deterrent punishment is called for. Accused No.1 (M.V. Manjunathegowde) is accordingly convicted under section 304B IPC and sentenced to rigorous imprisonment for ten years. The impugned order of the High Court is set aside and the appeals filed by the State are allowed to the extent indicated. We, however, refrain from interfering with the order of acquittal passed by the High Court insofar as the offence under Section 302 IPC is concerned.

This Judgment is also reported at (2003) 2 SCC 188.

IN THE SUPREME COURT OF INDIA

THE STATE OF ANDHRA PRADESH
VERSUS
RAJ GOPAL ASAWA AND ANR.

DORAISWAMY RAJU & ARIJIT PASAYAT

ARIJIT PASAYAT, J.

1. The State of Andhra Pradesh has questioned legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court holding respondents to be not guilty of the alleged offences for which the Trial Court had convicted them i.e. offences punishable under Section 304B and Section 498A of the Indian Penal Code 1860 (for short 'the IPC').Three persons faced trial relating to the alleged suicidal death of one Mangala (hereinafter referred to as 'the deceased'). A-3 was her husband, while A-1 and A-2 were her brother-in-law and mother-in-law respectively. During the pendency of the appeal before the High Court, A-2 expired and the appeal was held to be abated so far she was concerned.

2. Accusations which led to the trial were as follows:

   The deceased and A-3 were married on 6.7.1989. Admittedly, the accused committed suicide at about 11.30 a.m. on the date of occurrence i.e. 2.4.1990. The accused persons took her to the hospital where she was declared to be dead. The Inspector of Police sent a complaint to the SHO to register a case. FIR was registered and investigation was undertaken…

3. In the appeal before the High Court the primary stand taken was that there was no evidence to show about any agreement or demand for payment of dowry before the marriage. Even if any subsequent demand was made as alleged, that cannot bring in application of Section 304B IPC... The High Court by the impugned

judgment held that on the ground surged by the accused persons, conviction cannot be maintained. With reference to a decision of the Andhra Pradesh High Court in Ayyala Rambabu v. State of Andhra Pradesh (1993 (1) ALT (Crl.) 73) it was held that to constitute "dowry", the demand should be made directly or indirectly, either at the time of marriage, or before the marriage or at any time after the marriage in connection with the marriage of the parties. If there was no agreement between the parties to give or take any property or valuable security or where the property or valuable security has been given or taken but thereafter further amounts are demanded after the marriage, such demands will not fall within the meaning of dowry…

4. Mr. G. Prabhakar, learned counsel for the State submitted that the legal position has not been properly appreciated by the High Court. The view taken that subsequent demand does not constitute dowry is clearly untenable…

5. In response, learned counsel for the accused respondents submitted that the view taken by the High Court both on the interpretation of the term "dowry" and the factual aspects is correct. Further in order to attract application of Section 304B, there must be a proximity link of the demand with the alleged suicide…

…

9. The offence alleged against the respondents is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays important role and inferences can be drawn on the basis of such evidence. That

could be either direct or indirect. It is significant that Section 4 of the Act was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry,is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

10. Section 113-B of the Evidence Act is also relevant for the case at hand…Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

    1. The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).
    2. The woman was subjected to cruelty or harassment by her husband or his relatives.
    3. Such cruelty or harassment was for, or in connection with any demand for dowry.
    4. Such cruelty or harassment was soon before her death.

11. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon

before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence…

13. Their accusations have been clearly established so far as A-1 is concerned. The evidence of PWs 2, 3, 4 and 6 are clear, cogent and trustworthy. They have categorically spoken about the demand as made by A-1 and A-2. Therefore, the High Court was not justified in holding that no demand was made…

14. In the ultimate result the appeal is allowed so far respondent no.1 - A-1 is concerned while it is dismissed so far as respondent no.2 - A-3 is concerned.

15. The appeal is allowed to the extent indicated.

This Judgment is also reported at (2004) 4 SCC 470.

IN THE SUPREME COURT OF INDIA

DHAIN SINGH AND ANR.
VERSUS
STATE OF PUNJAB

K.G. BALAKRISHNAN & DR. AR. LAKSHMANAN

…

2. The incident happened on 13.10.1988. Shinder Kaur the daughter of PW-2 was married to the first appellant Dhian Singh about two and a half years prior to her death. After the marriage Shinder Kaur stayed with her husband for about one year. It was alleged that the first appellant, the husband, wanted more dowry and started harassing her so she left her matrimonial home and started staying with her parents. Then at the intervention of the local panchayatdars a settlement was effected and about two months prior to her death, she left her parents' house and again started staying with the appellant Dhain Singh. On 22.10.1988, PW-2 came to know that his daughter Shinder Kaur was burnt to death…

…

5. The counsel for the appellant urged before us that there was absolutely no evidence to show that the first appellant had ever demanded any dowry from PW-2. It was also contended that the prosecution failed to produce any evidence to show that there was any cruelty on the part of the first appellant. The contention of the appellant is not correct. PW-2 gave evidence to the effect that the appellant had demanded dowry and he demanded television set and PW-2 could not give the same and therefore the deceased was sent back to her parental home. It is also important to note that the deceased left the house of husband as she could not bear the miserable life in his house and there was a panchayat also to settle the dispute. Admittedly, the deceased Shinder Kaur died of burn

injuries. It was proved that incident happened within the period of seven years of her marriage. Section 304-B defines the Dowry death and it states that 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 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…

6. Section 113-B of the Evidence Act enables the Court to draw presumption in such circumstances to the effect that, 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 had been subjected by such person to cruelty or harassment or in connection with any demand for dowry, such person shall be deemed to have caused the dowry death.

7. The contention of the appellant's counsel is that even if it is proved that there was cruelty on account for demand of dowry, such cruelty shall be soon before the death and there must be proximate connection between the alleged cruelty and the death of the deceased. It is true that the prosecution has to establish that there must be nexus between the cruelty and the suicide and the cruelty meted out must have induced the victim to commit suicide. The appellant has no case that there was any other reason for her to commit suicide. The evidence shows that the first appellant had demanded dowry and he had sent her away from his house and only after the mediation she was taken back to appellant's house and death happened within a period of two months thereafter. These facts clearly show that the suicide was the result of the harassment or cruelty meted out to the deceased. The presumption under Section 113-B of the Indian Evidence Act could be invoked against the appellant and the Sessions Court rightly found the appellant

guilty of the offence punishable under Section 304-B IPC and Section 201 IPC.

8. The second appellant is the paternal uncle of the first appellant. He was found guilty for the offence punishable under Section 201 IPC for causing disappearance of the evidence. The allegation against this appellant was that he helped in cremating the body of deceased Shinder Kaur.

9. The counsel for the appellant contended that mere participation in cremation of the body by itself is not sufficient to prove that he committed the offence punishable under Section 201 IPC. It was argued that in order to establish charge under Section 201 IPC, it is essential to prove that an offence has been committed and the accused knew or had reasons to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information.

10. Reliance was placed on Palvinder Kaur v. The State of Punjab, reported in AIR (1952) SC 354, there the Court held that there was no direct evidence to show that the appellant therein was aware that an offence had been committed and there was no direct circumstantial evidence which was essential to prove the ingredients of the offence. In the instant case the glaring facts are to be noticed, Shinder Kaur died on 13.10.1988 of burn injuries. She was admittedly residing with the first appellant. According to the first appellant he was not in his house when Shinder Kaur sustained burn injuries. In his examination under Section 313 Cr P.C., he had taken the injured Shinder Kaur to the hospital. But the defence witness examined in the case deposed that Shinder Kaur was taken initially to a private doctor and as per his instructions she was taken to another government hospital but on the way she died. The first appellant did not inform the matter to the police and the body was cremated without any Information being given to the police. The second appellant was residing near to the residence of

first appellant. It is also pertinent to note that PW-2, the father of the deceased gave evidence to the effect that he was not informed of the death of his daughter at all and he came to know of her death through PW-6, Mukhtiar Singh. First appellant contended that there were about 50 persons at the cremation place including PW-2 and his relatives. There is absolutely no evidence to show that the cremation was done in the presence of PW-2 or any close relative of the deceased. The failure to inform PW-2 and police about the incident and the fact that the injured was not admitted in any hospital show that everything was done in clandestine and secret manner and circumstances of the case would show that the 2nd appellant was party to the secret disposal of the dead body. Hence, knowledge can be attributed to him that he knew well that an offence had been committed and he caused disappearance of the evidence. We do not find any illegality in the conviction of second appellant under Section 201 IPC.

11. Appellant No. 2 was granted bail by this Court and he had undergone imprisonment only for a period of one year. He has to surrender to his bail bonds to undergo the remaining period of sentence.

12. The appeal is disposed of accordingly.

This Judgment is also reported at (2004) 7 SCC 759.

IN THE SUPREME COURT OF INDIA

DHARAM CHAND
VERSUS
STATE OF PUNJAB & ORS.

C.K. THAKKER, J. & D.K. JAIN, J.

C.K. THAKKER, J.

…

2. The present appeal is filed by the complainant, brother of deceased Anju Devi against the judgment and order dated October 31, 2006 by the High Court of Punjab & Haryana in Criminal Appeal Nos. 992-SB of 2002 and 1012-SB of 2002. By the impugned judgment, the High Court allowed the appeal No. 1012-SB/2002 filed by Vinod and partly allowed the appeal No. 992-SB/2002 filed by other accused and acquitted some of the respondents-accused for offences with which they were charged reversing the order of conviction recorded by the trial Court.

…

4. It was the case of the prosecution that at the time of marriage, the parents of the deceased Anju Devi spent an amount of Rs.3,50,000/-. They also paid substantial amount of dowry to the accused. Anju Devi delivered a female child Diksha who was about two years of age at the time of incident. The allegation of the prosecution was that immediately after marriage of Anju Devi, her in-laws were harassing Anju Devi by making demands of dowry. At several occasions, deceased Anju Devi made complaints about such demands. It was stated that though substantial amount was paid by the parents of deceased Anju Devi, her in-laws were insisting for more and more amount…

5. It is alleged by the prosecution that on March 14, 2000, at about 9.00 a.m., deceased Anju Devi telephoned the appellant (her brother) that accused were harassing her and giving her beatings and were asking her to leave matrimonial home. Such cruel treatment and demand for dowry was made by all the accused. According to the appellant, he came along with his brother Jai Bhagwan, Sarpanch Harbans Singh and some other people to persuade the in-laws of deceased Anju Devi, but when they reached at the house of the accused, they found dead body of deceased Anju Devi lying burnt in bath room…

…

7. The Additional Sessions Judge, Patiala in Sessions Case No. 16 of 2000 decided on June 13, 2002 held that it was proved by the prosecution that the deceased died homicidal death and all the accused were responsible for committing the said crime…

8. Being aggrieved by the order of conviction and sentence, all the accused preferred appeals before the High Court. The High Court allowed the appeals filed by Rajesh, accused No. 3, Vinod, accused No. 4 and Kiran, accused No. 5 on the ground that they were residing separate from accused Nos. 1 and 2. It, however, dismissed the appeal filed by accused No. 1, Jolly Singla, husband of deceased Anju Devi and accused No. 2 Reshma Devi, mother in law of deceased Anju Devi. So far as respondent No. 2 Jolly Singla, accused No. 1-husband of deceased Anju Devi is concerned, the High Court observed that he had already undergone the imprisonment and was released. The said order is challenged by the complainant by filing the present appeal.

…

17. The High Court, in our opinion, was right in dismissing the appeal filed by accused No.1-husband and accused No.2-mother-in-law of deceased Anju Devi and in confirming the order of conviction and sentence.

18. In our opinion, however, the High Court was wrong in observing that the respondent No. 2 herein (accused No. 1) husband of Anju Devi had already undergone the sentence. From the evidence, it is clear that the incident in question took place on March 14, 2000 and the High Court decided the matter on October 30, 2006. Hence, even if we take the first day, i.e. date of offence and the last day, i.e. the date of judgment by the High Court, even then seven years were not over. Seven years from the date of incident would be over only on March 13, 2007.

19. The High Court, in the impugned judgment, observed as under;

"From the above discussion, I am of the view that prosecution case against accused-appellants Vinod, Rajesh and Kiran for the offence under Section 304-B IPC is not proved beyond doubt. They are entitled to acquittal and are acquitted. Jolly Singla happens to be husband and Reshma Devi is mother-in-law of the deceased. They were residing together with Anju, deceased. Appeal field by them is dismissed. Jolly Singla is stated to have already undergone imprisonment and released". (emphasis supplied)

20. From the above observations, it is clear that before the High Court, it was "*stated*" on behalf of the husband that he had already undergone the imprisonment and was released. When we asked the learned counsel for respondent No. 2 as to how the High Court recorded the above finding, he could not give satisfactory reply on what basis it was *stated* before the High Court that accused No. 1-husband had *already* undergone imprisonment and was released. We, therefore, asked the learned advocate for the State of Punjab to file an affidavit stating the basis of the statement and release of accused No.1. Such affidavit was filed on behalf of the State and the learned Government Pleader stated that it was as per the Order dated August 14, 2002 issued by the Government of Punjab, Department of Home affairs and Justice (Jails Branch) that accused No. 1 was treated as having undergone imprisonment for seven

years. A copy of the said order was also produced along with the counter-affidavit.

21. The Order was issued by the Government of Punjab in exercise of power conferred by Section 432 of the Code of Criminal Procedure, 1973 and Article 161 of the Constitution. Clause A provides for remission of sentence of imprisonment for life in certain cases. It is, however, expressly stated that the benefits referred to in that part of the Order would not apply to certain cases. The said head reads thus;

    "These benefits are not admissible in the following cases".

    Sub-clause (vii) of that part deals with offences under *Section 304B, IPC, i.e. a dowry death*.

22. It is, therefore, clear that in case of dowry death, an offence punishable under Section 304B, IPC, the benefit of remission of Government Order does not apply. If it is so, in our opinion, the benefit could not be granted to respondent No. 2–husband. Hence, even if accused No.1 or accused No.2 had been released before completion of seven years, such action could not be said to be legal and lawful. If it is so, obviously, the appeal deserves to be allowed to that extent.

23. For the foregoing reasons, the appeal deserves to be partly allowed and is allowed by directing respondent No. 2 Jolly Singla to surrender to custody and to remain in jail for a period of seven years which he had to undergo as per the order of the trial Court. If such benefit is granted to accused No. 2, she also had to surrender to custody till the period of seven years is over.

24. The appeal is accordingly allowed to the above extent.

This Judgment is also reported at (2008) 15 SCC 513

IN THE SUPREME COURT OF INDIA

TARSEM SINGH
VERSUS
STATE OF PUNJAB

S.B. SINHA, J. AND CYRIAC JOSEPH, J.

S.B. SINHA, J.

1. Appellant was prosecuted for committing murder of his wife Amriko. They were married in the year 1983. Appellant was employed in the Army as a Naik. Indisputably, the parents of the deceased came from the lower strata of the society. They were very poor. The father of the deceased was working as a Mate in the Canal Department at Jaura Kothi. They were not in a position to give sufficient dowry to their daughter. At the time of marriage, they had given only few items, such as, utensils, beddings, clothes etc. After the marriage also, they had not been able to give anything to the deceased Amriko by way of dowry or otherwise.

   Allegedly, on the ground that insufficient dowry had been brought by the deceased, she was tortured. The harassment increased as she was unable to bear a child. She used to be thrown out of the house. However, she used to be sent back by her parents. Her visit to the matrimonial home, when appellant visited the village upon obtaining leave, was mandatory. Some disputes appeared to have arisen as to whether the appellant himself on all the occasions should visit her parents' house to bring her back to the matrimonial home. On most of the occasions, the father of the appellant used to go to their place and bring her back.

   A few days prior to the date of occurrence, appellant is said to have addressed a few letters, two of which were marked as Exhibit PJ & PH respectively; one of them was in 'Gurumukhi' language, the other being in English vernacular.

One letter was addressed by the appellant to his father and another which is in Gurumukhi script was addressed to the brother-in-law of the deceased. The common thread in both the letters appears to be that the appellant was unwilling to keep the deceased with him. It was stated that during his visit she should come herself or her parents must get her there.

Indisputably again, the deceased had mostly been residing with her parents. Ten days prior to the date of occurrence, the deceased came to her house and disclosed that Tarsem Singh had written a letter to her parents asking them to turn her out of the house or otherwise he would kill her. However, as appellant was to come home on leave, Harnam Singh, father of the appellant, came to her parents' place. When asked to allow Amriko to go with her, an apprehension was expressed by PW-5-Dato (mother of the deceased) in regard to the said letter and expressed her unwillingness to allow Amriko to go with him. She insisted that she would send Amriko only with Tarsem Singh. However, on assurance by Harnam Singh that no such threatening letter had been received and he treats her as his own daughter, she was allowed to go with him. After a few days, Sukhwinder Singh, brother of the deceased was sent to enquire about the welfare of Amriko and to find out whether Tarsem Singh had come on leave or not. He left his house at 11.00 a.m. but he came back some time thereafter to inform his mother that Amriko had been murdered by her in-laws. At about 4.00 p.m., a First Information Report (FIR) was lodged against Parmjit Kaur, Manjit Kaur, sisters of appellant, Mohinder Singh, cousin of appellant and Tarsem Singh, appellant.

2. Before the learned Sessions Judge, charges under Section 302 and in the alternative under Section 304B of the Indian Penal Code were framed.

…

4. Mr. Mahabir Singh, learned Senior Counsel appearing on behalf of the appellant would submit that the learned Sessions Judge as also

the High Court committed a serious error in passing the impugned judgments of conviction and sentence insofar as they failed to take into consideration that neither in the FIR nor in the evidence of PW-5, any allegation was made to the effect that any dowry was demanded by the appellant…

5. Mr. Kuldip Singh, learned counsel appearing on behalf of the State, however, supported the impugned judgment.

6. Before us, the translated version of the FIR has been produced by Mr. Mahabir Singh to show that no allegation as regards demand of dowry had been made against the appellant. However, Mr. Kuldip Singh contended that upon reading of the FIR in its entirety it would appear that after the name of Tarsem Singh, the names of his parents, namely, Harnam Singh and Parsin Kaur had been mentioned and, thus, it is clear that all of them had been ill-treating Amriko for non-bringing of sufficient dowry and not bearing a child. The learned counsel appears to be correct.

7. It is, therefore, not correct to contend that FIR does not contain any statement of cruelty or harassment of the deceased for non-bringing of dowry. The marriage took place in the year 1983. The occurrence took place on 18.3.1987. The dead body was found in the matrimonial home of the deceased.

…

9. Before embarking on further discussions on this issue, we may place on record that the appellant examined Niranjan Dass as DW-1, who is said to have examined the deceased before her death. He found her to be suffering from pain in her chest and breathlessness. According to him, she was suffering from pneumonia. Some medicines were allegedly prescribed for the said disease. Whether any medicine was administered to her or not is not clear. Although there are doubts about the veracity of the said statement, the fact that the appellant and his family tried to conceal the reason for the death of the deceased is of some significance.

12. …As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive provision of Section 113B of the Evidence Act, one of the essential ingredients, amongst others, is that the 'woman' must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry".

    Presumption in terms of Section 113B is one of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

    1. The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.)
    2. The woman was subjected to cruelty or harassment by her husband or his relatives.
    3. Such cruelty or harassment was for, or in connection with, any demand for dowry.
    4. Such cruelty or harassment was soon before her death.

13. Harassment caused to the deceased was on three counts:

    1. Insufficient dowry;
    2. Inability to bear a child; and
    3. Insistence by her parents that every time appellant must go to her parents' house for bringing her back.

14. It appears that FIR (Exhibit-PF/2) lodged by PW-5 emphasizes on two reasons of harassment, namely, (1) previously on the pretext of bringing in insufficient dowry, and (2) thereafter for not bearing a child.

15. There is, thus, nothing on record to show that any demand of dowry was made soon before her death. The cause of action for committing the offence appears to be an ego problem on the part of the appellant, namely, the deceased had not been coming to her matrimonial home on her own, while he had been coming to his home on leave.

…

17. In Hira Lal & Ors. v. State (Govt. of NCT), Delhi [(2003) 8 SCC 80], this Court held:

"9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution…

It was furthermore held:

"Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498-A IPC...Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections (See Akula Ravinder v. State of A.P. (1991 Supp. (2) SCC 99)..."

18. In T. Aruntperunjothi vs. State through S.H.O. Pondicherry [2006 (9) SCC 467], this Court held:

"37.It, therefore, appears that no cogent evidence had been adduced by the prosecution to establish that the appellant had demanded any dowry. It would bear repetition to state that according to the mother of the deceased, PW-7 only PW-3 demanded dowry and only he was responsible for the death of her daughter. If that be so, he should have also been prosecuted."

19. Mr. Kuldip Singh, however, in our opinion, might be right in contending that on the materials on record it was possible for the trial court as also the High Court to pass a judgment of conviction against the appellant under Section 302 of the Indian Penal Code as the death occurred in the matrimonial home. It was a homicidal death. Appellant in a statement under Section 313 of the Code of Criminal Procedure did not make any statement that the deceased committed suicide or it was an accidental one. In a case of this nature, even Section 106 of the Indian Evidence Act could be brought to use. However, it was not done. Appellant has been convicted only under Section 304B of the Code.

20. For the aforementioned purpose, the learned counsel wants us to invoke Section 386(b)(iii) of the Code of Criminal Procedure, which reads as under:

"386 - Powers of the Appellate Court.- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) ……

(b) in an appeal from a conviction—

(i) ……

(ii) ……

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"

21. In Harjit Singh vs. State of Punjab [(2006) 1 SCC 463], this Court held:

"16.A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death"

…

…

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression…If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death"."

30. The ingredients of Section 306 and Section 304B are different and distinct. In any event, no evidence has been brought on record to show that there has been any act of omission or commission on the part of the accused, before the death of the deceased to demonstrate that the appellant was responsible for the same. We

have noticed hereinbefore that the High Court, for the first time, in its judgment on a hypothesis observed that when her father came to see her, he must have been insulted or felt hurt as she might have been subjected to harassment. Unfortunately, no evidence whatsoever has been brought to our notice to enable us to sustain the said finding and in that view of the matter we are unable to accept the submissions of the learned Counsel appearing for the Respondent State."

…

33. For the aforementioned reasons, the impugned judgment cannot be sustained and it is set aside accordingly. The appeal is allowed. The appellant who is in custody is directed to be set at liberty and released forthwith unless wanted in connection with any other case.

This Judgment is also reported at AIR 2009 SC 1454

IN THE SUPREME COURT OF INDIA

G.V. SIDDARAMESH
VERSUS
STATE OF KARNATAKA

P. SATHASIVAM, J. AND H.L. DATTU, J.

H.L. Dattu, J.

1. This criminal appeal arises out of common judgment and order passed by the Karnataka High Court in Criminal Appeal No. 1755 of 2003 and Criminal Appeal No. 665 of 2004, whereby and where under the court has partly allowed the appeal, and in so far as the appellant is concerned, while maintaining the conviction for offences punishable under Section 4 of Dowry Prohibition Act, 1961 and Sections 498-A and 304-B of the Indian Penal Code, 1860, has modified the sentence for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961 from 5 years and a fine of Rs. 2,50,000/- to 2 years and a fine of Rs. 1,25,000/- and, in default, to undergo simple imprisonment for 6 months.

…

3. On appeal, the High Court has allowed the appeal in part and has modified the sentence as stated earlier. The appellant has preferred this appeal against his conviction and sentence of imprisonment for life under Section 304-B of the Indian Penal Code.

4. The facts of the case in brief are, that the complainant K.G. Lingappa's daughter Usha (deceased) had been married to Siddaramesh (appellant) on 13.12.1997. The deceased went to her matrimonial home on 15.1.1998. On 17.1.1998, the deceased committed suicide by hanging herself… A case was registered in Cr. No. 18/1998, against the appellant and his father under Section 498-A and 304 B of the IPC and Sections 3,4 and 6 of the Dowry Prohibition Act.

The Learned Chief Judicial Magistrate committed the case to the Court of Sessions, as it involved offences exclusively triable by the Sessions Court. When the matter was pending before the Sessions Judge, the case was transferred to Fast Track Court, Devangere in accordance with a notification issued by the High Court.

5. The case of the appellant is that giving money or taking money is not dowry and further, money demanded after marriage is not dowry. The appellant further submits that the facts of the case do not disclose commission of an offence punishable under Section 498-A and 304-B of the IPC. The appellant contended that most of the witnesses examined by the prosecution were interested witnesses who were closely related to the deceased…

6. …The appellant had alleged that the deceased had committed suicide because she was in love with another person before marriage and was frustrated when she could not marry him. Again in his statement under Section 313 of Cr.PC, the appellant stated that since coming to her matrimonial home, she compared the house of the appellant to that of a "railway bogie", which, according to her, did not satisfactorily compare to her father's house and her sister's house. The trial court however observed that the appellant produced nothing on record to prove that the deceased had an affair before the marriage with another person. …The trial court also relied upon the post mortem report which revealed that death was caused due to asphyxiation due to hanging and there were also some unexplained scratches in the body which, according to the trial court was evidence of the harassment of the deceased by the appellant and, hence, concluded that the cruel treatment and harassment of the deceased by the appellant led her to commit suicide. Section 113B of the Evidence Act raises a presumption against the accused. The onus lies on the accused against whom the presumption lies to discharge it. The appellant has failed to discharge the burden satisfactorily. Based on these findings, the trial court has convicted and sentenced the accused to undergo R.I

for 5 years and a fine of Rs. 2,50,000/- and in default, to undergo R.I for two years for the offence punishable under Section 3 of the Dowry Prohibition Act; to undergo S.I for two years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 4 of the Dowry Prohibition Act; to undergo S.I for 3 years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 498-A of the Indian Penal Code; to undergo imprisonment for life for an offence punishable under Section 304-B of IPC. The trial court however went on to acquit the accused no.2 (father of the appellant) of all the charges.

7. The appellant (accused No. 1) preferred appeal before the High Court of Karnataka challenging his conviction and sentence and the State has preferred appeal challenging the acquittal of the appellant for the offence punishable under Section 6 of the Dowry Prohibition Act and accused No. 2 (father of the appellant) for all the offences. As stated earlier, the High Court has partly allowed the appeals.

8. This court while entertaining the special leave petition has issued notice confining to the offence under Section 304-B of IPC. We have heard learned counsel for the parties regarding the same.

9. Section 304-B of the IPC reads:-

   (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 purpose 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.

10. The essential ingredients which need to be proved in order to attract the offence of dowry death is as follows:-

(i) Death is caused in unnatural circumstances.

(ii) Death must have occurred within seven years of the marriage of the deceased.

(iii) It needs to be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

11. Coming to the first ingredient, the post mortem report suggests that the body of the deceased was bearing the mark of hanging and there is the indication of an injury mark 8 inches long around the neck. The cause of death was shock and asphyxia as a result of hanging. There are also unexplained traces of scratches around the neck region...

12. To prove the third ingredient, we need to peruse the testimony of the witnesses. The complainant PW-1 asserts that the appellant and his family demanded 20 tolas of gold, Rs.2 lakhs in cash and a motorcycle as dowry. Ultimately as negotiations progressed, the money was settled at Rs. 1,65,000 in cash, 18 tolas of gold and a motorcycle. These demands were met by the complainant. Also against the will of the family of the deceased, the deceased was taken to her matrimonial home on 15.1.1998, which coincided with Pushyamasa, which is considered as an inauspicious time by the family of the deceased. There is no reason to disbelieve the statement of the complainant, as the appellant himself in his statement under Section 313 of Cr.PC has stated, that, there were negotiations taking place as to the amount of money and gold, which will change hands during the course of the marriage, but he is unclear as to the place where the negotiations took place...

13. Karibasamma PW-3, the elder sister of the deceased has also stated in her evidence that when she went to the matrimonial house of the deceased on 17.1.1998, the deceased confided in her that there is further demand of Rs. 50,000/- by way of dowry by the appellant, and on account of the failure to meet the demand, she is being treated with cruelty and is harassed physically and mentally… Therefore all the ingredients of Section 304-B have been satisfied, pointing towards the guilt of the appellant.

14. Section 113-B of the Evidence Act raises a presumption against the accused and reads :-

"When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

***Explanation -** For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."*

15. A reading of Section 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a women. It is then up to the appellant to discharge this presumption. The appellant however has not brought on record anything substantial to dispel the theory of the prosecution. In fact, while filing application for grant of bail, the appellant had stated that the deceased was having an affair with another person before her marriage and since she could not marry him, she was in distress and, therefore, committed suicide. However there was no evidence brought on record to prove this theory. Further in his statement under Section 313 of Cr.P.C. he has stated that the deceased was not happy with the house of the appellant and stated that the house of her sister and father were

bigger and better. Further his theory of intimating the police and lodging a complaint before the Sub-Inspector of the Police Station at 12.30 AM fails as he had closed his shop at around 10.30 PM. After that by his own admission, he went and informed the sister of the deceased and then went outside the town to bring his father before lodging the complaint. Therefore, it is very much likely that the accused after witnessing the dead body of the deceased tried to hush up the matter and went to the Police Station much later. If this theory is to be true, this brings the suspicious behaviour of the appellant more to light, as the natural reaction to seeing the dead body of a wife who had come to her matrimonial home only 2 days earlier would be that of disbelief or shock…All these circumstances point to the fact that the appellant has not rebutted or discharged the presumption. Therefore we have no doubt in holding that the appellant is guilty for the offence punishable under Section 304-B of the IPC, for being responsible for the death of his wife.

…

This Judgment is also reported at (2010) 3 SCC 152

IN THE SUPREME COURT OF INDIA

DASRATH
VERSUS
STATE OF M.P.

V.S. SIRPURKAR, J. & MUKUNDAKAM SHARMA, J.

V.S. SIRPURKAR, J.

1. The present appeal is directed against the judgment of the High Court dismissing the appeal of the appellant Dasrath. He was convicted by the Trial Court of the offence under Section 304B, Indian Penal Code (IPC) and was sentenced to suffer rigorous imprisonment for 10 years and pay a fine of Rs. 5,000/- and in default directed to suffer further imprisonment for one year. He was also convicted for the offence under Section 201, IPC and was directed to suffer rigorous imprisonment for one year with a fine of Rs.1,000/- and in default to suffer three month's further imprisonment.

…

3. Shortly stated, the prosecution story was that Dasrath was married to Pinki who died under suspicious circumstance of burning. An intimation regarding death came to be given to the Police Station Pandhokhar, Distt. Gwalior. The said intimation was given by the complainant Vadehi Saran s/o Ramanand Kaurav who was none else but the father of the deceased Pinki. It was, *inter alia*, stated that on that day i.e. 12.8.1992 in the morning his son Jitendra Singh had gone to village Saujna for Rakhi festival to his daughter Pinki's house. But he returned at about 7 p.m. and told him that Pinki had caught fire and was sent to Daboh for treatment. Vadehi Saran further stated that on hearing the news, he along with some co-villagers went to Daboh. However, one Santosh belonging to his village met him near Dugdha Dairy and told him that Pinki had died. Then Vadehi Saran along with others went to village Saujna. But by the time they reached there, Pinki's cremation was over. It was

because of this that they came to the Police Station and further action was requested on the basis of the death report.

4. On this basis, a First Information Report was got registered on 16.8.92 wherein it was recorded that the death intimation was given on 12.8.92 at 23.15 hours orally about the death of Pinki…

…

6. Learned Senior Counsel, Dr. J.N. Singh appearing on behalf of the accused attacked the judgment of both the Courts below, firstly, contending that conviction under Section 304B, IPC and Section 201, IPC was wholly incorrect as it was not proved that Pinki had died a suspicious or un-natural death within the seven years of her marriage nor was her body found. He also contended that there was no question of demanding any dowry as no complaint was ever made for dowry nor was there any evidence regarding the demands of dowry. Lastly, he suggested that there was no question of any offence having been committed. He pointed out that the Trial Court had acquitted all the accused of the offence under Section 302, IPC though a charge was also framed under that Section and there was no appeal by the State Government against the acquittal under Section 302, IPC. Under such circumstances, it was clear that the accused persons could not be held responsible for the death of Pinki.

7. As against this, Ms. Aishwarya Bhati, Learned Counsel appearing on behalf of the respondent pointed out that it could not be said that the death did not take place within seven years of marriage as the accused himself had admitted that the marriage had taken place six years prior to the trial…Learned Counsel further contended that if Pinki had died of burning, a report ought to have been made for un-natural death which the accused did not bother to make, instead they had cremated the body of Pinki without even intimating the relatives of the deceased and also without waiting for the police. This was the most suspicious circumstance which pointed towards the guilt of the accused.

…

9. … The question is, in the absence of *corpus delicti,* could it be presumed that the accused persons alone were responsible for the death of Pinki. We must hasten to add here that the accused persons have already been acquitted of the murder charge. What remains to be seen is as to whether Pinki died an un-natural death within seven years of her marriage and whether her death was attributable to the demand of dowry and further whether she was dealt with cruelly soon before her death. If these ingredients are proved by the prosecution then the conviction of the accused under Section 304B, IPC will be complete.

10. There can be no dispute that Pinki had died an un-natural death. In fact there is enough evidence to suggest that Pinki suffered the burn injuries. It is not the defence of the accused that she died a natural death…

…

11. …As regards dowry, Learned Counsel for the defence pointed out that there was no specific evidence nor was any allegation made in the First Information Report. We are not much impressed as we have seen from the evidence that there were demands of Buffalo made to Vadehi Saran, father of Pinki who did not accept that demand. Vadehi Saran has also specifically stated in his evidence that after 1 ½ years of the marriage when he went to the house of Pinki in the month of *Shravan*, door was closed and the appellants were beating Pinki and that the floor was smeared with blood and blood was also oozing out from the mouth of Pinki. He also asserted about the demand of a large size television as the television which was given in marriage was a small colour television…

12. Similar is the case as regards the offence under Section 201, IPC. In fact it was incumbent upon the accused persons to firstly, inform the police about the un-natural death of Pinki. They did not do so. On the other hand, even after her death, they did not inform either the police or even the relatives like her father etc., though they could have done so. In stead they hurriedly conducted the funeral thereby causing destruction of evidence.

13. In *State of Rajasthan v. Jaggu Ram [2008 (12) SCC 51]*, this Court has considered the circumstance about the non-information to the parents and the hurried cremation. This was also a case where accused persons were tried for offence under Section 304B, IPC, where the accused, after the death of the unfortunate lady did not bother to inform her parents. In paragraph 26, this Court took a serious note of the manner in which the body was disposed of. The Court observed "the disposal of the dead body in a hush-hush manner clearly establishes that the accused had done so with the sole object of concealing the real cause of death of Shanti @ Gokul."

…

15. From all this, it is clear that the prosecution has not only proved the offence under Section 304B, IPC with the aid of Section 113B, Indian Evidence Act but also the offence under Section 201, IPC. We are satisfied that all the three ingredients of Section 304B, IPC, they being:

    (1) that the death of a woman has been caused by burns or bodily injury or occurs otherwise than under normal circumstances;

    (2) that such death has been caused or has occurred within seven years of her marriage; and

    (3) that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry."

    as also the presumption under Section 113B of India Evidence Act are fully established the case of prosecution.

16. We have gone through the judgments of the Trial Court as well as the appellate Court carefully and we find that both the Courts have fully considered all the aspects of this matter. We, therefore, find nothing wrong with the judgments and confirm the same. The appeal is, therefore, dismissed.

This Judgment is also reported at (2010) 12 SCC 198.

IN THE SUPREME COURT OF INDIA

SANJAY KUMAR JAIN
VERSUS
STATE OF DELHI

DALVEER BHANDARI, J. & H.L. GOKHALE, J.

Dalveer Bhandari, J.

…

3. The brief facts giving rise to this appeal are as under:

   The appellant Sanjay Kumar Jain was married to Smt. Anju Jain (since deceased) on 20th February, 1990. After marriage, only both of them started residing at house No.2803, Gali No.6, Chander Puri, Kailash Nagar, Delhi. It is the case of the prosecution that the deceased was harassed for insufficient dowry and the harassment continued till her death. Admittedly, Smt. Anju Jain died within one year and two months of marriage on 10.4.1991.

…

5. Dr. L.K. Barua, P.W. 20 who conducted the post-mortem found ten ante-mortem injuries on the body of the deceased and the cause of the death was opined as asphyxia following strangulation by rope like material and the injuries were sufficient to cause death in the ordinary course of nature.

6. The parents of the deceased Mohan Lal, P.W. 2 (father) and Raj Bala, P.W. 3 (mother) were examined and in their statements it was clearly stated that the deceased was continuously being harassed on account of insufficient dowry.

…

10. The appellant was charged under sections 302 and 304B of the Indian Penal Code. The trial court held that the charge under section

302 IPC was established against the accused, therefore, there was no necessity to discuss the next alternative charge under section 304B IPC. In the impugned judgment, the High Court also did not deal with the charge under section 304B IPC. The trial court on the basis of evidence and other material on record found the appellant guilty under Section 302 IPC. He was convicted and was awarded life imprisonment. The conviction was upheld by the High Court. The appellant aggrieved by the impugned judgment of the High Court has preferred this appeal.

11. We have heard the learned counsel for the parties at length.

…

38. We find some merits in the statements of the learned senior counsel for the appellant that in a case of circumstantial evidence all circumstances must lead to the conclusion that the accused appellant was the only one who had committed the crime and none else.

39. On following aspects there is no consistency in the prosecution version:

(1) The door leading to the house of the deceased had free access and possibility of any other person entering the house of the deceased cannot be ruled out.

(2) The landlord had clear access to the house of the deceased and non-examination of the landlord creates serious doubt in the prosecution version.

(3) Injuries found on the body of the accused/appellant remained unexplained. No question was put to the accused to explain the alleged injuries on the person.

(4) There is a material contradiction as to the ornaments which the deceased was wearing and were missing from her body.

(5) The string and wicket (stump) were not seized by the Investigating Officer on the same day as they were lying near the dead body.

(6) The string and the wicket (stump) were not sent to Central Forensic Science Laboratory (CFSL) despite the opinion of the doctor telling the circumstances in favour of the accused for being used in the alleged crime.

(7) The string (narrah) allegedly used for strangulating the deceased was 8 ½inches in length and making it impossible to commit the offence in the manner alleged by the prosecution.

40. In view of the aforementioned infirmities in the prosecution's version the conviction under Section 302 of the Indian Penal Code cannot be sustained. Consequently, the impugned judgment of the High Court and the judgment of the Additional Sessions Judge are accordingly set aside and the appellant is acquitted as far as his conviction under Section 302 of the Indian Penal Code is concerned.

41. Now the question arises is whether the appellant can be convicted under Section 304B of the Indian Penal Code? In the instant case the appellant was also charged under Section 304B, but, in view of his conviction under Section 302 of the Indian Penal Code the trial court did not proceed with the charge under Section 304B of the Indian Penal Code.

…

43. Section 304B of the Indian Penal Code was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. It provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under the 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 shall be guilty under Section 304B of the Indian Penal Code. It is most unfortunate that instances of dowry death are rapidly increasing.

…

47. In *The State of Punjab v. Iqbal Singh and Others* (1991) 3 SCC 1 this Court observed that crimes are generally committed in the privacy of residential homes and in secrecy and it is difficult to get independent direct evidence in such cases. That is why the legislature has, by introducing Sections 113A and 113B in the Evidence Act, tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established that the unfortunate event has taken place within seven years of the marriage.

48. On proper analysis of Section 304B of the Indian Penal Code and Section 113B of the Evidence Act, it shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution is under an obligation to rule out any possibility of natural or accidental death. Where the ingredients of Section 304B of the Indian Penal Code are satisfied, the section would apply. If death is unnatural, either homicidal or suicidal, it would be death which can be said to have taken place in unnatural circumstances and the provisions of Section 304B would be applicable.

49. The death, otherwise than under normal circumstances, under Section 304B of the Indian Penal Code would mean the death not in usual course either natural or accidental death. Section 304B creates a substantive offence. The necessity for insertion of the two provisions has been amply enumerated by the Law Commission of India in its 21st Report, dated 10.08.1988 on 'Dowry Deaths and Law Reform'. This has been primarily done because of the pre-existing law in securing evidence to prove dowry related deaths.

50. In order to bring home the guilty under Section 304B of Indian Penal Code the following ingredients are necessary:

    (1) The victim was subjected to cruelty or harassment by her husband or his relatives.

(2) Such cruelty or harassment was for, or in connection with any demand for dowry.

(3) Such cruelty or harassment was done within seven years of the marriage.

51. Evidence on record of this case clearly lead to the conclusion that all these three ingredients are available in full measure in this case. The deceased was subjected to cruelty and harassment by her husband, the appellant herein and the harassment was in connection with the demand of dowry.

52. In the instant case the victim (deceased) died within one year and two months of the marriage. On proper analysis of the entire evidence on record it is abundantly proved that the appellant was clearly guilty of committing an offence under Section 304B of the Indian Penal Code.

53. Consequently, we deem it appropriate to set aside the conviction of the appellant under Section 302 of the Indian Penal Code but in the facts and circumstances of this case we proceed to convict the appellant under Section 304B of the Indian Penal Code and sentence him to 9 years rigorous imprisonment and fine of Rs.10,000/-. In case of non-payment of fine, the accused would further undergo imprisonment for two months.

54. As a result, this appeal is partly allowed and disposed of accordingly.

This Judgment is also reported at AIR 2011 SC 363.

CHAPTER THREE

THE MEANING OF ‘SOON BEFORE’ WITHIN SECTION 304-B IPC

As stated in Chapter 2, a key component of the offence under section 304-B IPC is that the victim has been subjected to cruelty and/or harassment by her husband and/or his relatives in connection with demands for dowry *soon before* her death. The Supreme Court has therefore attempted to elucidate, via its judgments, what time frame is considered 'soon before' in the case of dowry deaths.

In *Sham Lal Vs. State of Haryana Etc.*[1], the wife of the appellant died of burns for which the appellant, his father and grandmother were charged. Although at trial the appellant was convicted under Sections 302, 304-B and 498-A IPC, the High Court upheld only his conviction under Section 302. The Supreme Court went on to overturn this conviction and further held that the appellant could not be convicted of the Section 304-B offence. This was because the prosecution only established cruelty and harassment towards the victim in connection with demands for dowry roughly one and a half years before her death. This was insufficient to satisfy the 'soon before' requirement.

A more general definition of this requirement was stated in *Kans Raj Vs. State of Punjab and Ors.*[2]. In this case, the appellant's daughter was asphyxiated in her husband's home. Although the trial court convicted her husband, mother-in-law, brother-in-law and sister-in-law under Sections 304-B, 306 and 498-A, all of them were acquitted of all charges in the High Court. On appeal, the Supreme Court re-convicted the victim's husband of all offences. In doing so, the Court stated that the time period implied by 'soon before' was both a fact and circumstance specific time period as well as a 'reasonable time'. The key element was a 'proximate and live link' between the cruelty/harassment regarding demands for dowry and the victim's death.

This interpretation of 'soon before' was confirmed in *Kunhiabdulla and Anr. Vs. State of Kerala*[3]. In this case, the Court further explained that if the alleged cruelty was 'remote in time; and did not disturb the woman's

1 (1997) 9 SCC 759
2 (2000) 5 SCC 207
3 (2004) 4 SCC 13

'mental equilibrium' then the requirement for the cruelty/harassment regarding demands for dowry to be 'soon before' the victim's death was not satisfied. A catena of later judgements have cited the same test, including *Raman Kumar Vs. State of Punjab*[4]*, Kailash Vs. State of M.P.*[5] and *Kaliyaperumal and Anr. Vs. State of Tamil Nadu*[6]*.*

Although the Supreme Court has articulated this requirement of proximity and a 'live link' in the following cases in an alternative way, the essence of the test has always remained the same which has ensured consistency in the judicial approach to this element of section 304-B. For example, in *Deen Dayal & Ors. Vs. State of U.P.*[7] the appellants were the victim's father-in-law, mother-in-law and husband respectively. They were charged under Sections 304-B IPC and 498-A IPC for having murdered the victim and pushed her down a well, were acquitted at trial but were convicted at the High Court. The Supreme Court upheld the convictions holding that the appellants' cruelty and harassment regarding their demands for dowry were the 'proximate cause' of the victim's death. Similarly in *Raja Lal Singh Vs. The State of Jharkhand*[8] the Court held that there needed to be a 'perceptible nexus' between the appellant's cruelty/harassment regarding demands for dowry and the death of the victim.

4 (2009) 16 SCC 35
5 AIR 2007 SC 107
6 (2004) 9 SCC 157
7 (2009) 11 SCC 157
8 AIR 2007 SC 2154

IN THE SUPREME COURT OF INDIA

SHAM LAL
VERSUS
STATE OF HARYANA ETC.

MADAN MOHAN PUNCHHI, J.& K.T. THOMAS, J.

1. Neelam Rani, wife of the appellant, died of burns on 17.6.1987. Her husband, the present appellant, and his father and grand-mother were arrayed as accused before the Sessions Court in connection with the death of Neelam Rani charging them with offences under Section 302, 304B and 498A of the IPC. The Sessions Court acquitted the grandmother, who was in her eighties, but convicted the appellant as well as his father of all offences and sentenced them to imprisonment for life. The High Court of Punjab and Haryana on the joint appeal by those convicted persons acquitted appellant's father but confirmed the conviction of the appellant under Section 302 IPC…

2. … The prosecution case in brief is that appellant was persecuting her with the demand for more dowry and at last set her ablaze for not quenching his greed for dowry. On the other hand the stand of the appellant, when questioned under Section 313 of the Code of Criminal Procedure, was that by frustration, as she could not give birth to a child and as she could not adjust in the village life with the appellant, she committed suicide by burning herself.

…

4. On a scrutiny of the evidence we are of the view that the circumstances are far too meagre for reaching the conclusion that appellant had set her on fire.

5. When Neelam Rani's father-Bhagwan Dass (PW-3) on hearing about the precarious condition of his daughter rushed to see her

at the Civil Hospital, Kaithal, all that he could see was her charred body. When he saw the appellant standing nearby he asked him whether she was killed by him, to which appellant answered with folded hands that it was a mistake on his part for that he should be forgiven.

6. The above circumstance was taken seriously by the High Court as an incriminating conduct of the appellant. Along with it High Court counted the evidence of Zile Singh (PW-5). But that witness did not stick to the version assigned to him by the prosecution, and hence he was treated as hostile. He was to speak to the words he heard from the deceased as soon as he reached the scene of occurrence. He was confronted with a letter which he had sent to PW-6 in which he promised that he would never revert from what he has already committed to the police. But PW-5 in his testimony in court said that he could not hear anything which deceased had muttered as it was too inaudible. The testimony of PW-5 is therefore of no use to the prosecution except to the extent he saw Neelam Rani in flames and the inmates of the house remaining aghast.

7. We are unable to agree with the finding reached by the High Court that onthe said circumstance Neelam Rani was murdered by the appellant.

8. But it is a certainty that Neelam Rani died under abnormal circumstances; If it is not a case of homicide, it could be a case of suicide because her death by accident could reasonably be ruled out from all the broad circumstances in this case. We have now therefore to consider whether the appellant can be fastened with the penal liability under Section 304-B of the IPC.

9. The primary requirements for finding the appellant guilty of the offence under Section 304-B IPC are that death of the deceased was caused by burns within seven years of her marriage and that "soon before her death" she was subjected to cruelty or harassment by the appellant for or in connection with any demand for dowry.

10. The first premise stands established in this case that the death of Neelam Rani took place within seven years of her marriage though the precise date of her marriage is not in evidence. (It is admitted by both sides that her marriage was in the year 1983). The second premise that death was caused by burns is a factum which has not been disputed even by the appellant himself. In order to establish the third ingredient that "soon before her death she was subjected to cruelty or harassment for or in connection with demand for dowry", a plea is made to resort to the legal presumption envisaged in Section 113-B of the Evidence Act…

11. It is imperative, for invoking the aforesaid legal presumption, to prove that "soon before her death" she was subjected to such cruelty or harassment. Here, what the prosecution achieved in proving at the most was that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, Neelam Rani was taken by her parents to their house about one and a half years before her death. Further evidence is that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence in this case. There is nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken to the parental home and her tragic end.

12. In the absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act…

13. The corollary of the aforesaid finding is that appellant cannot be convicted of the offence under section 304-B IPC. But this would not save him from the offence under Section 498-A of the IPC for which there is overwhelming evidence, particularly of PW-3, Bhagwan

Dass, who heard from his daughter, which evidence is admissible under Section 32 of the Evidence Act, besides his own direct dialogue with the appellant and his father. As the trial court and the High Court found his evidence reliable, we hold that prosecution has succeeded in proving the offence under Section 498-A of IPC.

14. We therefore set aside the conviction and sentence passed on the appellant under Section 302 of IPC. But we find him guilty of the offence under Section 498-A of the IPC and convict him thereunder and sentence him to the maximum period of imprisonment prescribed thereunder i.e., rigorous imprisonment for three years.

This Judgment is also reported at (1997) 9 SCC 759.

IN THE SUPREME COURT OF INDIA

KANS RAJ
VERSUS
STATE OF PUNJAB & ORS.

G.B. Pattanaik, R.P. Sethi, &Shivaraj V. Patil.

SETHI, J.

1. Sunita Kumari married on 9th July, 1985 was found dead on 23rd October, 1988 at the residence of her in-laws at Batala in Punjab. The death was found to have occurred not under the ordinary circumstances but was the result of the asphyxia…Noticing ligature marks on the neck of her sister, Ram Kishan PW5 telephonically informed his parents about the death and himself went to the police station to lodge a report Exh. PF. On the basis of the statement of PW5 a case under Section 306 IPC was registered against the respondents. After investigation the prosecution presented the charge-sheet against Rakesh Kumar, husband of the deceased and Ram Piari, the mother-in-law of the deceased. Ramesh Kumar, brother-in-law and Bharti, sister-in-law of the deceased were originally shown in Column No.2 of the report under Section 173 of the Code of Criminal Procedure. After recording some evidence, Ramesh Kumar and Bharti were also summoned as accused. The appellant, the father of the deceased, filed a separate complaint under Section 302 and 304B of the Indian Penal Code against all the respondents. The criminal case filed by the appellant was also committed to the Sessions Court and both the appellant's complaint and the police case were heard and decided together by the Additional Sessions Judge, Gurdaspur who, vide his judgment dated 28th August, 1990, convicted the respondents under Section 304B IPC and sentenced each of them to undergo 10 year Rigorous Imprisonment. He also found them guilty for the commission of

offence under Section 306 and sentenced them to undergo rigorous imprisonment for 7 years besides paying a fine of Rs. 250/- each. The respondents were also found guilty for the commission of offence punishable under Section 498A IPC and were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.250/- each. All these sentences were to run concurrently. The respondents herein filed an appeal in the High Court against the judgment of conviction and sentence passed against them by the Trial Court and the appellant, father of the deceased, filed a revision petition against the said judgment praying for enhancement of the sentence to imprisonment for life on proof of the charge under Section 304B of the IPC. Both the appeals and the revision were heard together by a learned Single Judge of the High Court who vide her judgment impugned in this appeal acquitted the respondents of all the charges. The revision petition filed by the father of the deceased was dismissed holding that the same had no merits.

2. Ms. Anita Pandey, learned Advocate appearing for the appellant has vehemently argued that the judgment of the High Court suffers from legal infirmities which requires to be set aside and the respondents are liable to be convicted and sentenced for the commission of heinous offence of dowry death, a social evil allegedly commonly prevalent in the society. She has contended that the judgment of the High Court is based upon conjectures and hypothesis which are devoid of any legal sanction…

3. Supporting the case of the respondents Shri U.R. Lalit, Senior Advocate appearing for them has submitted that there being no direct evidence regarding the cause of the death or circumstances leading to death, particularly in the absence of demand of dowry soon before the death, none of the respondents could be held guilty for the offences with which they were charged, convicted and sentenced by the Trial Court.

…

5. We agree with the learned counsel for the respondents 3 to 5 that his clients, namely, Ramesh Kumar, brother of the husband, Ram Pyari, mother of the husband and Bharti sister-in-law of the husband-accused cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the appellant worth the name against the aforesaid respondents…In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that respondents 3 to 5 were roped in the case only on the ground of being close relations of respondent No.2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt…

6. We, however, find that there is reliable legal and cogent evidence on record to connect Rakesh Kumar, respondent No.2 with the commission of the crime. There is evidence showing that immediately after his marriage with the deceased the respondent-husband started harassing her for the demand of dowry. We do not find substance in the submission of the learned defence counsel that the statements made before her death by the deceased were not admissible in evidence under Section 32(1) of the Evidence Act and even if such statements were admissible, there does not allegedly exist any circumstance which could be shown to prove that the deceased was subjected to cruelty or harassment by her husband for or in connection with any demand of dowry soon before her death. It is contended that the words "soon before her death" appearing in Section 304B has a relation of time between the demand or harassment and the date of actual death. It is contended that the demand and harassment must be proximately close for the purposes of drawing inference against the accused persons.

…

8. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

   (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

   (b) such death should have occurred within 7 years of her marriage;

   (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

   (d) such cruelty or harassment should be for or in connection with the demand of dowry; and

   (e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

9. …We do not agree with the submissions made by Mr. Lalit, learned Senior Counsel for the accused that the statement made by the deceased to her relations before her death were not admissible in evidence on account of intervening period between the date of making the statement and her death.

10. Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without an amount of delay or expense or he is incapable of giving

evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. The phrase "circumstances of the transaction" were considered and explained in Pakala Narayana Swami v. Emperor [AIR 1939 PC 47]:

"The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related 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 persons, 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"…."

11. The death referred to in Section 32(1) of the Evidence Act includes suicidal besides homicidal death. Fazal Ali, J. in Sharad Birdhichand Sarda v. State of Maharashtra [1984 (4) SCC 116] after referring to the decisions of this Court in Hanumant v. State of Madhya Pradesh [1952 SCR 1091], Dharambir Singh vs. State of Punjab [Criminal Appeal No.98 of 1958, decided on November 4, 1958], Ratan Gond v. State of Bihar [1959 SCR 1336], Pakala Narayana Swami (supra), Shiv Kumar v. State of Uttar Pradesh [Criminal Appeal No. 55 of 1966, decided on July 29, 1966], Mahnohar Lal v. State of Punjab [1981 Cri.LJ 1373 (P&H)] and other cases held:

"We fully agree with the above observations made by the learned Judges. In Protima Dutta v. State [1977 (81) Cal WN 713] while relying on Hanumant Case the Calcutta High Court has clearly pointed out the nature and limits of the doctrine of proximity and has observed that in some cases where there is a sustained cruelty, the proximate may extend even to a period of three years…

In Chinnavalayan v. State of Madras [1959 Mad LJ 246] two eminent Judges of the Madras High Court while dealing with the connotation of the word 'circumstances' observed thus:

"The special circumstances permitted to transgress the time factor is, for example, a case of prolonged poisoning, while the special circumstances permitted to transgress the distance factor is, for example, a case of decoying with intent to murder. This is because the natural meaning of the words, according to their Lordships, do not convey any of the limitations such as (1) that the statement must be made after the transaction has taken place, (2) that the person making it must be at any rate near death, (3) that the circumstances can only include acts done when and where the death was caused. But the circumstances must be circumstances of the transaction and they must have some proximate relation to the actual occurrence.

Before closing this chapter we might state that the Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English Law where only

the statements which directly relate to the cause of death are admissible. The second part of clause (1) of Section 32, viz., "the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law. This distinction has been clearly pointed out in the case of Rajindra Kumar v. State [AIR 1960 Punj 310]…

In the English Law the declaration should have been made under the sense of impending death whereas under the Indian Law it is not necessary for the admissibility of a dying declaration that the deceased at the time of making it should have been under the expectation of death…"

…

13. In view of this legal position statements of Ms. Sunita made to her parents, brother and other acquaintances, before her death are admissible in evidence under Section 32 of the Evidence Act.

14. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case… If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non existence of such treatment is not brought on record, before the alleged such

treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.

15. No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman…

16. Mr. Lalit, learned Senior Counsel has further contended that as the prosecution had failed to prove the cruelty or harassment for or in connection with the demand of dowry, the High Court was justified in acquitting the accused persons including Rakesh Kumar, respondent No.2. He also pointed out to some alleged contradictions in the statements of PWs 5 and 6. Having critically examined the statements of witnesses, we are of the opinion that the prosecution has proved the persistent demand of dowry and continuous cruelty and harassment to the deceased by her husband. The contradictions pointed out are no major contradictions which could be made the basis of impeaching the credibility of the witnesses…

…

19. The High Court appears to have adopted a casual approach in dealing with a specified heinous crime considered to be a social crime. Relying upon minor discrepancies and some omissions, the court has wrongly acquitted the accused-husband, namely, Rakesh

Kumar. The charges framed against respondent No.2 had been proved by the prosecution beyond reasonable doubt and there was no justification for interfering with the conviction recorded and sentence passed against him by the Trial Court.

20. Under the circumstances the present appeal is partly allowed by setting aside the judgment of the High Court in so far as it relates to respondent No.2, namely, Rakesh Kumar, the husband of the deceased and confirmed so far as it relates to other accused persons. The judgment of the Trial Court regarding conviction of Shri Rakesh Kumar under Section 304B is upheld but the sentence is reduced to seven years Rigorous Imprisonment. His conviction under Section 306 is also upheld but his sentence is reduced to five years besides paying a fine as imposed by the Trial Court. In default of payment of fine the respondent No.2 shall suffer Rigorous Imprisonment for one month more. Confirming his conviction under Section 498A IPC, the respondent No.2 is sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.250/-, in default of payment of fine he will further undergo Rigorous Imprisonment for one month. All the sentences are directed to run concurrently. The bail bonds of respondent No.2, who is on bail, are cancelled and he is directed to surrender to serve out the sentence passed on him.

This Judgment is also reported at (2000) 5 SCC 207.

IN THE SUPREME COURT OF INDIA

KUNHIABDULLA AND ANR.
VERSUS
STATE OF KERALA

Y.K. SABHARWAL & ARIJIT PASAYAT

ARIJIT PASAYAT, J.

1. … The two appellants stood charged for alleged commission of offence punishable under Section 304B read with Section 34 of the Indian Penal Code, 1860 (in short 'the IPC'). The Trial Court found that the prosecution has failed to establish the accusations and directed their acquittal.

2. In appeal preferred by the State, the judgment of acquittal was set aside and the accused persons were found guilty under Section 304B read with Section 34 IPC and each was sentenced to undergo RI for seven years.

3. The victim in this case was one Sherifa (hereinafter referred to as 'the deceased') and the accused-appellants 1 and 2 were her husband and mother-in-law respectively.

4. According to the prosecution following is the factual scenario:

   The deceased was married to the appellant no.1 (A-1) on 19.1.1989. At the time of marriage, there was an agreement to pay Rs.35000/- as dowry. Since the entire amount was not paid, the accused was subjected to mental and physical harassment. On 29.8.1991 about 9.00 a.m. she committed suicide by jumping into a well…

…

6. Accused-appellants submitted that there was no dispute regarding payment of a sum of Rs.30,000/- as dowry. In fact, this amount was kept in a bank account in the name of the deceased and this itself

negates the plea of prosecution that there was greed for money… Furthermore, the evidence of prosecution in no way shows that the accused no.2 allegedly demanded dowry. Moideen (PW-8) had himself stated that he did not have any idea if any amount in excess of Rs.30,000/- was demanded as dowry. There was no harassment after the payment of Rs.30,000/-. Therefore, there was no question of any demand immediately prior to the alleged occurrence. Section 304B has therefore no application.

7. In response, learned counsel for the State of Kerala submitted that both the Trial Court and the High Court have discarded the plea taken by the accused persons that the deceased accidentally fell into the well. The Trial court proceeded on erroneous premises to hold that the demand of dowry has not been established overlooking the cogent evidence of Moideen and Kunhammed (PWs 8 and 12 respectively). Moreover, PWs 3 and 4 who were neighbours categorically stated about the harassment meted out to the deceased for non-payment of dowry.

…

9. …In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

   (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

   (ii) Such a death should have occurred within seven years of her marriage.

   (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

   (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

   (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

10. Section 113B of the Indian Evidence Act, 1872 (in short the 'Evidence Act') is also relevant for the case at hand. Both Section 304B IPC

and Section 113B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:-

"113B: 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 connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

***Explanation** - For the purposes of this section "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860)."*

…

11. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not

defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft', is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

12. When the aforesaid factual scenario as described by Narayani (PW 3), Safiya (PW-4), and PWs 8 and 12 is considered in the background of legal principles set out above, the inevitable conclusion is that accusations have been clearly established so far as accused-appellant no.1 husband of the deceased is concerned. But in respect of accused-appellant No.2, evidence against her relating to alleged demand of dowry is not cogent, and no credible evidence has been brought on record to substantiate the accusations. Therefore, while upholding the conviction and sentence imposed so far accused-appellant no.1 is concerned, we direct acquittal of accused-appellant no.2.

13. The accused-appellant no.1 is directed to surrender to custody to serve remainder of sentence, if any. The bail bonds of accused-appellant no.2 be cancelled.

14. The appeal is accordingly disposed of.

This Judgment is also reported at (2004) 4 SCC 13

IN THE SUPREME COURT OF INDIA

KALIYAPERUMAL AND ANR.
VERSUS
STATE OF TAMIL NADU

DORAISWAMY RAJU, J. & ARIJIT PASAYAT, J.

ARIJIT PASAYAT, J.

1. The appellants who were found guilty of offences punishable under Section 304B and Section 498A of the Indian Penal Code, 1860 (for short 'IPC') by the Assistant Sessions Judge, Nagapattinam, unsuccessfully challenged the conviction before the Madras High Court. By the impugned judgment the High Court only reduced the sentence from nine years to seven years for the offence punishable under Section 304B IPC but confirmed the sentence five years as imposed in respect of offences punishable under Section 498A, on the allegation that Devasena (hereinafter referred to as 'the deceased') committed suicide because of the cruelty and tortures perpetuated by the appellants who were her father-in-law and mother-in-law respectively along with husband Ashok Kumar (since acquitted).

2. … On 9.12.1992, PW.3 received the information that their daughter (deceased) had committed suicide…The enquiry of RDO revealed that the death was due to dowry torture… As noted above, the appellants were convicted while the husband of the deceased was acquitted…

3. In support of the appeal, learned counsel for the appellants submitted that Section 304B has no application because there was no evidence to show that soon before deceased committed suicide, there was any cruelty or torture. According to him Section 113B of the Indian Evidence Act, 1872 (for short 'Evidence Act') has no

application because the prosecution has failed to prove that "soon before her death" the victim was subjected to such cruelty or harassed in action with demand for dowry...

…

5. … In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

   (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

   (ii) Such a death should have occurred within seven years of her marriage.

   (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

   (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

   (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

6. Section 113B of the Evidence Act is also relevant for the case at hand…Section 113B reads as follows:-

   "113B: 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 connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

   ***Explanation:** For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."*

7. …As per the definition of 'dowry death' in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection

with the demand of dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

8. …The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

9. Further question is whether a case under Section 498A has been made out, even if accusations under Section 304B fail…

10. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences… A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

…

14. It may be noted that though no charge was framed under Section 306 IPC that is inconsequential in view of what has been stated by a three-judge Bench of this Court in K. Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors. (2003 (1) SCC 217).

15. When the factual scenario is considered in the background of the aforesaid principles the inevitable conclusion is that the appellant-Kaliyaperumal has been rightly convicted for offence punishable under Section 304B and Section 498A. As the High Court has awarded the minimum punishment prescribed no interference with the sentences is called for. So far as appellant no.2 Muthulakshmi

is concerned, there is inadequacy of material to attract culpability under Section 304B. But Section 498A IPC is clearly attracted to her case. Therefore, the appeal is allowed so far as her conviction under Section 304B IPC is concerned, but stands dismissed so far as it relates to offence punishable under Section 498A IPC.

16. The appeal is allowed to the extent indicated above so far as accused Muthulakshmi is concerned, but fails so far as accused-appellant Kaliyaperumal is concerned.

This Judgment is also reported at (2004) 9 SCC 157.

IN THE SUPREME COURT OF INDIA

KAILASH
VERSUS
STATE OF M.P.

ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

ARIJIT PASAYAT, J.

…

2. Challenge in this appeal is to the judgment rendered by a learned single Judge of the Madhya Pradesh High Court at Jabalpur dismissing the appeal of the appellant and maintaining his conviction and sentence as recorded by the trial Court.

…

4. Prosecution case in a nutshell is as follows:

   Appellant got married with the deceased on 4.5.1997. Acquitted accused Smt. Shyam Bai is the aunt of appellant. In the wee hours of 18.3.1999 the dead body of deceased was found floating in a well located in the house of the appellant. Thus, the death of Uma Devi occurred otherwise then under normal circumstances. The deceased was subjected to cruelty or harassment by her husband and acquitted accused in connection with demand for dowry…

5. In support of the appeal learned counsel for the appellant submitted that the evidence of the witnesses who were examined to prove alleged dowry demand, torture and harassment, is not sufficient to prove commission of offence by the appellant. It is full of exaggerations and trial Court and the High Court should not have placed reliance on them…

…

7. In Kans Raj v. State of Punjab (2000 (5) SCC 207) a three-Judge Bench of this Court dealt with the presumption available in terms of Section 113-B of the Evidence Act, 1872 (in short "the Evidence Act") and its effect on finding persons guilty in terms of Section 304-B IPC. It was noted as follows: (SCC p. 217, para 9)

> *"9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:*
>
> *(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;*
>
> *(b) such death should have occurred within 7 years of her marriage;*
>
> *(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;*
>
> *(d) such cruelty or harassment should be for or in connection with the demand of dowry; and*
>
> *(e) to such cruelty or harassment the deceased should have been subjected soon before her death."*

9. No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the

relevant provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term "immediately before"…

10. The factual position of the present case goes to show that the death was not in normal circumstances. The expression "normal circumstances" apparently means natural death…

11. The conviction as maintained by the High Court needs no interference. Coming to the question of sentence, on considering the background facts, it would be appropriate to reduce the custodial sentence to eight years which the appellant claims to have undergone including remissions. If the appellant had already undergone custodial sentence including remission for eight years, he shall be immediately released from custody unless required to be in custody in connection with any other case. The appeal is partly allowed so far as it relates to quantum of sentence.

This Judgment is also reported at AIR 2007 SC 107.

IN THE SUPREME COURT OF INDIA

RAJA LAL SINGH
VERSUS
THE STATE OF JHARKHAND

S. B. SINHA, J. & MARKANDEY KATJU, J.

MARKANDEY KATJU, J.

…

3. The facts of the case are that an FIR being Baghm are P.S. Case No. 229/2000 was registered under Sections 304-B/34 of the Indian Penal Code against the three aforesaid appellants on the basis of the information given by Dashrath Singh (PW5), wherein it was alleged that his daughter Gayatri Devi (the deceased) aged about 19 years, was married to the appellant Raja Lal Singh on 24.4.2000 and he had given dowry according to his capacity. His daughter came back after three months of her stay at her in-laws' place and told him that her husband Raja Lal Singh, her brother-in-law Pradip Singh and her sister-in-law (Gotni) used to harass her for the demand of a 'Palang' (Bed) and a Godrej Almirah…

4. It is said that on 28.11.2000 one Dunia Lal Singh came to the village of the informant and informed him that his daughter has died due to hanging.... The police after investigation submitted a charge-sheet under Sections 304-B/34 IPC. The cognizance was taken and the case was committed to the Court of Sessions.

…

10. The learned trial court on consideration of the oral and documentary evidence adduced on behalf of the prosecution held that the prosecution was able to establish the charge under Sections 304-B/34 IPC against all the three accused. Accordingly, the accused persons were convicted for the said offence and were sentenced to undergo R.I. for a period of ten years each.

11. Against the aforesaid judgment of the trial court, the appellants filed appeals before the High Court which were dismissed by the impugned judgment. Hence, these two appeals.

…

13. It has come in evidence that Raja Lal Singh, appellant in Criminal Appeal No. 513/2006 used to live on the first floor of the building along with his wife, deceased Gayatri, whereas Pradip Singh and his wife Sanjana Devi were living in the ground floor. Admittedly, the deceased Gayatri was found dead due to hanging on the first floor in the room of her husband. There is no evidence to show that the appellant Pradip Singh and Sanjana Devi had any hand in the incident which led to her death, and at any event we are of the opinion that benefit of doubt has to be given to them, as they were living on the ground floor of the building in question.

…

15. However, we are of the opinion that the appeal of Raja Lal Singh has to be dismissed. Raja Lal Singh is the husband of the deceased Gayatri and he used to live with her on the first floor of the building in question. Hence, it was for him to explain how Gayatri met with her death…

16. It is settled by a series of decisions of this Court that so far as Section 304-B is concerned, it is not relevant whether it is case of homicide or suicide vide Satvir Singh and others vs. State of Punjab and another (2001) 8 SCC 633, para 18.

17. It has been held in Satvir Singh (supra) that the essential components of Section 304-B are :

    (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage.

    (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. In the present case, Gayatri died about 7 months after

her marriage in April, 2000. Also, it has come in evidence that she had been harassed for dowry 10 or 15 days before her death.

Thus, in our opinion, the ingredients of Section 304-B IPC are satisfied in this case [see also in this connection T. Aruntperunjothi vs. State (2006) 9 SCC 467] .

18. It may be mentioned that the words "soon before her death" do not necessarily mean immediately before her death. As explained in Satvir Singh (supra), this phrase is an elastic expression and can refer to a period either immediately before death of the deceased or within a few days or few weeks before death. In other words, there should be a perceptible nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her.

19. In the present case, we are of the opinion that there is a clear nexus between the death of Gayatri and the dowry related harassment inflicted on her. As mentioned earlier, even if Gayatri committed suicide, S. 304-B can still be attracted. A person commits suicide in a fit of depression due to extreme unhappiness. Thus, even if Gayatri committed suicide, it was obviously because she was extremely unhappy, and unless her husband gave a satisfactory alternative explanation for the suicide we have to take it that it was the persistent demand for dowry which led to her suicide.

20. Resultantly, Criminal Appeal No. 513/2006 filed by Raja Lal Singh is dismissed while Criminal Appeal No. 514/2006 filed by Pradip Singh and Sanjana Devi is allowed.

This Judgment is also reported at AIR 2007 SC 2154.

IN THE SUPREME COURT OF INDIA

DEEN DAYAL & ORS.
VS.
STATE OF U.P.

LOKESHWAR SINGH PANTA, J. AND AFTAB ALAM

AFTAB ALAM, J.

1. This appeal under Section 379 of Code of Criminal Procedure, 1973 read with Section 2(A) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is at the instance of three appellants. Amar Singh, appellant no.3, is the son of Deen Dayal, appellant no.1 and Smt. Sukhrani, appellant no.2. They were tried for killing Asha Devi, wife of appellant no.3 for non fulfilment of their demand for dowry and were charged under sections 498-A and 304-B, alternatively section 302 of the Penal Code. At the conclusion of the trial they were acquitted of the charges by the 4th Additional Session Judge, vide judgment and order dated April 30, 2001 in Sessions Trial no.740 of 1998. Against the judgment of acquittal passed by the trial court the State of U.P. preferred an appeal before the High Court that was registered as Govt. Appeal no. 2998 of 2001. A Division Bench of the High Court found and held that in the face of prosecution evidence the conclusion arrived at by the trial court was wholly untenable. Accordingly, the High Court allowed the appeal, set aside the Judgment of acquittal passed by the trial court and by judgment and order dated September 21, 2005 convicted all the three appellants under sections 498-A and 304-B of the Penal Code and sentenced them to undergo rigorous imprisonment for three years and ten years respectively for the two offences subject to the direction that the two sentences would run concurrently. The judgment and order passed by the High Court is brought under appeal to this court by the three appellants.

2. Dr. J. N. Dubey learned senior counsel made long and elaborate submissions in support of the appeal. Learned counsel first contended that in a criminal case the scope of an appeal against acquittal is quite different from an appeal against conviction and sentence. In the former case, if the trial court has taken one of the two possible views the judgment of acquittal would not warrant any interference in appeal. Counsel further submitted that the present case fell under that category and the High Court was in error in interfering with the judgment of the trial court and substituting its own view in place of the view taken by trial court. Next, passing over to the merits of the case, Dr. Dubey submitted that on the evidence on record several ingredients of the offence of dowry death remained unproved and since the prosecution failed to establish all the necessary conditions no presumption would arise against the appellants under Section 304-B of the Penal Code and Sec. 113-A of the Indian Evidence Act.

3. Before examining the submissions made on behalf of the appellants in any detail it would be useful and proper to state certain facts of the case that are admitted or are in any event undeniable. Asha Devi, the deceased was married with appellant no.3 in June 1997. Fifteen months later she died on September 6, 1998. At the time of her death she was living with the appellants. Her dead body was taken out of a well situate at a distance of about four hundred paces from the house of the appellants. Here it must be stated that her death was not caused by drowning. According to the prosecution, Asha Devi was killed by the appellants and her dead body was thrown into the well. The appellants, however, have a different story. Their case is that she had gone to fetch water and while pulling up the pail of water she accidently slipped and fell down into the well and died.

4. At this stage we may take a look at the medical evidence. P. W.3, the doctor holding post-mortem on the dead body of Asha Devi found the following two injuries

1: Swelling 3 x 3 cm in front upper part of nose.

2: Swelling mark 5 x 5 cm on top and middle of head. On internal examination he found the following injuries :

"Left parietal bone of head was fractured. Membrane was soiled in blood. There was blood in brain. Bone of nose was fractured. There was 2 ounce clotted blood in nose. There was 2 ounce watery fluid in stomach".

He opined that death was caused due to coma resulting from head injury. He stated before the court that the injuries were possibly caused by some blunt weapon. He found no water in the lungs or the wind pipe…

5. The medical evidence thus fully corroborates the prosecution case that Asha Devi was thrown into the well when she was already dead or was dying. At any rate she had stopped breathing as indicated by the absence of any water in her lungs or windpipe.

6. In order to reconcile the defence case with the medical evidence Dr. Dubey came up with an explanation. Learned Counsel suggested that in course of her fall in the deep well (water surface in the well was at a depth of 60-70 ft.) Asha Devi might have smashed her head against the wall of the well and as a result she went into coma even before hitting the water surface. We are totally unable to accept the submission. According to the investigating officer the mouth of the well was half covered by wooden planks and a pulley was fixed over the other open half for pulling up the filled up bucket. With that kind of arrangement it is highly unlikely for a person to slip and fall down in the well…

…

8. Thus on the evidence on record we find it fully established that only after fifteen months of her marriage and while she was living with the appellants Asha Devi died under circumstances that were not only far from normal but also plainly indicated homicide.

9. …In support of the submission that the appellants did not make any demand for dowry Dr. Dubey heavily relied on certain sentences picked out from the evidence of PW 1, the father of the deceased. Learned counsel referred to two sentences from the statement of PW 1 in reply to the court's questions where he said that no dowry was decided at the time of the marriage and appellant no.1 had said that he would be happy with whatever they gave. Learned counsel then pointed out two or three sentences from his cross examination where he said that there was no talk of dowry at the time of engagement and marriage of his daughter; there was no talk of dowry at the time of solemnization of marriage (taking steps around the sacred fire). And that the appellants took his daughter happily and at the time of departure also there was no talk (of dowry).

10. We find absolutely no substance in the submission. The evidence of the witness has to be taken as a whole and not by plucking out one or two sentences from here and there. In his examination-in-chief PW 1 clearly stated that in the marriage of his daughter he gave dowry according to his capacity but the members of the bridegroom side were not satisfied…

…

13. Dr. Dubey lastly contended that before any presumption may be drawn against the appellants it must be shown that they had made the demand for dowry and in that connection subjected Asha Devi to cruelty and harassment 'soon before her death'. He submitted that according to the prosecution evidence the demand for dowry was last made in July 1998 when appellant no.1 had gone to bring Asha Devi from her parents' house and she died on September 6, 1998. Thus, according to Dr Dubey, there was no evidence that she was subjected to any cruelty or harassment soon before her death and hence, there would be no application of Section 304-B of the Penal Code and no presumption could be raised against the appellants as provided under Section 113-A of the Evidence Act…

14. The words 'soon before her death' occurring in section 304 B of the Penal Code are to be understood in a relative and flexible sense. Those words cannot be construed as laying down a rigid period of time to be mechanically applied in each case. Whether or not the cruelty or harassment meted out to the victim for or in connection with the demand of dowry was soon before her death and the proximate cause of her death, under abnormal circumstances, would depend upon the facts of each case. There can be no fixed period of time in this regard. From the evidence on record, it is clear that there was an unrelenting demand for dowry and Asha Devi was persistently subjected to cruelty and harassment for and in connection with the demand. Both her parents and her brother (PW 1, PW 5 and PW 2) deposed before the court that appellant no.1 had once again raised his demand when he had gone to their house in July 1998 to bring Asha Devi to his place. Their inability to meet his demand had caused him annoyance and anger. Asha Devi was naturally apprehensive and was very reluctant to go with him. But they somehow prevailed upon her and made her depart with him. There is thus direct and positive evidence of her being subjected to harassment. There is nothing to show that after she was brought to the appellants' place and till her death on September 6, 1998 merely about two months later the situation had radically changed, the demand of dowry had ceased and relations had become cordial between the deceased and the three appellants. In the facts and circumstances of the case, we are satisfied that in connection with the appellants' demand for dowry Asha Devi was subjected to cruelty and that was the proximate cause of her homicidal death.

15. We are satisfied that all the ingredients of Section 304-B of the Penal Code are fully satisfied and on the evidence on record no other view is possible but to hold that the three appellants are guilty of committing dowry death.

16. In view of the discussions made above, it follows that the view taken by the trial court was completely untenable and the High Court was fully justified in reversing its verdict in appeal preferred by the State. We thus find no merit and substance in any of the submissions made on behalf of the appellants. The appeal fails and is accordingly dismissed.

This Judgment is also reported at (2009) 11 SCC 157

IN THE SUPREME COURT OF INDIA

RAMAN KUMAR
VERSUS
STATE OF PUNJAB

ARIJIT PASAYAT, J. & ASOK KUMAR GANGULY, J.

Dr. ARIJIT PASAYAT, J.

…

3. Background facts in a nutshell are as follows:

Suman Bal (hereinafter referred to as the 'deceased') was married to the appellant on 11.4.1992. On 13.8.1992 she came to her maternal home with her husband on Raksha Bandhan and stayed there for the night. At 8.00 a.m. while going back to her husband, she started weeping. Her father Sham Lal PW-6 gave her a wrist watch and Rs. 300/-. He also separately gave her Rs.2,000/-. On 16.8.1992 at 8-00 A.M., Surinder Kumar (husband of sister of Sham Lal) met Sham Lal and told him that he received information from Raman Kumar that Suman Bala was burnt in the night at 2.00 A.M. and was admitted to Muni Lal Chopra Hospital at Amritsar. Sham Lal went to the hospital but Suman Bala was unconscious. His statement was recorded by SI Tirath Ram to the effect that Suman Bala had put kerosene on herself and finished her life, fed up with her in-laws. This led to registration of First Information Report (in short the 'FIR')…PW-6 Sham Lal deposed that his daughter told him in the hospital that she was caught hold by appellant and Satish, her mother-in-law Asha Rani put kerosene oil on her and she was set ablaze by the appellant…

The trial Court after considering the evidence on record, held that case of the prosecution was proved against Raman Kumar but gave the benefit of doubt to Satish, Madan Lal and Asha Rani.

The High Court after referring to the respective stand of the parties in an abrupt manner held that the acquittal of the appellant was not legal and proper. It however held that the trial Court was right in holding that the so called dying declaration stated by Sham Lal (PW-6), Smt. Surinder Kanta(PW-7) and Manoj Kumar (PW-8) was not fully reliable…

4. Learned counsel for the appellant submitted that the High Court has erroneously analysed the evidence of the so called witnesses. It did not notice that there were lots of exaggerations and statements which were not made during investigation but were made in Court. The trial Court and the High Court were not justified in placing reliance on such evidence.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

…

7. A bare reading of the letter (Ext. PF) clearly shows that there is not even a whisper about demand but the deceased had categorically stated that she had asked for the money and the articles on her own. The trial Court erroneously held that in the letter there was reference to demand of dowry. Strangely, the High Court held that even though the letter Ex. PF was inconsequential but the evidence of the relatives about the harassment for dowry cannot be brushed aside…

…

9. In Hazarilal v. State of M.P. (2007 (8) SCALE 555) it was inter-alia observed by this Court as follows:

"8. … There being no other material to show as to how the deceased was being harassed or subjected to cruelty, the conclusion of the High Court that because the deceased committed suicide there must be some harassment and cruelty is insupportable and indefensible. There was no material to substantiate this conclusion. Merely on surmises and conjectures the conviction could not have recorded. There is a

vast difference between "could have been", "must have been" and "has been". In the absence of any material, the case falls to the first category. In such a case conviction is impermissible."

10. In Harjit Singh v. State of Punjab, (2006) 1 SCC 463 it was observed as follows:

"16.A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death…"

11. The scope and ambit of Section 304-B IPC was examined by this Court in Kaliyaperumal and Anr. v. state of Tamil Nadu (2004 (9) SCC 157).

…

13. The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry…

14. Section 113-B of the Evidence Act is also relevant for the case at hand…

15. … As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death…

16. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence… The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined...There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

17. The High Court's judgment is not only sketchy but also devoid of reasons. Various factors highlighted above would go to show that the prosecution has squarely failed to establish the accusations so far as the appellant is concerned. Therefore, the appeal deserves to be allowed which we direct. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

This Judgment is also reported at (2009) 16 SCC 35.

CHAPTER FOUR

THE RELATIONSHIP BETWEEN SECTION 304-B IPC AND SECTION 498-A IPC

Section 498-A was added to the Indian Penal Code by the 1983 amendment, (Act 46 of 1983) with a view to make cruelty in the nature of harassment or torture of the wife at the hands of her husband or his relatives for demand for dowry, an offence under the Code. An offence under this section is cognizable, non-bailable and non-compoundable. Though 'cruelty' is the common essential in both section 498-A, which deals with 'matrimonial cruelty', and section 304-B, which deals with 'dowry death', the courts have taken the stand that both these sections are not mutually inclusive but constitute distinct offences and that persons acquitted under section 304-B IPC can be convicted under section 498-A, IPC. Section 498-A, of the Indian Penal Code states as under:

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.

Explanation: For the purpose of this section, "cruelty" means—

(*a*) *any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;*

or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In *Smt. Shanti and Anr. Vs State of Haryana*[1], the Court began to define the relationship between the two sections. In this case the two appellants were charged and convicted of dowry death offences under Sections 201, 304-B and 498-A IPC at trial. On appeal, the High Court set aside their convictions under Section 498-A, holding that convictions under Sections 304-B and 498-A are mutually exclusive and that if the cruelty envisaged in Section 498-A results in the dowry death of the

1 (1991) 1 SC 371

victim, Section 304-B alone is attracted. The Supreme Court however held that the offences under Section 304-B and 498-A were not mutually exclusive and so a defendant could in theory and in practice be convicted under both sections. Several judgments have reiterated this relationship.

The interrelationship between the sections was made clearer in *Satpal Vs. State of Haryana*[2] and in *M. Srinivasulu Vs. State of A.P.*[3]. In the latter, the Court stated that not only are convictions under sections 304-B and 498-A IPC not mutually exclusive but a defendant can also be convicted of a section 498-A offence instead of a section 304-B offence even where the former is not explicitly charged. In circumstances where the section 498-A offence is not explicitly charged but the defendant is nonetheless convicted of that offence, *Dinesh Seth Vs. State of N.C.T. of Delhi*[4] established that the Court will only question this conviction if it causes prejudice to the defendant and causes a failure of justice to occur.

Limited similarities between the sections were identified in *Durga Prasad & Anr. Vs. The State of M.P.*[5], where the Court held that the nature of the cruelty required to satisfy both sections 304-B IPC and 498-A IPC was the same and needed to be cruelty in connection with demands for dowry. This was confirmed in *Kishan Singh and Anr Vs. State of Punjab*[6]. In this case, the victim's husband was acquitted of charges under both sections 304-B and 498-A IPC because he had not treated the victim cruelly or harassed her in connection with demands for dowry. The Court went on in *Amar Singh Vs. State of Rajasthan*[7] to better define cruelty for the purposes of both sections, stating that where a 'husband starts taunting [the victim] for not bringing dowry and calling her ugly… such acts of taunting by the husband would constitute

2 (1998) 5 SCC 687
3 (2007) 11 SCALE 12
4 (2008) 14 SCC 94
5 (2010) 9 SCC 73
6 AIR 2008 SC 233
7 AIR 2010 SC 339

cruelty both within the meaning of Section 498A and Section 304B IPC'.

However, several judgments (*M. Srinivasulu Vs. State of A.P.*[8], *Balwant Singh & Ors. Vs. State of HP*[9] and *Rajendran & Anr. Vs. State Asstt. Commnr. of Police Law & Order*[10]) have also emphasised the differences between sections 304-B and 498-A. The Court has stated in these cases that although the meaning of cruelty for each offence is the same, under Section 304-B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. Further a person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if a case is made out. Further *Gopal Vs. State of Rajasthan*[11] indicates that whilst section 304-B can be established where either a murder or suicide have occurred, as it only requires a 'dowry death', section 498-A cannot be established where the victim has been murdered.

In *Onkar Singh and Ors. Vs. State of UP*[12], the Court dealt with the question of retrospective applicability of the dowry death legislation. It held that where the death of the victim occurred before the coming into force of the dowry death offences under section 304-B and 498-A, the husband and/or his relatives cannot be charged under these sections.

The Court has also addressed the question of whether an appellant charged with a section 304-B and/or section 498-A offence will be granted bail in *Bakshish Ram and Anr. Vs. State of Punjab*[13]. Here, it held that because of the seriousness of the offences charged the appellant would not be granted bail.

8 supra
9 (2008) 15 SCC 497
10 AIR 2009 SC 855
11 (2009) 11 SCC 314
12 (1996) 5 SCC 121
13 (2009) 6 SCC 561

IN THE SUPREME COURT OF INDIA

SMT. SHANTI AND ANR.
VERSUS
STATE OF HARYANA

S. RATNAVEL PANDIAN, J. AND K. JAYACHANDRA REDDY, J.

K. Jayachandra Reddy, J.

1. This is a case of dowry death. The deceased by name of Smt. Kailash was the daughter of Hari Bhagwan, P.W.I of Jonala. She was married to one Sat Pal of Mundaliya Village about 9 kilometres away from Jonala. The marriage took place on 18th April, 1987. Sat Pal, the husband at the relevant time was serving in the Army. His father namely the father-in-law of deceased was employed in Railways. Accused No. 1 Smt. Shanti is the mother of Sat Pal, and the mother-in-law of the deceased. The other appellant Smt. Krishna wife of the brother of Sat Pal was another inmate. After marriage the deceased was living in her matrimonial home with accused Nos. 1 and 2, the two appellants herein. It is alleged that these two women were harassing the deceased all the while after the marriage for not bringing Scooter and Television as part of the dowry and she was treated cruelly... On 26th April, 1988 at about 11 P.M. P.W.I came to know that the deceased had been murdered and was cremated by the two ladies with the help of another three persons. A report was given and the police could recover only bones and ashes. After investigation, the charge- sheet was laid.

2. The Additional Sessions Judge, who tried all the five accused convicted the appellants under Section 304B I.P.C. and sentenced each of them to life imprisonment and under Section 201 I.P.C., sentenced them to undergo imprisonment for one year and to pay a fine of Rs. 2000/- each and also under Section 498A I.RC. to two years rigorous imprisonment and to pay a fine of Rs. 3000/-. The-

sentences were directed to run concurrrently. The other accused were acquitted. These two appellants preferred an appeal to the High Court and the same was dismissed. The High Court, however, set aside the conviction under Section 498A I.P.C. The present appeal, pursuant to the leave granted by this Court, has been preferred against the judgment of the High Court.

3. Mr. Lalit, learned counsel for the appellants submitted that there is no direct evidence in this case and that all the ingredients of an offence under Section 304B I.P.C. are not made out. According to him, it is not conclusively proved that the two appellants subjected the deceased to cruelty or harassment and the very fact that the High Court has acquitted the appellants of the offence punishable under Section 498A would itself indicate that the prosecution case regarding cruelty is not accepted and consequently the death cannot be one of "dowry death"...

Section 304B I.P.C. reads as follows:

304B. 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.*

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

This section was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths. It lays down that 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 the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called "dowry death" and the husband or relatives shall be deemed to have caused her death and shall be punishable with imprisonment for a minimum of seven years but which may extend to life imprisonment. As per the explanation to the section, the "dowry" for the purposes of this section shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 which defines "dowry" as follows:

2. Definition of "dowry" - In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Keeping in view the object, a new Section 113-B was introduced in the Evidence Act to raise a presumption as to dowry death. It reads as under:

113B. 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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

***Explanation** - For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code.*

One another provision which is relevant in this context in Section 498A I.P.C. which reads as under:

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. Explanation - For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

…The meaning of "cruelty" for the purposes of these sections has to be gathered from the language as found in Section 498A and as per that section "cruelty" means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry". With this background of the provisions of law we shall examine the facts in the instant case.

4. Both the courts below have held that the two appellants did not send the deceased to her parent's house and drove out the brother as well as the father of the deceased complaining that scooter and television have not been given as dowry. We have carefully examined this part of the prosecution case and we are satisfied that

the prosecution has established beyond all reasonable doubt that the appellants treated the deceased cruelly and the same squarely comes within the meaning of "cruelty" which is an essential under Section 304B and that such cruelty was for demand for dowry, It is an admitted fact that death occurred within seven years of the marriage. Therefore three essentials are satisfied. Now we shall see whether the other essential namely whether the death occurred otherwise than under normal circumstances is also established? From the evidence of P.W.I, the father, P.W.2 the brother, and P.W.3 the mother, it is clear that they were not even informed soon about the death and that the appellants hurriedly cremated the dead body. Under these circumstances, the presumption under Section 113B is attracted... Because of this cremation no post-mortem could be conducted and the actual cause of death could not be established clearly. There is absolutely no material to indicate even remotely that it was a case of natural death. It is nobody's case that it was accidental death. In the result it was an unnatural death; either homicidal or suicidal. But even assuming that it is a case of suicide even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304B is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under Section 304B beyond all reasonable doubt.

5. Now we shall consider the question as to whether the acquittal of the appellants of the offence punishable under Section 498A makes any difference. The submission of the learned counsel is that the acquittal under Section 498A I.P.C. would lead to the effect that the cruelty on the part of the accused is not established. We see no force in this submission. The High Court only held that Section 304B and Section 498A I.P.C. are mutually exclusive and that when once the cruelty envisaged in Section 498A I.P.C. culminates in dowry death of the victim, Section 304B alone is attracted and in that view of the matter the appellants were acquitted under Section 498A I.P.C. It can therefore be seen that the High Court did not hold

that the prosecution has not established cruelty on the part of the appellants but on the other Land the High Court considered the entire evidence and held that the element of cruelty which is also an essential of Section 304B I.P.C. has been established. Therefore the mere acquittal of the appellants under Section 498A I.P.C. in these circumstances makes no difference for the purpose of this case. However, we want to point out that this view of the High Court is not correct and Sections 304B and 498A cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved. The Explanation to Section 498A gives the meaning of "cruelty". In Section 304B there is no such explanation about the meaning of "cruelty" but having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" will be the same as we find in the explanation to Section 498A under which "cruelty" by itself amounts to an offence and is punishable. Under Section 304B as already noted, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further it must also be borne in mind that a person charged and acquitted under Section 304B can be convicted under Section 498A without charge being there, if such a case is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under Section 498A in view of the substantive sentence being awarded for the major offence under Section 304B.

6. These are all the submissions and we do not find merit, in any of them. Therefore, we confirm the convictions.

…

This Judgment is also reported at (1991) 1 SCC 371

IN THE SUPREME COURT OF INDIA

SMT. RAJESHWARI DEVI
VERSUS
THE STATE OF U.P.
WITH
ONKAR SINGH & ORS.
VERSUS
THE STATE OF U.P.

M.M. PUNCHHI, J. AND SUJATA V. MANOHAR, J.

Mrs. Sujata V. Manohar, J.

1. The appellant Rajeshwari, in Criminal Appeal No.38 of 1987 is the mother-in-law of the deceased. The first appellant Onkar Singh, in Criminal Appeal No.534 of 1987 is the father-in-law of the deceased. The second appellant in that appeal, Santosh Singh is the husband of the deceased while appellants 3 and 4 in that appeal Lallu Ram and Bandhaare the servants of Onkar Singh. The deceased Sudha was married to Santosh Singh on or about 3.2.1982. She died of a gunshot injury in the house of her husband on 22.11.1982 at around 12.30 noon. The village Chowkidar Rameshwar was sent by the accused to the parents of Sudha who reside in a different village. He reached the house of Sudha's parents around 4.30 p.m. and informed them that Sudha had committed suicide…

2. …The Sessions court acquitted Suman, alias, Guddi, the sister-in-law of the deceased. It convicted the husband Santosh Singh and his parents Onkar Singh and Rajeshwari and sentenced them to life imprisonment under Section 302 read with Section 149 of the Indian Penal Code…

3. In appeal before the High Court the High Court has convicted Santosh Singh under Section 302 and maintained his sentence of life imprisonment…

…

6. The High Court, on the basis of circumstantial evidence and, in particular, the fact that Santosh Singh had been seen by Yaduvir Singh with a gun in his hand going to the field and making a statement that his line was about to be extinguished, coupled with the evidence of P.W.5 has convicted Santosh Singh under Section 302 of the Indian Penal Code. The High Court has rightly negatived the theory of suicide for the reasons which it has set out in its judgment. We do not see any reason to set aside this findings of the High Court.

7. The cases of Onkar Singh and Rajeshwari, however, stand on a somewhat different footing. The death of Sudha occurred prior to the two amendments of the Indian Penal Code introducing Sections 498A and 304B in the Indian Penal Code and amending the Evidence Act by introducing Section 116B. Therefore, the presumptions under these Sections are not available to the prosecution although there is clear evidence relating to the demand for dowry by Onkar Singh and Rajeshwari and harassment of Sudha on that count. In the absence of these presumptions we find that there is no material to convict them under Section 302 with the help of Section 34. The evidence of P.W.2 Yaduvir Singh is to the effect that Santosh Singh had taken the gun in his hand and gone to the field after P.W.2 Yaduvir Singh had talked to him about the treatment being given to his sister Sudha. There is no evidence to indicate any instigation by either Onkar Singh or Rajeshwari of Santosh Singh to kill Sudha. The evidence of P.W.5. Rukmangal Singh, undoubtedly shows the presence of Rajeshwari and Onkar Singh at the site of the occurrence. He has deposed that the two servants told him that Onkar Singh had instigated Santosh Singh to kill Sudha. This, however, is hearsay evidence. There is no satisfactory evidence to establish that Onkar

Singh was in any manner responsible for instigating Santosh Singh to shoot his wife Sudha. Undoubtedly, both Onkar Singh and Rajeshwari had demanded dowry from Sudha's family and were parties to harassing her. But in the absence of presumptions which are available after the amendments of the Penal Code and the Evidence Act, there is no other direct or circumstantial evidence which would justify the conviction of Onkar Singh and Rajeshwari under Section 302 read with 34. Their conviction on this count is, therefore, set aside. Onkar Singh, however, was present at the time of the cremation of the dead body of Sudha along with Santosh Singh and the two servants. The High Court has rightly come to the conclusion that Section 201 is attracted…

…

9. The appeals are accordingly partly allowed. The conviction and sentence of Santosh Singh is upheld. The conviction of Rajeshwari is set aside and she is acquitted of all charges. The conviction of Onkar Singh under Section 302 read with Section 34 is set aside. However, his conviction under Section 201 and the sentence imposed, of four years' rigorous imprisonment is upheld. The sentence of Lallu Ram and Bandha is reduced to the sentence already undergone.

This Judgment is also reported at (1996) 5 SCC 121.

IN THE SUPREME COURT OF INDIA

SATPAL
VERSUS
STATE OF HARYANA

G. RAY, J. AND G. PATTANAIK, J.

1. This appeal is directed against the judgment dated 18-12-1990 passed by the Division Bench of the Punjab & Haryana High Court in Criminal Appeal No. 571-DB of 1988. By the impugned judgment, the High Court dismissed the appeal preferred by the appellant against his conviction and sentence passed by the learned Sessions Judge, Rohtak in Sessions Trial No. 6 of 1988 by judgment dated 26-10-1988. The learned Sessions Judge convicted the appellant for the offence under Sections 498A, 306 and 304B of the Indian Penal Code. The appellant was sentenced to suffer 3 years' rigorous imprisonment for offence under Section 498A of the Indian Penal Code, 10 years' imprisonment for the offence under Section 306 Indian Penal Code and imprisonment for life for the offence under Section 304B of the Indian Penal Code. The deceased Alka was the wife of the appellant and the marriage of the deceased had taken place on 12-12-1985. Out of the said wedlock, a female child was born on 8-12-1986. Alka was admitted in the Medical College Hospital, Rohtak and died in the said hospital on 7-1-1987. From the analysis of the contents found in the viscera of the deceased, it transpired that aluminium phosphate usually used in pesticides was the cause of the death. The brother of the deceased, Satpal was the only witness who came and deposed to the effect that Alka was subjected to humiliation and mental torture on account of demand for dowry. It may be stated that the co-accused, Lajwanti, the mother-in-law of the deceased died before the trial commenced. The learned trial Judge accepted the deposition of the brother of the deceased who was the complainant in the case and

came to the finding that the deceased had been harassed for more dowry shortly before her death. It may be indicated here that the learned trial Judge, however, noted that there is no direct evidence for a clear demand of the dowry but from the facts stated in the deposition that in connection with the Jamni, the gifts given by the parents of the deceased were not accepted because they did not contain gold and also on other occasions the deceased was treated with cruelty and was humiliated, the learned trial Judge came to the finding that even in the absence of direct evidence in connection with the demand for dowry, the evidence of the brother of the deceased should be accepted that there was demand for dowry for which the deceased had been dealt with cruelty by the members of the family of the husband. Since the cruelty as contemplated under Section 498A of the IPC is of a wide amplitude, the learned Judge convicted the appellant for the offence under Section 498A IPC and the learned Judge was also of the view that the presumption under Sections 113A and 113B of the Evidence Act, 1872 was also attracted in the facts of the case. Therefore, the charges under Section 306 IPC and under Section 304B IPC must be held to have been proved against the accused.

2. As indicated, the High Court upheld such conviction and sentence by dismissing the appeal. Mr. U.R. Lalit, learned Senior Counsel assisted by Mr. Uma Datta, learned counsel has contended that no case for conviction under Section 306 IPC was made out because there is no evidence on the basis of which the Court can come to a conclusive finding that the deceased had committed suicide. Simply because aluminium phosphate, a poison was found in the viscera of the deceased, it cannot be held that the deceased had consumed the said poison for the purpose of committing suicide. Unless accidental consumption of such poison and administration of such poison by someone are ruled out, the case of suicide cannot be held to have been established beyond reasonable doubt. Therefore, the case for conviction under Section 306 IPC for abetment of suicide could not and did not arise and the courts below failed to

appreciate the lacuna in the prosecution case. Mr. Lalit has also submitted that even for the conviction for an offence under Section 304B IPC it must be established that there had been demand for dowry and the deceased had been harassed in connection with such demand for dowry as defined under Section 2 of the Dowry Prohibition Act, 1961. Excepting the lone statement of PW 4, the brother of the deceased, there is no convincing evidence from which it can be held that there had been demand of dowry and on account of such demand, the deceased had been harassed. It has also been contended by the learned counsel for the appellant that for the purpose of conviction under Section 304B, the harassment on account of dowry demand must also be proximate to the time of death and if demand of dowry had been made long back and thereafter there is no evidence that such demand had continued thereafter then conviction under Section 304B cannot be based even if unnatural death takes place long after the demand of dowry had been made. The learned counsel for the appellant has also submitted that even the conviction under Section 498A is not warranted in the facts and circumstances of the case because the evidence of cruelty, as contemplated under Section 498A is absent and the sole statement made by the brother of the deceased has not been corroborated by any convincing evidence in the case.

3. Disputing the said contention of the learned counsel for the appellant, Mr. Prem Malhotra, the learned counsel appearing for the respondent, has submitted that the death had taken place within seven years of marriage and the brother of the deceased had deposed about the demand of dowry and the humiliation of the deceased on account of such dowry demand. He has also submitted that aluminium phosphate is not expected to be consumed by the deceased inadvertently, if the convincing evidence for which conviction under Section 304B can be made. Therefore, in our view, the conviction under Section 306 IPC and the conviction under Section 304B IPC of the appellant have been made in the absence of sufficient evidence. We, therefore, set aside such convictions and

sentences passed against the appellant. But so far as the conviction of the appellant under Section 498A IPC is concerned, it appears to us that there is direct and convincing evidence that the deceased had been humiliated and treated with cruelty on some occasions by the appellant and also the co-accused who had died before the trial. Therefore, the conviction under Section 498A IPC is justified in the facts and circumstances of the case and there is no occasion to interfere with such conviction and sentence passed against the appellant. The appellant is stated to have already served out the sentence for the conviction under Section 498A IPC, his bail bond should stand discharged, the appeal is disposed of accordingly.

This Judgment is also reported at (1998) 5 SCC 687

IN THE SUPREME COURT OF INDIA

M. SRINIVASULU
VERSUS
STATE OF A.P

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court upholding the conviction of the appellant for offences punishable under Sections 304 B and 498 A of the Indian Penal Code, 1860 (in short the 'IPC'). Sentence of seven years was imposed on each count. By the impugned judgment conviction recorded in respect of co-accused Laxmi was set aside and she was directed to be acquitted.

2. Background facts as projected by prosecution in a nutshell are as follows: Padma @ Pitchamma (hereinafter referred to as the 'deceased') was married to accused No.1-Srinivasulu on 21.5.1989. At the time of marriage, PW.1 father of the deceased gave rupees 10,000/- in cash, five tolas of gold, other household articles worth Rs.3000/- and Rs.1200/- towards clothes to accused No.1, who was employed as sub-staff of Karnataka Bank, Secunderabad. Accused No.2 is the mother of accused No.1 and she used to visit accused No.1 in the city and did not allow the deceased to fulfil conjugal obligations. At the instigation of accused No.2, accused No.1 had demanded Rs.5,000/- more from the parents of the deceased to purchase a Scooter as additional dowry. PW.1, father of the deceased paid the said amount to accused No.1. In spite of the same, both the accused made repeated demands for additional dowry upon the deceased. On one occasion, a sum of Rs.1,000/- and on another occasion a sum of Rs.2,000/- was paid by PW.1 to the accused. But the accused persons did not stop ill- treatment and harassment towards the deceased. After some time, when the

deceased and her parents came to know that accused No.2 was thinking of a second marriage of accused No.1, immediately they went to the house of the accused but accused No.1 refused to take the deceased into the house. Accused No.2 ill-treated the deceased and both the accused asked the deceased to go back to her parents' house. Accused No.1 threatened to immolate the deceased and accused No.2 threatened to poison the deceased and insisted that she continues to stay in the house of her parents. Therefore, the deceased was taking shelter in the house of her parents and about 2 months prior to the incident, on the assurance given by both the accused before the elders, the deceased joined accused Nos.1 and 2 to fulfil conjugal obligations. In spite of the same, the accused continued ill-treatment and harassment for more dowry. Because of the persistent ill- treatment and cruelty meted out by the accused towards the deceased, on 17.9.1992 at about 9.30 a.m. the deceased set herself ablaze and died with 100% burn injuries in Gandhi Hospital while undergoing treatment. First information report was filed, investigation was undertaken and on completion thereof charge sheet was filed. Accused persons pleaded innocence.

3. To establish its accusations prosecution examined 11 witnesses and 16 documents were exhibited. PWs. 1 and 2 were the father and mother of the deceased respectively while PW3 was a relative. PW4 was a brother of the deceased while PW5 was the sister of the deceased. PW 6 was a caste elder. PW 10 is the Doctor who conducted the autopsy while PW 11 was the investigating officer. On consideration of the evidence on record, learned II Additional Metropolitan Sessions Judge, Hyderabad convicted the appellant for offence punishable under Section 304B and sentenced him to undergo imprisonment for ten years and to pay a fine of Rs.10,000/- with default stipulation. The acquitted co-accused A2 i.e. the mother of the appellant was sentenced to undergo imprisonment for seven years. Though the accused person was found guilty for offence punishable under Section 498A no separate sentence was imposed. Questioning correctness of the trial court's judgment, an

appeal was preferred before the High Court by both the accused. It was essentially the stand of the appellant before the High Court that there was no material to show any demand of dowry and therefore neither Section 498A nor Section 304B had any application. It was pointed out that the deceased stayed for only 12 days at the matrimonial home. Reference was made to several letters which clearly establish that the deceased was unhappy not because of any demand of dowry but because the appellant used to stay most of the times with the parents and the mother in law was taking objection to her long absence from the marital home. The High Court did not find any substance in the stand of the appellant but found that there was no material to show that the co-accused i.e. the mother in law was guilty of the charged offences. Accordingly her conviction was set aside and she was acquitted. However, in case of the appellant the conviction was maintained and the sentence was reduced as afore-stated.

4. In support of the appeal, it was submitted that there is no evidence of any dowry demand. On the contrary, the letters on which prosecution placed reliance indicated that the dispute was not relating to demand of dowry but was on account of normal marital discord.

…

6. Section 304B IPC deals with dowry death which reads as follows:

"304B. 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 purpose of this sub- section 'dowry' shall have 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."

7. The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

   (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

   (ii) Such a death should have occurred within seven years of her marriage.

   (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

   (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

   (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

…

11. Section 498A reads as follows:

"498A: 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.

Explanation - For the purpose of this section 'cruelty' means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

12. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

...

14. The prosecution version primarily rests on three documents i.e. exhibits 2, 3 and 4 dated 3.1.1990, 20.6.1991 and 25.10.1990 respectively. A careful reading of these documents which were letters by the deceased show there was in fact no allegations of any demand of dowry made by the accused. Exhibit 3 i.e. the letter dated 20.6.1991 is very significant. Grievance in the said letter was not to any demand of dowry. In fact the deceased had clearly written that she was forced to marry with the accused against her wish and that created a lot of problems for her. The underlying essence of the letter is that the deceased was not willing to get married and wanted to continue her studies and she was married against her wish. There is one significant statement in the letter, which is to the effect that the deceased did not want to go to her parental home for Gangamma festival as her husband was taking due care of her. In exhibit 4 i.e. letter dated letter dated 25.10.1990 she has clearly stated that she was all right and was happy in her in laws place and her in laws were taking good care of her and she on the other hand stated that somehow or other she does not want to live in the marital home. In Exhibit 2 i.e. letter dated 3.1.1990 also she had stated that she was happy. In fact she wrote to her father that he should take good care of her mother.

15. Learned counsel for the State referred to a particular sentence which speaks as to the effect that Rajamma was scolding her. It is to be noted that Rajamma was appellant's grand mother, she is not an accused. It is also not indicated in the letter that she was scolding her for any dowry. It is to be noted that the reference to the grand mother being unhappy is relatable to the deceased's long absence from the matrimonial home. In fact there is no allegation of any harassment due to dowry. What the trial court and the High Court appears to have done is to pick up one line from one place and another from another place and conclude that there was demand of dowry. Reading of the letters in the entirety show that there

was, in fact, no mention of any demand for dowry. Therefore the conviction in terms of Section 498A and Section 304B cannot be maintained. The judgment of the High Court is accordingly set aside and the appellant is acquitted of the charges. Bail bond executed for the release of appellant on bail pursuant to the order dated 8.1.2002 shall stand discharged.

16. The appeal is allowed.

This Judgment is also reported at (2007) 11 SCALE 12

IN THE SUPREME COURT OF INDIA

KISHAN SINGH & ANR
VERSUS
STATE OF PUNJAB

C.K. THAKKER, J.& P. SATHASIVAM, J.

C.K. THAKKER, J.

1. The present appeal is filed by the two appellants against an order of conviction and sentence recorded by the Addl. Sessions Judge, Gurdaspur on April 30, 2002 in Sessions Case No. 128 of 1999 and confirmed by the High Court of Punjab & Haryana at Chandigarh on May 4, 2005 in Criminal Appeal No.950-SB of 2002. By the said order, the Courts below convicted the appellants herein for offences punishable under Sections 304B and 315, Indian Penal Code (IPC). For an offence punishable under Section 304B, IPC the appellants were ordered to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months, whereas for an offence punishable under Section 315, IPC, they were ordered to undergo imprisonment for three years.

2. The facts of the case in nutshell are that Reeta Kumari, daughter of Tilak Singh and Sudershana Rani-PW2, got married to Manmohan Singh (original accused No.1) on February 19, 1999 as per Hindu rites and ceremonies. According to the prosecution, sufficient dowry was given by the parents of Reeta Kumari at the time of marriage as per their financial status and capacity. However, Reeta Kumari, immediately after marriage, disclosed on her first visit to parental home after 3-4 days that the accused were subjecting her to taunts and harassments for not bringing scooter and golden bangle (kara) in dowry. The young bride was told in clear terms that if the demands of the accused of scooter and golden bangle

would not be met with, she should not come back to matrimonial home…On June 20, 1999, at about 3.30 p.m., one Mangat Ram, who acted as mediator for the marriage between Reeta Kumari and Manmohan Singh, informed parents of Reeta Kumari that Reeta Kumari died after consuming some poisonous substance…

3. The prosecution case also disclosed that at the time of death, Reeta Kumari was pregnant with a child of about 12 weeks gestation period in her womb. It was alleged by the prosecution that death was caused by the accused and it was a dowry death. Challan was, therefore, presented against the accused for offences punishable under Section 304B, 315 and 498A, IPC…

…

15. We have heard learned counsel for the parties.

16. The learned counsel for the appellant contended that both the Courts committed an error in convicting the appellants for offences punishable under Sections 304B and 315, IPC. According to the learned counsel, there was no demand of dowry by the accused and it could not be said that death of deceased Reeta Kumari was due to harassment because of demand of dowry…

17. The learned counsel for the State submitted that the order of conviction and sentence recorded by the trial Court and confirmed by the High Court does not call for interference. According to him, from the prosecution evidence, it was clearly established that deceased Reeta Kumari was maltreated and harassed for dowry. Immediately after her marriage on February 19, 1999, when she came to parental home within few days, she complained that dowry demand was made by her in-laws and even thereafter, the demand was repeated. Reeta Kumari was pregnant at the time of death. Both the Courts were, therefore, right in convicting the appellants under Section 304B and 315, IPC.

18. Having heard learned counsel for the parties, in our opinion, no case has been made out by the appellants so as to interfere with the decision of the Courts below…

19. Section 304B (Dowry death) was inserted by Act 43 of 1986 with effect from November 19, 1986…

20. In order that this section may apply, the following ingredients must be satisfied;

    (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

    (ii) such death must have occurred within seven years of her marriage;

    (iii) the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

    (iv) cruelty or harassment must be for or in connection with demand for dowry;

    (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

…

26. In our judgment, both the Courts were right in rejecting defence version that since the accused possessed scooter as well as motorcycle, there was no necessity to make demand of scooter. The High Court observed that it was a matter of common knowledge that even if in-laws had several things in the house, still they demand dowry…

27. We also find no substance in the contention of the appellants that there was material contradiction in the deposition of prosecution witnesses as to the occasion of making demand, i.e. as shagun or as dowry. From the evidence, it is proved that accused persons insisted for scooter and golden bangle as they had obliged parents of Reeta Kumari by allowing her to marry to accused No.1-Manmohan Singh. In our opinion, therefore, both the Courts were right in coming to the conclusion that there was demand of dowry by the accused.

28. The trial Court convicted accused No.1-Manmohan Singh for an offence punishable under Section 498A, IPC. The High Court, however, set aside the said conviction observing that he was not

regularly staying with Reeta Kumari as he was serving in Army and used to come only for few days by taking leave. Prosecution witnesses have, no doubt, deposed that demand of dowry was also made by accused No.1-Manmohan Singh-husband of Reeta Kumari and believing the said evidence, the trial Court convicted him. But the High Court was of the view that there was no sufficient evidence to prove demand of dowry by accused No.1-Manmohan Singh and acquitted him. The said acquittal is not challenged by the State. That part of the order thus has become final. The matter, therefore, rests there.

29. For the foregoing reasons, in our opinion, both the Courts were wholly right and fully justified in recording an order of conviction and in imposing sentence on appellants-accused Nos. 3 and 4. We see no infirmity therein and dismiss the appeal and confirm the order of conviction and sentence. Since they are on bail, we direct them to surrender to undergo the remaining period of sentence.

…

This Judgment is also reported at AIR 2008 SC 233.

IN THE SUPREME COURT OF INDIA

DINESH SETH
VS.
STATE OF N.C.T. OF DELHI

ALTAMAS KABIR, J.AND G.S. SINGHVI, J.

G.S. Singhvi, J.

1. This appeal is directed against the judgment of Delhi High Court whereby the appellant was acquitted of the charge under Section 304B Indian Penal Code (for short 'IPC') but was convicted under Section 498A IPC and sentenced to three years' rigorous imprisonment.

…

5. We have considered the respective submissions. For deciding whether the High Court committed an illegality by convicting the appellant under Section 498A IPC, it will be useful to notice the provisions of Sections 221, 222 and 464 of the Code. The same read as under:-

   221. Where it is doubtful what offence has been committed.

   (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

   (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

…

222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

…

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may- (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

6. A reading of the plain language of Section 221(1) and (2) shows that if a single act or series of acts constitute several offences and the prosecution is not certain about the particular offence then the accused can be charged with the allegation of having committed all, some or any of the offences. In such a case the accused can be convicted of the offence with which he may not have been specifically charged but evidence produced by the prosecution proves that such an offence has, in fact, been committed. Section 222(1) lays down that when a person is charged with an offence consisting of several particulars and combination of only some of the particulars constituting a minor offence is proved then he can be convicted of the minor offence with which he may not have been charged. Section 222(2) lays down that when a person is charged with an offence but the facts proved constitute a minor offence then he can be convicted of the minor offence despite the fact that he may not have been charged with that offence. Sub-section (3) of Section 222 lays down that a person charged with an offence, can be convicted of an attempt to commit such offence even though a separate charge may not have been framed on that account. Section 464 lays down that any error, omission or irregularity in the framing of charge including any misjoinder of charges, will not invalidate a finding, sentence or order by a court of competent jurisdiction unless the higher court comes to a conclusion that failure of justice has been occasioned. Sub-section (2) of Section 464 specifies the modes which can be adopted by the Court of appeal, confirmation or revision, if such court is of the opinion that a failure of the justice has been occasioned on account of non framing of charge or any error, omission or irregularity in the framing of charge.

7. The question whether omission to frame a charge or any error or irregularity in the charge, is by itself, sufficient for quashing the conviction of the accused was considered in *Willie (William) Slaney vs. State of M.P.* [AIR 1956 SC 116]. After examining the issue in detail, the Constitution Bench of this Court observed:-

"Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions."

8. The Constitution Bench then referred to the provisions of Sections 225, 232, 535 and 537 of the Code of Criminal Procedure, 1898, which are analogous to Section 215, 464 and 465 of the Code and held:

"Now, as we have said, Sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and

irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

…

12. In view of the apparently conflicting judgments of the coordinate Benches, the issue was referred to a larger Bench. In *Dalbir Singh vs. State of U.P.* [2004 (5) SCC 334], a three Judges' Bench considered the provisions of Section 222 and 464 of the Code and observed:-

"Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor

offence, though he was not charged with it. Sub- section (2) of the same section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 CrPC is in the nature of a general provision which empowers the court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely, Chapter XXXV which deals with irregular proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this section provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent court unless the appellate or revisional court comes to the conclusion that a failure of justice has in fact been occasioned thereby."

13. The three Judges' Bench then referred to the earlier judgments in *Willie (William) Slaney vs. State of M.P.* (supra), *Gurbachan Singh vs. State of Punjab* (supra) and observed:-

"There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for

which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

14. The ratio of the above noted judgments is that in certain situations an accused can be convicted of an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate, confirming or revisional Court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned.

15. Reverting to the facts of this case, we find that the appellant and his co-accused were charged under Section 304B IPC. The specific allegation levelled against them was that they had subjected the deceased to cruelty for or in connection with demand for dowry and she had died unnatural death within seven years of her marriage. Thus, the appellant knew that he was to defend himself against the allegation of cruelty. The cross-examination of prosecution witnesses unmistakably shows that the defense had made concerted effort to discredit the testimony of mother, sisters and brother of the deceased in the context of allegation of cruelty. Not only this in his statement under Section 313 of the Code, the appellant denied the allegation that he had subjected his wife to cruelty. It is thus evident that the appellant was not only aware of the charge of cruelty but he got and availed the opportunity to defend himself with reference to that charge. Therefore, it is not possible to accept the submission of Shri Tulsi that omission of the trial court to frame specific charge under Section 498A IPC had prejudiced the cause of his client or that failure of justice had been occasioned on that count.

16. The next point which requires consideration is whether after discarding the testimony of PW-1, PW-6 and PW-7 and acquitting the appellant of the charge under Section 304B IPC, the High Court could convict him under Section 498A IPC.

17. Section 498A was added to the IPC by amending Act No.46 of 1983 in the backdrop of growing menace of dowry related cases in which the women were subjected to cruelty and harassment and were forced to commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation appended to this section defines the term 'cruelty' to mean any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. After three years, Section 304B was inserted by amending Act No.43 of 1986 to deal with cases involving dowry deaths occurring within seven years of marriage. Sub-section (1) of Section 304B IPC lays down that 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. By virtue of explanation appearing below sub-section (1), the word 'dowry' used therein carries the same meaning as is contained in Section 2 of The Dowry Prohibition Act, 1961.

19. The ingredient of cruelty is common to Sections 304B and 498A IPC, but the width and scope of two sections is different, inasmuch as Section 304B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet unlawful demand for property or valuable security.

20. In order to bring home charge under Section 304B IPC, the prosecution is required to establish that the death of the woman has been caused by burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and soon before her death, the woman is subjected to cruelty or harassment by her husband or his relative. However, for the purpose of conviction under Section 498A IPC, it is sufficient to prove that the woman was subjected to cruelty, as elucidated in the explanation appearing below substantive part of the section, by her husband or his relative.

…

22. Although the judgment under challenge does not contain an elaborate discussion with reference to the ingredients of Section 498A IPC, having carefully gone through the statements of PW-1, PW-6, PW-7, PW-14 and PW-26, we are convinced that the prosecution succeeded in proving that the appellant had subjected the deceased to cruelty within the meaning of clause (a) of explanation appearing below Section 498A IPC and the mere fact that the statements of three of them were not found convincing by the High Court for sustaining the conviction of the appellant and his other co-accused on the premise that all the ingredients of Section 304B IPC have not been established is not sufficient to discard the prosecution case as a whole. PW- 1, PW-6 (both sisters),

PW-7 (mother) and PW-26 (brother) have categorically deposed that immediately after marriage the deceased was given beating by the appellant, his brothers and was subjected to harassment and taunting by mother-in-law and sister-in-law for being dark complexioned and illiterate/not fluent in English. Their statements also show that the appellant had hit the deceased with a brick resulting in wound on her head which had to be stitched. On the date of death also, the deceased was subjected to physical torture and harassment. Both the sisters narrated that when they met the deceased, she was weeping and her eyes were swollen. Their testimony has been substantially supported by PW-14 Rakesh Malhotra. He too stated that the deceased was subjected to beating by her husband and she had suffered injury on her head. This part of the prosecution case has not been disbelieved by the High Court which found discrepancy only on the issue of demand of dowry. The beating given to the deceased and harassment to which she was subjected had direct bearing on her committing suicide. Therefore, we are convinced that the High Court did not commit any error in convicting the appellant under Section 498A IPC.

23. The judgments on which Shri Tulsi has placed reliance do not support the cause of the appellant. Rather, the judgment in *State of West Bengal vs. Orilal Jaiswal & Another* (supra) supports the conclusion that an offence under Section 498A IPC is made out if the woman is subjected to physical assault, humiliation, harassment and mental torture. In *Satpal vs. State of Haryana* (supra), this Court held that even though the prosecution evidence was not sufficient to establish charge under Section 304 or 306IPC, conviction under Section 498A IPC can be upheld because the deceased was treated with cruelty by the appellant.

24. In the result, the appeal is dismissed. The appellant who is on bail, shall be arrested for serving out the remaining sentence.

This Judgment is also reported at (2008) 14 SCC 94.

IN THE SUPREME COURT OF INDIA

BALWANT SINGH AND ORS.
VERSUS
STATE OF H.P.

ARIJIT PASAYAT, J. & MUKUNDAM SHARMA, J.

Dr. ARIJIT PASAYAT, J.

1. In this appeal challenge is to the judgment of a learned Single Judge of the Himachal Pradesh High Court holding each of the appellants guilty of offence punishable under Section 498A of the Indian Penal Code, 1860 (in short the 'IPC') while setting aside the conviction and the sentence imposed in respect of Section 306 IPC.

2. Background facts in a nutshell are as follows:

   The appellants-accused were tried for offences punishable under Sections 498A, 304B and 306 IPC. Accused No.1 Balwant Singh was father-in-law, accused No.4-Kanta Devi was mother-in-law, accused No.3- Ravinder Singh was brother-in-law and accused No.2- Anup Singh was husband of Renu Bala (hereinafter referred to as the 'deceased'). The deceased was daughter of one Gurdayal Singh and Kamla Devi. She was married to A-2, Anup Singh on July 6, 1992 in accordance with the Hindu rites and rituals. After few days of her marriage, when Renu Bala visited the house of her parents, she complained as to how accused persons were treating her with cruelty by putting demands for refrigerator and scooter as dowry. It was alleged that on January 5, 1993, Kamla Devi, mother of Renu Bala came to know from Tilak Raj, her brother-in-law that Renu Bala was admitted in a hospital at Gagret. She, therefore, along with Tilak Raj went to the hospital, but Renu Bala was not there, and they came to know that Renu Bala was taken to Patohar Kalan, the village where the accused were staying. Both of them then went

to the residence of the accused and found Renu Bala lying dead in verandah of the house of the accused and none of the accused was there. …

After hearing the learned Public Prosecutor for the State as well as learned defence counsel, a charge was framed against the accused for the offences punishable under Sections 498-A, 304-B and 306 of the IPC and they were asked as to whether they plead guilty.

The accused did not plead guilty to the charge and claimed to be tried.

3. … The trial court as noted above held the accused persons guilty of offences punishable under Section 498A and 306 IPC while directing acquittal of the charge in terms of Section 304-B IPC. In appeal after referring to the evidence High Court came to hold that the offence under Section 306 is not made out.

…

5. Learned counsel for the appellants further pointed out that having held that the appellants were not guilty of offence punishable under Section 306 IPC there is no scope for convicting the appellants under Section 498A IPC.

…

7. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A… It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be

taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142)…

8. On analyzing of the evidence it is clear that there is no material to establish the guilt of A-3 i.e. brother-in-law of the deceased. Consequently he stands acquitted of the charge. So far as other three accused persons are concerned, the accusations have been established by the evidence of PWs 3, 4 and 5, the documentary evidence and the exhibited letters and the convictions recorded so far as they are concerned cannot be faulted.

9. It is to be noted that the High Court has imposed sentence of one year. Considering the age of the father-in-law and mother-in-law (A-1 and A-4) and the period of sentence already undergone by them while upholding the conviction the sentence is reduced to the period already undergone. The appeal stands dismissed so far as A-2 is concerned.

10. The appeal is disposed of accordingly.

This Judgment is also reported at (2008) 15 SCC 497.

IN THE SUPREME COURT OF INDIA

RAJENDRAN & ANR.
VERSUS
STATE ASSTT. COMMNR. OF POLICE LAW & ORDER
WITH
CRIMINAL APPEAL NO. 1139 OF 2003

DR. ARIJIT PASAYAT, J AND MUKUNDAKAM SHARMA , J.

Dr. ARIJIT PASAYAT, J.

1. These two appeals are interlinked and have their matrix on a judgment of the Madras High Court. By the impugned judgment the High Court upheld the conviction of the accused persons for offence punishable under Section 498(A) of the Indian Penal Code, 1860 (in short the 'IPC')… Originally, the accused persons were charge sheeted and tried for offence punishable under Section 498A and 304 B IPC. The Trial Court after considering the material on record acquitted the appellants in respect of offence referred to Section 304 B and convicted them for offence under Section 498A IPC.

2. Prosecution version in a nutshell is as follows:

   … On 1.12.1989, the deceased Shanthi got married to appellant-Rajendran. Since there was torture at the hands of the appellants, the deceased Shanthi committed suicide on 7.3.1991 at 10.30 A.M. by setting fire on herself after pouring kerosene…After examination of witnesses and recovery of material objects, the Assistant Commissioner of Police (PW-11) filed a charge sheet before the trial Court on 20.3.1992 for the offences under Section 498(A) and 304(B) IPC…The trial court on completion of trial, concluded that all the appellants were guilty of offence under Section 498 A IPC and convicted and sentenced them to undergo rigorous imprisonment for 3 years. Same was challenged before the High Court.

The appellants in the appeal before the High Court submitted that in the absence of any dying declaration or suicide note or any evidence relating to dowry torture the trial court ought not to have convicted the appellants for offence punishable under Section 498A IPC. It was also submitted that since the appellants were acquitted of charge punishable under Section 304B IPC, consequentially the trial court ought to have acquitted the appellants in respect of other offence. The High Court did not accept this plea…

…

4. One of the reasons for ill-treatment to the deceased was that the deceased gave birth to a female child, which was considered to be inauspicious and after the birth of the said female child, the Rajendran's brother's wife died and the appellants thought that the birth of the said female child was the reason for various debacles in the family and consequently, she was tortured by the appellants.

…

7. Section 498A reads as follows:

"498A: 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.

***Explanation** – For the purpose of this section 'cruelty' means –*

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

8. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498A IPC… It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

9. The above position was highlighted in Balwant Singh & Ors. v. State of H.P. [2008(10) JT 589].

10. Section 498A IPC has two limbs. The first limb of Section 498A provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished. 'Cruelty' has been defined in clause (a) of the Explanation to the said Section as any willful conduct which is of such a nature as is likely to drive to a woman to commit suicide.

When there is demand of dowry, the case comes under clause (b) of the Explanation to Section 498A. Clause (a) of the Explanation has definite application to the facts of the present case. Additionally, effect of Section 113 A of the Indian Evidence Act cannot be lost sight of.

11. Further as per Section 113 A of the Evidence Act when the question as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by such relative of her husband. This has not been rebutted by the appellants.

12. Above being the position we find no merit in these appeals, which are accordingly dismissed.

This Judgment is also reported at AIR 2009 SC 855

IN THE SUPREME COURT OF INDIA

BAKSHISH RAM & ANR.
VERSUS
STATE OF PUNJAB

TARUN CHATTERJEE, J. & H.L. DATTU, J.

…

2. This appeal arises out of the judgment and order passed by the High Court of Punjab and Haryana in Criminal Appeal No. 487 – SB of 1994 dated 26th day of March, 2008, wherein and where under, the court has confirmed the judgment and order passed by the learned Sessions Judge, Jalandhar dated 21.9.1994, sentencing the appellants Bakshish Ram and Dalip Kaur to undergo rigorous imprisonment for seven years each for the offences under Section 304-B read with Section 498-A IPC…

3. …Aggrieved by the said judgment, appellants had filed a criminal appeal before the High Court with an application for suspension of sentence/grant of bail. The High Court at the preliminary stage considering that there is no likelihood of the appeal being heard early, suspended the sentence and granted bail to the accused by its orders dated 2.11.1994 and 16.12.1994…

4. The High Court after scrutinizing the evidence on record has held that the deceased was compelled to commit suicide by the appellants in order to satisfy their lust for dowry, for which appellants are responsible and thereby dismissed the appeal.

…

6. Learned Counsel for the appellants would submit that the petition is pending for adjudication before this Court and during its pendency this Court may be pleased to grant bail to the appellants. Learned Counsel would contend on behalf of appellant No.1/Bakshish Ram

that he may be granted bail as he is the only bread earner of his family…

7. Before going into merits of the application, we intend to take note of some of the decisions of this court while considering the application for grant of interim bail. This Court in the case of Talab Haji Hussain vs. Madhukar Purshottam Mondkar, 1958 SCR 1226, has observed :

"It is to be remembered that it is not possible to give a list of all the factors which a court may consider in the disposal of a bail application. But, putting the whole thing singly the object, which a court dealing with an application for bail must keep in mind, is that in any case there should not be any impediment in the progress of the fair trial."

8. This Court in the case of State of Maharashtra v. Anand Chintaman Dighe, (1990) 1 SCC 397, has stated that where the offence is of serious nature, the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence.

9. It is clear from the various decisions of this Court as stated above that, cases where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The seriousness and gravity of the offence must be looked into before granting the bail. In the instant case, accused are convicted by the Trial Court for harassing, torturing and compelling the deceased to end her life by committing suicide, and the said conviction is confirmed by the High Court.

10. In the case of Kashmira Singh v. State of Punjab, (1977) 4 SCC 291, this Court observed that, so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where

special leave has been granted to the accused to appeal against his conviction and sentence.

11. Now coming back to the facts of this case, in so far as the first appellant is concerned, the only reason assigned for grant of bail is that he is the only bread earner of the family. In the light of decisions of this court, this contention of the appellant does not impress us to release him on bail for the alleged offence for which he had been convicted by the Courts. Therefore, in our view, for the present he is not entitled to the relief sought in the application.

...

14. The application for grant of bail is disposed of.

This Judgment is also reported at (2009) 6 SCC 561.

IN THE SUPREME COURT OF INDIA

GOPAL
VERSUS
STATE OF RAJASTHAN

ARIJIT PASAYAT, J. & MUKUNDAKAM SHARMA, J.

Dr. ARIJIT PASAYAT, J

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court allowing the appeal of the State Government and holding the appellant guilty of offence punishable under Section 498-A of the Indian Penal Code, 1860 (in short 'IPC') while upholding the acquittal in respect of offence punishable under Section 306 IPC...

2. Background facts giving rise to the prosecution are as under:

   On 4.7.1988, at about 10 p.m. Laxman Singh (P.W.13) who was S.I. in the Police Station Nimbaheda received an information from the Medical Officer Dr. R.D. Bhatt (P.W.15) from the Hospital and on receiving that information, Laxman Singh reached the hospital where Prem Chand was present who informed orally to Laxman Singh that in the morning all the persons of his family had gone to the field in the house; wife of his son Gopal, namely, Ram Kumari (hereinafter referred to as "the deceased") was alone and in the noon, when he went to his house, he found the deceased unconscious and then he called his wife Lahar Bai (PW-4) who was living nearby and she also came there. Then he called doctor and doctor advised him that she should be taken to the hospital and in the hospital, when the treatment was going on, the deceased died.
   …

   During investigation, post mortem of the dead body of the deceased was conducted by Dr. R.K. Gupta (P.W. 11) and Dr. R.D.

Bhatt (P.W.15) and the post mortem report is Ex.P/4 and both the doctors have stated that cause of death of Smt. Ram Kumari was asphyxia and this may be probably due to opium poisoning and they also found 6 bruises, three on the right thigh and three on her right hip. Thereafter P.W.13 Laxman Singh came to the conclusion that accused Gopal who was husband of the deceased used to treat her with cruelty and used to beat her and a case for offence under Sections 498A and 306 I.P.C. was made out and he himself lodged FIR Ex.P/8 and on this FIR Ex.P/8 investigation of the case was done by Netrapal Singh (PW-14) who was S.H.O. in the police station Nimbaheda…

… The trial Court directed acquittal of the appellant inter-alia holding as follows:

(i) It has not been proved by the prosecution that the deceased has been subjected to cruelty and single act of cruelty or beating is not sufficient.

(ii) Since the deceased had undergone tubectomy operation after delivery of 3rd child and because of that she was not in a position to work and she used to feel restlessness and accused respondent used to ask her to work and there was dispute between husband and the wife on this point and such type of dispute cannot be covered.

Aggrieved by the judgment and order, State filed an appeal and as noted above the same was allowed.

3. In support of the appeal, learned counsel for the appellant submitted that the marriage took place sometime in 1976 and the date of occurrence is July, 1998 and therefore Section 113-B of the Indian Evidence Act, 1872 (in short the 'Evidence Act') has no application. Further it is submitted that the ingredients of Section 498-A have not been established.

4. It has been concluded by the High Court that suicide has not been proved. Therefore, Section 498-A has no application. Section 498-A(b) relates to demand of dowry for which there is no evidence.

5. In response, learned counsel for the respondent-State submitted that the case is covered by Section 498-A(b). It is submitted that in any event injuries have been established and therefore Section 323 IPC has been clearly established. It is by way of reply learned counsel for the appellant submitted that no charge has been framed for Section 323.

6. The ingredients of Section 498-A are as follows:

" 498A: 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.

***Explanation** – For the purpose of this section 'cruelty' means –*

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

7. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section

498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under Section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. (See Akula Ravinder and others v.The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

8. The above position was highlighted in Balwant Singh &Ors. v. Stateof H.P. [2008(10) JT 589].

9. Section 498A IPC has two limbs. The first limb of Section 498A provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished. 'Cruelty' has been defined in clause (a) of the Explanation to the said Section as any wilful conduct which is of such a nature as is likely to drive to a woman to commit suicide. When there is demand of dowry, the case comes under clause (b) of the Explanation to Section 498A. Clause (a) of the Explanation has definite application to the facts of the present case. Additionally, effect of Section 113 A of the Indian Evidence Act cannot be lost sight of.

10. Further as per Section 113 A of the Evidence Act when the question as to whether commission of suicide by a woman had been abetted

by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by such relative of her husband. This has not been rebutted by the appellants.

11. For bringing in application of Section 306 IPC, suicide has to be established. In the instant case, the trial Court and the High Court have categorically held that no suicide has been established.

12. So far as Section 498-A(b) is concerned, there must be an evidence of demand of dowry. There is no evidence in that regard adduced by the prosecution. That being so, as rightly contended by learned counsel for the appellant Section 498-A(b) has no application.

13. The crucial question is whether the appellant can be convicted in terms of Section 323 IPC. Even if it is so as contended by learned counsel for the respondent, considering the fact that the appellant has already suffered custody of about 6 months, we do not consider it necessary to go into that question. The appeal is allowed. The conviction as recorded is set aside. The bail bonds executed by the appellant for release on bail pursuant to the order dated 14.1.2002 shall stand discharged.

This Judgment is also reported at (2009) 11 SCC 314.

IN THE SUPREME COURT OF INDIA

AMAR SINGH
VERSUS
STATE OF RAJASTHAN
WITH
STATE OF RAJASTHAN …… APPELLANT
VERSUS
JAGDISH & ANR. …… RESPONDENTS

A.K. PATNAIK, J.

1. This is an appeal against the judgment dated 07.10.2003 of the High Court of Rajasthan, Jaipur Bench, in D.B. Criminal Appeal No.816 of 1998.

2. The facts very briefly are that on 05.05.1992 Santosh (the deceased) was married to the appellant and on 08.03.1993 she was found dead in her in-laws house. On the same day, a written report was lodged with the police at the Shivaji Park Police Station at Alwar, by the uncle of the appellant, Ganga Sahai Saini, saying that while the deceased was boiling the water she got engulfed in flames and died. On the same day, another written report was lodged with the police by the father of the deceased, Babu Lal, that the deceased used to be harassed and humiliated in connection with demand of dowry and on receiving the information that she has died in an electric current accident, he rushed to the spot and found the body of Santosh in charred condition. On the basis of such information given by Babu Lal, the police registered FIR No.53 of 1993 for the offences under Sections 498A and 304B of the Indian Penal Code (for short 'IPC')… The Additional Sessions Judge convicted the appellant, Jagdish and Gordhani under Sections 498A and 304B IPC and imposed the sentence of three years rigorous imprisonment and a fine of Rs.1,000/-, in default to suffer further three months'

simple imprisonment for the offence under Section 498A IPC and imposed the sentence of imprisonment for life and a fine of Rs.5,000/-, in default further six months' simple imprisonment for the offence under Section 304B IPC. On appeal, the High Court acquitted Jagdish and Gordhani but confirmed the conviction of the appellant under Section 498A and 304B IPC.

3. Mr. Tara Chandra Sharma, learned counsel for the appellant, submitted that the appellant has already served out the sentence under Section 498A IPC and, therefore, his challenge in this appeal is confined to the conviction and sentence under Section 304B IPC. He submitted that the main ingredient of the offence under Section 304B IPC is that the deceased must have been subjected to cruelty or harassment in connection with any "demand for dowry" and in this case the prosecution has not established that the deceased was subjected to cruelty or harassment by the appellant in connection with any demand for dowry. In support of his submission, he relied on the decisions of this Court in *Biswajit Halder alias Babu Halder and Others* v. *State of West Bengal* [(2008)1 SCC 202] and *Durga Prasad and Another* v. *The State of M.P.* [2010(6) SCALE 18]...

4. … He submitted that in any case the evidence of PW- 2, PW-4 and PW-5 on whatever was stated to them by the deceased regarding demand for dowry and harassment or cruelty were at best hearsay evidence and not admissible either under Section 60 of the Indian Evidence Act, 1872 or under Section 32 of the Indian Evidence Act, 1872. In support of his submission, he cited *Rattan Singh* v. *State of H.P.* [(1997) 4 SCC 161].

5. …According to learned counsel Mr. Sharma, this is not a case where the prosecution has been able to establish the offence under Section 304B IPC against the appellant and hence the judgment of the High Court should be set aside.

6. Dr. Manish Singhvi, learned counsel appearing for the State of Rajasthan, in reply submitted that the facts of this case would show

that the deceased did not die under normal circumstances. He referred to the *post-mortem* report (Ex.P-21) which indicated that the deceased suffered 100% burns…

7. He submitted that the evidence of PW-2, PW-4 and PW-5 establishes that there was demand for dowry of a Scooter or Rs.25,000-/. He referred to the evidence of PW-4 and PW-5 to show that the appellant used to taunt the deceased saying that she has come from a hungry house and that the appellant had himself visited the house of PW-4 and demanded a sum of Rs.10,000/-. He vehemently submitted that this is a clear case of continuous harassment of the deceased in connection with demand of dowry not only by the appellant but also by his other family members. He cited *Pawan Kumar and Others* v. *State of Haryana* [(1998) 3 SCC 309] to contend that such taunting and teasing of a bride for not bringing dowry amount to harassment or cruelty within the meaning of Section 304B IPC.

8. … He submitted that in the present case the statements made by the deceased to PW-2, PW-4 and PW-5 related to the cause of her death, namely, demand for dowry and therefore would be admissible under Section 32 of the Indian Evidence Act, even if the deceased while making the statement was not expecting the death. He submitted that in the present case the prosecution has firmly established that soon before her death the deceased has been subjected to cruelty or harassment by the appellant in connection with demand for dowry and therefore the Court has to presume under Section 113B of the Indian Evidence Act that the appellant has caused the dowry death and this presumption has not been rebutted by the appellant by leading any evidence.

…

10. We find that the evidence of PW-4 (mother of the deceased) is that after marriage, the deceased came several times and she also came about one month prior to her death and she used to complain about the demand of a Scooter and harassment by her mother-in-

law Gordhani and that she had also told that the appellant used to taunt her that she has come from a hungry house and brought nothing and the last time when she came she stayed for two days and returned and one month thereafter she was murdered. Similar is the evidence of PW-5 (brother of the deceased) that whenever the deceased used to come home she used to complain that her in-laws have been teasing her and she had also stated that they demanded Scooter or Rs.25,000/- for a shop and that one month prior to her death she came home and complained that her mother-in-law and all other in-laws used to torture her and taunt her that she did not bring anything and that the appellant also used to tease her. It is thus clear from the evidence of PW-4, as corroborated by the evidence of PW-5, that the deceased has made statements before them that her in-laws as well as the appellant have been demanding a Scooter or Rs.25,000/- for a shop and have been taunting and teasing her for not meeting the demand of dowry within a couple of months before her death. Such evidence of PW-4 and PW-5 with regard to the statements made by the deceased is no doubt hearsay but is admissible under clause (1) of Section 32 of the Indian Evidence Act.

…

12. In *Pakala Narayana Swami* v. *Emperor* [AIR 1939 PC 47] Lord Atkin held that circumstances of the transaction which resulted in the death of the declarant will be admissible if such circumstances have some proximate relation to the actual occurrence. The test laid down by Lord Atkin has been quoted in the judgment of Fazal Ali, J. in *Sharad Birdhichand Sarda* v. *State of Maharashtra* (supra) and His Lordship has held that Section 32 of the Indian Evidence Act is an exception to the rule of hearsay evidence and in view of the peculiar conditions in the Indian Society has widen the sphere to avoid injustice. His Lordship has held that 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 statements would clearly fall within the four

corners of Section 32 and, therefore, admissible and the distance of time alone in such cases would not make the statements irrelevant. The difference in the English Law and the Indian Law has been reiterated in *Rattan Singh* v. *State of H. P.* (supra) and it has been held therein that even if the deceased was nowhere near expectation of death, still her statement would become admissible under Section 32 (1) of the Indian Evidence Act, though not as a dying declaration as such, provided it satisfies one of the two conditions set forth in this sub-section. The argument of Mr. Sharma, therefore, that the evidence of PW-4 and PW-5 regarding the statements made by the deceased before them are hearsay and are not admissible is misconceived.

13. The prosecution, therefore, has been able to show that soon before her death the deceased has been subjected by the appellant to taunt in connection with demand for dowry. This Court has held in *Pawan Kumar and Others* v. *State of Haryana* (supra) that a girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride and such acts of taunting by the husband would constitute cruelty both within the meaning of Section 498A and Section 304B IPC.

14. Once it is established by the prosecution that soon before her death the deceased was subjected by the appellant to harassment or cruelty in connection with demand for dowry, the Court has to presume that the appellant has committed the offence under Section 304B IPC. This will be clear from Section 113B of the Indian Evidence Act which states that 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 connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. The prosecution in this case had led sufficient evidence before the Court to raise a presumption that the

appellant had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption.

…

16. For the offence under Section 304B IPC, the trial court has imposed the maximum punishment of life imprisonment saying that the appellant has sacrificed the newly-wed bride with cruelty and harshness to satisfy his lust of dowry illegally and hence he does not deserve any mercy and considering the nature of the offence committed by him and his conduct, he deserves the maximum punishment of life imprisonment. The High Court has only sustained the conviction and punishment of life imprisonment imposed on the appellant under Section 304B IPC. Dr. Singhvi, however, suggested that this was a case of strangulation of a bride before she was burnt and for this reason, the High Court sustained the maximum punishment of life imprisonment.

17. The fact remains that the appellant was not charged for the offence of murder under Section 302 IPC presumably because during investigation no materials were available to establish the offence under Section 302 IPC against the appellant. In *Smt. Shanti and Another* v. *State of Haryana* [(1991) 1 SCC 371] cited by Mr. Sharma, this Court has held that where there is no evidence as to the actual part played by the accused, a minimum sentence of seven years would serve the ends of justice. In the present case, since there is no evidence as to the actual role played by the appellant in the death of the deceased, a punishment of ten years' imprisonment would suffice in the ends of justice.

18. In the result, the appeal is partly allowed and the sentence of life imprisonment imposed on the appellant under Section 304B IPC is reduced to ten years and the impugned judgment of the High Court is modified accordingly. In case the appellant has undergone the period of ten years imprisonment, he shall be released forthwith unless he is wanted in any other case.

This Judgment is also reported at AIR 2010 SC 3991

IN THE SUPREME COURT OF INDIA

DURGA PRASAD & ANR.
VERSUS.
THE STATE OF M.P.

ALTAMAS KABIR, J. AND H. L. GOKHALE, J.

ALTAMAS KABIR, J.

…

2. This appeal is directed against the judgment and order dated 28th April, 2009, passed by Jabalpur Bench of the Madhya Pradesh High Court, dismissing Criminal Appeal No.103 of 2000, which had been directed against the judgment of conviction and sentence under Section 498-A and Section 304-B Indian Penal Code. By the said judgment, the learned Sessions Judge had sentenced the Appellants to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for 3 months under Section 498-A IPC and to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- and in default of payment of such fine, to undergo rigorous imprisonment for a further period of 3 years...

3. Appearing in support of the appeal, Mr. R.P. Gupta, learned Senior Advocate, contended that both the Courts below had erred in convicting the Appellants on the basis of evidence on record. Mr. Gupta submitted that in the absence of any evidence to prove the charges under Sections 304-B and 498-A IPC, the trial Court, as also the High Court, had erred in merely relying on the presumption available under Section 304-B regarding the death of a woman by any burn or bodily injury or otherwise than under normal circumstances, within 7 years of her marriage, in coming to a conclusion that there would be a natural inference in such circumstance under Section 113-A and 113-B of the Indian Evidence

Act, 1872, that the accused persons had caused the death of Kripa Bai by torturing her physically and mentally so as to drive the deceased to commit suicide…

4. Mr. Gupta also submitted that the provisions of Section 113-A of the Indian Evidence Act were not applicable in this case since no case for abetment of suicide by the husband or any of the husband's relatives had been alleged. On the other hand, the case sought to be made out is one under Section 113-B relating to presumption as to dowry death. Mr. Gupta submitted that the provisions in Section 113-B relating to presumption as to dowry death are similar to that of Section 304-B IPC. He urged that in order to arrive at the presumption of dowry death, it would have to be shown by the prosecution that soon before her death, such woman had been subjected to cruelty or harassment for, or in connection with, any demand for dowry, which would lead to a presumption that such person caused the dowry death.

…

6. It was pointed out that the only evidence on which reliance had been placed both by the trial Court, as well as the High Court, for convicting the Appellants, was the evidence of Vimla Bai, PW.1, the mother of the deceased and Radheshyam, PW.3, the brother of the deceased. In fact, the prosecution story was that since no dowry had been received from the family of the victim, she had been beaten and treated with cruelty. There is no other evidence regarding the physical and mental torture which the deceased was alleged to have been subjected to. Mr. Gupta urged that the marriage of the Appellant No.1 with the deceased was performed as part of a community marriage being celebrated on account of the poverty of couples who could not otherwise meet the expenses of marriage and that even the few utensils which were given at the time of such community marriage were given by the persons who had organized such marriages.

…

10. Opposing the submissions made by Mr. R.P. Gupta, learned Senior Advocate, Ms.Vibha Datta Makhija, learned Advocate appearing for the State of Madhya Pradesh, submitted that the trial Court had considered the evidence of Vimla Bai, PW.1, the mother of the deceased and Radheshyam, PW.3, the brother of the deceased, in coming to a finding that their evidence was sufficient to bring home the guilt of the Appellants under Sections 498-A and 304-B IPC.

11. Ms. Makhija also reiterated the submissions which had been made before the trial Court regarding the presumption that was to be drawn both under Section 304-B IPC, as also under Section 113-B of the Indian Evidence Act, 1872, having regard to the fact that Kripa Bai had committed suicide within 7 years of her marriage. Ms. Makhija submitted that once it was found that by their actions the Appellants had driven Kripa Bai to commit suicide, the provisions of Section 304-B IPC were immediately attracted and the Appellants, therefore, had been rightly convicted by the trial Court under Sections 498-A and 304-B IPC…

12. Ms. Makhija then contended that as had been laid down by this Court in the case of Anand Kumar vs. State of M.P. [(2009) 3 SCC 799], in order to counter the presumption available under Section 113-B, which is relatable to Section 304-B, a heavy burden has been shifted on to the accused to prove his innocence. Having regard to the language of Section 113-B of the Indian Evidence Act, which indicates that when a question arises as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman was subjected to cruelty or harassment by such other person or in connection with any demand for dowry, the Court shall presume that such person had caused such dowry death. Ms. Makhija urged that the aforesaid wording of Section 113-B of Evidence Act and the use of the expression “shall” would clearly indicate that the Court shall presume such death as dowry death provided the conditions in Section 113-B were satisfied and it would then be for the accused to prove otherwise.

…

14. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to allow the benefit of doubt to the Appellants having particular regard to the fact that except for certain bald statements made by PWs.1 and 3 alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of Section 113-B of the Indian Evidence Act, 1872, in order to bring home the guilt against an accused under Section 304-B IPC.

15. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be 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. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned.

16. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the Appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only.

17. The decision cited by Mr. R.P. Gupta, learned Senior Advocate, in Biswajit Halder's case (supra) was rendered in almost similar circumstances. In order to bring home a conviction under Section 304-B IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry. In our view, the prosecution in this case has failed to fully satisfy the

requirements of both Section 113-B of the Evidence Act, 1872 and Section 304-B of the Indian Penal Code.

18. Accordingly, we are unable to agree with the views expressed both by the trial Court, as well as the High Court, and we are of the view that no case can be made out on the ground of insufficient evidence against the Appellants for conviction under Sections 498-A and 304-B IPC. The decision cited by Ms. Makhija in Anand Kumar's case (supra) deals with the proposition of shifting of onus of the burden of proof relating to the presumption which the Court is to draw under Section 113-B of the Evidence Act and does not help the case of the State in a situation where there is no material to presume that an offence under Section 304-B IPC had been committed.

19. In that view of the matter, we allow the Appeal and set aside the judgment of the trial Court convicting and sentencing the Appellants of offences alleged to have been committed under Sections 498-A and 304-B IPC. The judgment of the High Court impugned in the instant Appeal is also set aside. In the event, the Appellants are on bail, they shall be discharged from their bail bonds, and, in the event they are in custody, they should be released forthwith.

This Judgment is also reported at (2010) 9 SCC 73

CHAPTER FIVE

THE RELATIONSHIP BETWEEN SECTION 304-B IPC AND SECTION 113B, INDIAN EVIDENCE ACT 1872

Section 113-B of The Evidence Act, creates a presumption of 'dowry death' of a woman where it is shown by the prosecution that soon before her death, such woman was subjected to cruelty or harassment by her husband or his relatives in relation to demand for dowry. This provision was inserted by 1986 amendment to The Evidence Act, (Act 43 of 1986) in order to substantiate section 304-B of the Indian Penal Code.

Section 113B of The Evidence Act 1872 states as under:

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

***Explanation** – For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).*

The Supreme Court has clarified several aspects of this presumption in its judgments. In terms of the applicability of section 113B to the various dowry death offences, in *Devi Lal Vs. State of Rajasthan*[1] the Court held that it only relates to section 304-B IPC. This means that where section 498-A IPC is charged, the section 113B presumption is not relevant and not applicable.

In order to for the section 113B presumption to be applied, the Court has made clear in several cases including *Arun Garg Vs. State of Punjab & Anr.*[2] and *Satbir Singh and Ors. Vs. State of Haryana*[3], that the following elements need to be established:

(1) The death of a wife occurring otherwise than under normal circumstances;

1 (2007) 12 SCALE 265
2 (2004) 8 SCC 251
3 (2005) 12 SCC 72

(2) Death occurring within 7 years of her marriage; and

(3) Sufficient evidence that she was subject to cruelty or harassment by her husband or his relatives in connection with demands for dowry soon before her death.

What this has meant in practice is that where the section 304-B IPC offence is established by evidence on record, the section 113B presumption arises and applies automatically. This was confirmed in *Ram Badan Sharma Vs. State of Bihar*[4].

Where several offences are charged, the Court held in *Alamgir Sani Vs. State of Assam*[5], an acquittal under section 302 IPC does not automatically rebut the section 113B presumption.

Instead, where the section 113B presumption is activated, the onus is on the defendant to rebut the presumption and this must be done by providing evidence on the record – *Bansi Lal Vs. State of Haryana*[6].

The Court dealt with the question of whether a defendant could be charged with a section 304-B offence, and so whether section 113B could arise, in circumstances where the victim's death occurred before this provision came into force in *Soni Devrajbhai Babubhai Vs, State of Gujarat and Ors*[7]. Here the petitioner's daughter died on 13 August 1986 and he suspected that her husband and husband's relatives were responsible so brought a charge against them under Section 498A IPC. He sought later to replace this charge with one under Section 304B IPC once it came into force on 19 November 1986. In agreement with the High Court however, the Supreme Court held that because Section 304B created a new offence it could not be used to prosecute any husband and/or his relatives where a woman died before 19 November 1986. This also meant that the section 113-B presumption did not and could not operate.

4 (2006) 10 SCC 115
5 (2002) 10 SCC 277
6 (2011) 1 SCALE 447
7 (1991) 4 SCC 298

IN THE SUPREME COURT OF INDIA

SONI DEVRAJBHAI BABUBHAI
VERSUS
STATE OF GUJARAT AND ORS.

L.M. SHARMA, J. AND J.S. VERMA, J.

VERMA, J.

1. Petitioner's daughter Chhaya has 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 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, 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 that application. Hence this special leave petition.

…

3. 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.

…

6. 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.

7. 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.

8. 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.

   (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."

   …

12. In the Indian Evidence Act, 1872, after section 113-A, the following section shall be inserted, namely:-

"11.3-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.

***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)."*

9. 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 498A 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:

"20. Protection in respect of conviction for offences. --(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission 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."

10. 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 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. This contention is, therefore, rejected.

11. It follows that the view taken by the High Court that the respondents cannot be 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. 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 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.

This Judgment is also reported at (1991) 4 SCC 298

IN THE SUPREME COURT OF INDIA

ALAMGIR SANI
VERSUS
STATE OF ASSAM

S. N. VARIAVA, J. & B. N. AGRAWAL, J.

S. N. VARIAVA, J.

1. This Appeal is against a Judgment dated 25th April, 2001 by which the High Court has confirmed the conviction, by the learned Sessions Judge, under Section 304-B of the Indian Penal Code.

2. Briefly stated the facts are as follows:

   The Appellant got married to Dr. Anjum Ara on 31st May, 1994. On 14th February, 1995, the Dispur Police Station received a telephonic message from one Dr. Kalpana Sharma (P.W. 1) that a woman had died under suspicious circumstances. On the basis of this information a diary entry was made. The police then went to the place of occurrence. There they found Dr. Anjum Ara lying dead on the bed....The diary entry dated 15th February, 1995 records that the father of the deceased had informed in writing that he does not have any suspicion and that it was purely a case of suicide...

...

4. After receipt of the post-mortem report on 22nd February, 1995 the father of the deceased gave a second report to the police. Now he alleged that his daughter had been murdered by her husband. He alleged that she had been so murdered for non-fulfillment of demand of dowry made by the Appellant. The Appellant was therefore charged under Sections 302 and 304-B of the Indian Penal Code. The Appellant pleaded not guilty and claimed to be tried.

5. The prosecution led the evidence of 12 witnesses. P.W. 5, one Jahida Khatun, is a relation of the deceased, P.W. 6 one Mohd. Kasim, was

a friend of the family of the deceased as well as of the family of the Appellant, P.W. 7 is the father of the deceased, P.W.9 is the mother of the deceased. P.Ws. 10 and 11 are the brothers of the deceased. These witnesses gave evidence of the demand for dowry made by the Appellant and his brothers after the marriage was solemnised.

6. …When the younger brother of the deceased Sakil (P.W.4) came back from the school P.W.3 told P.W.4 that the deceased was in the bathroom for a long time. Therefore P.W.4 knocked the door of the bathroom which seemed to be locked and called the deceased by name but did not get any response. On this they got suspicious and P.W. 4 asked the servant to climb a pipe and see what had happened. The servant therefore climbed a pipe and peeped into the bathroom through a gap in the wall. He found the deceased in a sitting position with head stooping down. The deceased appeared to be dead. The servant informed P.W. 4 about it. Immediately the Appellant want to the bathroom and brought the body of the deceased out and put it on to the bed. Thereafter the neighbour, a doctor, was called in, who declared the deceased to be dead and who then informed the police.

7. The above evidence shows that the deceased was last seen alive with the Appellant in the bedroom occupied by them. The bathroom in which the deceased was found was attached to the bedroom. Even though the deceased was in the bathroom for an indefinitely long time the Appellant showed no concern or anxiety. The brother (P.W.4) and the servant (P.W. 3) get concerned and discover that she appears to be dead. On such discovery the Appellant immediately brings out the body and lays it down on the bed. The trial Court still thought it fit to acquit the Appellant of the charge under Section 302 I.P.C. As no Appeal was filed by the State we make no comment about this acquittal. The trial Court however convicted the Appellant of the charge under Section 304-B I.P.C. The trial Court sentenced the Appellant to life imprisonment. The High Court considered the entire evidence in detail and confirmed the conviction of the Appellant by the trial Court.

8. Mr. Jaspal Singh submitted that the evidence of demand for dowry could not be believed at all. He submitted that if there had been a demand for dowry the father of the deceased would never have given a report that he did not suspect any foul play. Mr. Jaspal Singh relied upon the case of Ravindra Pyarelal Bidlan and Ors. v. State of Maharashtra reported in (1993) Crl.L.J. 3019. In this case the Bombay High Court refused to believe evidence of ill treatment, beating and demand of various articles because the father of the deceased did not make any statement to that effect for three full days. This Judgment is based on facts of that case. If the authority were laying down that in all cases where immediately a statement about ill treatment or beating or demand for various articles is not made, then such evidence cannot be accepted then it would have to be held that it is laying down bad law. Human nature is very complex. Different persons react differently under pressure or in times of sudden bereavement or grief. The shock suffered by a parent having seen his daughter dead in an unnatural manner can in some cases prevent immediate outpouring of reasons. Each case would have to be tested on its own facts and no hard and fast rule can be laid down in this behalf.

…

12. Mr. Jaspal Singh further submitted that, in any event, the Appellant has been acquitted under Section 302 I.P.C. He submitted that this shows that there was no intention or knowledge to cause death. He submitted that such an acquittal necessarily means that the Appellant is held not responsible for the death of the deceased. He submitted that once the Appellant has been acquitted under Section 302 I.P.C., the presumption under Section 113-B of the Evidence Act stands rebutted.

13. We are unable to accept the submissions of Mr. Jaspal Singh. In an Appeal under Article 136 of the Constitution this Court will not reappreciate and/or re-appraise the evidence to arrive at a different conclusion, unless it is shown that the Courts below have not taken

into consideration some relevant facts or have not appreciated the evidence in a correct perspective or this Court finds serious infirmities in the findings of the Courts below. In our view, both the Courts below have correctly relied upon the evidence of P.Ws. 5, 6, 7, 10 and 11 to come to the conclusion that there had been demands for dowry. P.Ws. 5 and 6 are independent witnesses. P.W. 6 is a friend of the family of the Appellant also. Therefore, there is no reason why he would give false evidence. We therefore find no flaw or fallacy in the reasoning adopted by the Courts below.

14. We also see no substance in the submission that merely because the Appellant had been acquitted under Section 302 I.P.C the presumption under Section 113-B of the Evidence Act stands automatically rebutted. The death having taken place within seven years of the marriage and there being sufficient evidence of demand of dowry, the presumption under Section 113B of the Evidence Act gets invoked. There is no evidence in rebuttal.

15. We therefore see no reason to interfere. The Appeal stands dismissed.

This Judgment is also reported at (2002) 10 SCC 277

IN THE SUPREME COURT OF INDIA

ARUN GARG
VERSUS
STATE OF PUNJAB & ANR.

K.G. BALAKRISHNAN & DR. AR. LAKSHMANAN

Dr. AR. Lakshmanan, J.

1. These appeals are directed against the impugned judgment and order dated 30.05.2003 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 161-SB of 2001. The High Court dismissed the said appeal of the appellant and confirmed the sentence of ten years rigorous imprisonment awarded by the Sessions Judge, Ludhiana but enhanced the fine from Rs.2000/- to Rs.2,00,000/- in Criminal Revision No. 1251 of 2001 filed by the complainant against the appellant.

2. Briefly stated, the case of the prosecution is as follows:

   The marriage between Seema, daughter of Ramesh Chander Bansal, PW-1 and the appellant-accused, Arun Garg took place on 25.02.1996. According to the prosecution, she died under very tragic circumstances on 30.03.1999, that is, within three years of her marriage with the appellant. The appellant was alleged to have administered aluminium phosphide causing unnatural death of the daughter of the respondent and thus the appellant was liable for the offence under Section 304B of the Indian Penal Code. At the time of marriage, household articles, clothes, gold etc. and cash amount of Rs.2,00,000/- was also given in dowry...

3. On 28.03.1999, at about 6.00 p.m., the respondent received information that her daughter Seema had been administered some poisonous substance by her husband and in-laws and sister-in-law Neena and that she had been admitted in the Dayanand

Medical College, Ludhiana. The respondent accompanied by his wife immediately rushed to the hospital and found that Seema was unconscious and her condition was found to be serious. The respondent thereafter went to the police station and lodged an FIR on the same day which was registered as FIR No. 139 of 1999 under Section 307 read with Section 34 of the Indian Penal Code, against Arun Garg, his father, Sham Lal Garg, mother Shimla Garg and sister Neena. On the same day, i.e., 28.03.1999, police made an application for recording the statement of Seema, which was declined as she was declared medically unfit to make the statement. Police again made an application for recording the statement of Seema on 29.03.1999 which was also declined as Seema was not medically fit to make the statement. Unfortunately, Seema died in the hospital on 30.03.1999.

4. On the death of Seema, the case was converted into one under Section 304B of the Indian Penal Code and all the three accused, namely, Arun Garg, Sham Lal Garg and Shimla Garg were arrested in the case on 31.03.1999…

5. …The Sessions Judge, by his judgment dated 22.01.2001, acquitted Sham Lal Garg and Shimla Garg giving them benefit of doubt and convicted the appellant, Arun Garg, under Section 304B IPC in connection with the death of his wife Seema Garg and sentenced him to undergo R.I. for a period of ten years and to pay a fine of Rs.2000/- or in default of payment of fine to undergo further R.I. for a period of two months.

…

7. The High Court, by its order dated 14.02.2001, admitted the appeal filed by the appellant and stayed the recovery of fine, however, declined the prayer for bail.

…

11. Learned counsel appearing for the appellant took us through the judgments of both the Courts and documents filed in the Court. He

made the following submissions:

1) that in the FIR dated 28.3.1999, there was no imputation by the complainant that 'soon before death' the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, and in connection with any demand of dowry…

2) That no independent witness came in the witness box to corroborate the interested version of PW-3 and PW-4, the parents of the deceased…

3) The ingredients of demand of dowry soon before the death of the deceased and the harassment thereon under Section 304B has not been proved beyond reasonable doubt.

…

8) There is hardly any evidence to prove the offence under Section 304B and 498A IPC against the accused. Even from the evidence on record, no offence is made out under Section 304B of IPC. There is no material on record to support the conclusion of cruelty or harassment.

…

…

12. Learned counsel appearing for the State of Punjab submitted that the investigation revealed that the accused was responsible for causing the death of the deceased, Seema and also subjected her to cruelty for and in connection with the demand of dowry articles…

…

15. Before considering the rival contentions, it will be appropriate to note the relevant provisions of Section 304B of the Indian Penal Code…

…

17. The ingredients necessary for the application of Section 304B I.P.C. are:

(i) that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;

(ii) within seven years of her marriage;

(iii) it must be shown that before the death she was subject to cruelty or harassment by her husband or any relative of the husband or in connection with the demand of dowry.

18. In the light of these ingredients, the evidence of the prosecution is to be scanned.

19. The appellant was married with the deceased in the year 1996. The deceased died on 30.03.1999. So she died within seven years of the marriage. It is also not disputed that the deceased had not died a natural death. The only controversy between the parties is with regard to the third ingredient as to whether soon before the death the deceased was harassed and was subjected to cruelty on account of demand of dowry.

…

23. It was argued on behalf of the appellant that in the FIR, there was no imputation by the complainant that 'soon before death' the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for and in connection with, any demand of dowry. We have perused the FIR in this connection. PW-1 deposed that on 26.3.1999 Seema informed him on telephone that her father- in- law, mother-in-law, sister-in-law and her husband had been conspiring to kill her and this fact had mentioned in his first information statement. The High Court had dealt with this in detail and reached the conclusion that the most vital circumstances of an offence under Section 304B IPC that the demand for dowry had been made soon before the death had been proved beyond doubt...

…

26. There is no substance in the argument of the learned counsel appearing the appellant that the interested evidence of the parents of the deceased has not been supported by independent evidence or witness of the locality while the stand of the defence has been that the deceased Seema was never harassed or tortured by the appellant or by any of his family members for demand of dowry…

27. Section 304B was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. By the same Amendment Act, Section 113B has been added in the Evidence Act, 1872 for raising a presumption. It reads thus:

"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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

***Explanation.-** For the purpose of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."*

28. Once the three essentials under Section 304B as referred to in paragraphs supra (page 10) are satisfied the presumption under Section 113-B would follow. This rule of evidence is added in the Statute by amendment to obviate the difficulty of the prosecution to prove as to who caused the death of the victim. Of course, this is a rebuttable presumption and the accused by satisfactory evidence can rebut the presumption. In the instant case, the appellant could not rebut the presumption, and the prosecution, even without the aid of this presumption under Section 113-B proved that the appellant was responsible for the death of the deceased Seema. Hence, the conviction of the appellant for the offence under Section 304B I.P.C. is only to be confirmed.

…

31. Section 304 B is one of the few sections in the Indian Penal Code where imposition of fine is not prescribed as a punishment. The Division Bench of the High Court which confirmed the conviction of the appellant under Section 304B instead of setting aside the fine, which is not warranted by law, enhanced a sum to Rs. 2 lakhs and also directed that the fine, if recovered, shall be paid to the complainant. The appellant could have been sentenced only to a punishment which is prescribed under the law. As no fine could

be imposed as punishment for offence under Section 304B, the direction to the appellant to pay a fine of Rs. 2 lakhs was wholly illegal.

…

33. The learned Counsel for the respondent contended that even if the Court is not competent to impose fine as a punishment, the Court can still order compensation under Section 357(3) of the Cr.P.C. and the direction of the High Court to pay Rs. 2 lakhs to the complainant is to be treated as the direction given under Section 357(3). The contention of the respondent's learned Counsel cannot be accepted. Hear the Trial Court had imposed a sentence of fine of Rs. 2,000/- as fine and the High Court enhanced the quantum of fine without there being any further discussion on the matter. Therefore, the direction to the appellant to pay a fine of Rs. 2 lakhs could only be treated as enhancement of fine already imposed by the Sessions Judge. Moreover, Section 357(3) contemplates a situation where the complainant has suffered any loss or injury and for which the accused person has been found prima facie responsible. There is no such finding or observation by the High Court. Of course, the daughter of the complainant passed away but the direction of the High Court to pay Rs. 2 lakhs was on the assumption that the complainant had paid Rs. 2 lakhs as part of the dowry to the appellant. There is no evidence to show that such an amount was given to the appellant…

34. In the result, the appeals are partly allowed confirming the sentence of imprisonment for a period of 10 years.

35. The direction to pay a fine of Rs. 2 lakhs is set aside.

This Judgment is also reported at (2004) 8 SCC 251.

IN THE SUPREME COURT OF INDIA

SATBIR SINGH AND ORS.
VERSUS
STATE OF HARYANA

H.K. SEMA & G.P. MATHUR

SEMA, J.

…

2. This appeal is directed against the judgment and order dated 8.8.03 passed by the High Court affirming the conviction recorded by the Trial Court.

…

4. Briefly stated the prosecution case is that the FIR was lodged by complainant, PW-4, father of the deceased on 14.6.1989 to the effect that he had five daughters and two sons. Smt. Shanti Devi was married to Accused No.3, Dilbag Singh, and at the time of marriage he had given dowry as per his capacity. Subsequently when the deceased used to come from her maternal house, she was asked to make some demand of dowry on the instructions of the family members of her in-laws…It is also stated that about 10 days back from the date of occurrence that is, intervening night of 13/14the June, 1989, the deceased Smt. Shanti had come to the house of the complainant and stated that Accused No.3 Dilbag Singh, Accused No.2, Pritam Singh, Accused No.1, Satbir Singh and Accused No.4 Smt. Bohti, the mother-in-law of the deceased, asked her to go to the complainant's house and bring a sum of Rs. 7000, because they wanted to purchase a buffalo. It is also stated that the deceased would not be allowed to reside in in-laws house till she brought Rs. 7000 with her. It is stated that the complainant, being a poor man, could not meet the said demand. On 11.6.1989, A.3, Dilbag Singh came to the house of the complainant and requested

him to send the deceased Smt. Shanti with him stating that there was an engagement ceremony of his younger brother, Pritam Singh on 12.6.1989 and the presence of the deceased will be required. Considering the request, the deceased was sent along with A.3 on 12.6.1989. It is further stated that in the intervening night of 13/14.6.1989 at about 1.30 a.m. A.2 and four others came to the village of the complainant and told him that his daughter was seriously ill. On arrival the complainant noticed that Shanti was already dead and there was blood in her mouth…

…

Section 304-B was inserted in the Indian Penal Code by Act 43 of 1986 with effect from 19.11.1986. In consequence thereof, another Section 113-B was inserted in the Evidence Act by Act 43 of 1986 with effect from 1.5.1986. Section 113-B of the Evidence Act deals with the presumption of the dowry death which reads as under:-

''113-B. <u>Presumption as to dowry death</u> - 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 had been subjected by such person to cruelty or harassment, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.''

5. Undisputedly in this case the death of a woman has occurred during seven years of her marriage. It is also stated that, at the time of marriage the dowry has been paid according to the capacity of the complainant. However, subsequent to the marriage, the deceased Shanti was harassed for not bringing more dowry... In our view, the prosecution has been able to establish the ingredients as enjoined under Section 304-B of Indian Penal Code. Once the prosecution is able to establish the aforesaid ingredients, the presumption against the accused starts as enjoined under Section 113-B of the Indian Evidence Act. Of course, it is a rebuttable presumption and the onus lies, on the accused against whom the presumption lies to discharge it. On this aspect the laws are no more res integra. In catena of decisions, this Court has repeatedly held that once that

ingredients of Section 304-B IPC have been able to established by the prosecution, the onus lies on the accused to rebut the presumption under Section 113-B of the Evidence Act. Avoiding multiplicity, we may refer to the decision rendered by this Court in the case of State of Karnataka v. M.V. Manjunathegowda and Anr., [2003] 2 SCC 188 at page 189 this Court said that

''In order to establish the offence under Section 304-B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 years of her marriage and if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry. If the prosecution is able to prove these circumstances then the presumption under Section 113-B of the Evidence Act will operate. It is a rebuttable presumption and the onus to rebut shifts on the accused. The defence of the accused was a total denial. Therefore, the presumption as to dowry death envisaged under Section 113-B of the Evidence Act remains unrebutted.''

6. Learned counsel for the appellant, in order to rebut the presumption, has taken us through the evidence of DW-1. His evidence was considered by the Trial Court as well as by the High Court, and rejected as it does not inspire confidence. The case of the appellant was that the deceased died of heart attack and in his defence he examined DW-1. We have also been taken through the entire evidence of DW-1. Prima facie, the evidence does not inspire confidence. DW-1 in his own statement, said that he was a matriculate. He was stated to be working as a Compounder with the village Doctor. The village Doctor does not possess MBBS degree. DW-1 referred to a Certificate stated to have been granted by a village Doctor to the effect that he had worked as Compounder, but he has no knowledge about the symptoms of heart attack…

7. Learned counsel also has referred to another decision of this Court rendered in Kans Raj v. State of Punjab and Ors., reported in JT

(2000) 5 SC 223 wherein this Court held that subsequent allegation must be leveled against all the accused which may be mentioned in the complaint PW-4 has mentioned all the names of the accused in the F.I.R. This ruling is of no help to the appellant.

8. Lastly, it is contended that the A.2, Pritam Singh was 17 years of age as on 13.6.1989 and therefore he should be entitled to the benefit of the Juvenile Justice Act, 1986. Section 2(h) defines ''Juvenile'' means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. As per his own statement A.2 was 17 years of age as on 13.6.1989, therefore, he is not entitled to the benefit of Juvenile Justice Act, 1986.

…

10. For the reasons aforesaid, the appeal is devoid of any merit and it is, accordingly, dismissed.

…

This Judgment is also reported at (2005) 12 SCC 72

IN THE SUPREME COURT OF INDIA

RAM BADAN SHARMA
VERSUS
STATE OF BIHAR
WITH
CRIMINAL APPEAL NO.333 OF 2005.

S.B. SINHA, J. & DALVEER BHANDARI, J.

DALVEER BHANDARI, J.

…

2. Brief facts of this case are as follows:

   On 20th November 1993, at 4.30 p.m., the brother of the deceased Chandra Bhushan Chaudhary, PW2 filed a written complaint at the Police Station Chandi alleging that his sister Sanju Kumari (who was married in the year 1989) was poisoned by her husband Surya Kant Sharma, her father-in-law Ram Badan Sharma and mother-in-law Saraswati Devi. It was also alleged that at the time of marriage, Surya Kant Sharma, Ram Badan Sharma and Saraswati Devi demanded a colour TV, Yamaha motor-cycle and cash of Rs.20,000/-. The informant and his family could not fulfill their dowry demands…

…

4. On 20.11.1993, a Barber from Lodipur brought a letter which disclosed that Sanju Kumari had died on the intervening night of 17/18.11.1993. The informant rushed to the village Lodipur where he came to know that the accused persons had killed his sister by administering poison to her. The FIR was filed at the Chandi Police Station by the brother of the deceased…

…

15. …The Additional Sessions Judge, Bhojpur, Arrah carefully examined the entire evidence on record. The prosecution had examined six witnesses. The trial court after analyzing the entire evidence on record came to the categoric finding that the prosecution was able to prove that Sanju Kumari was killed within seven years of her marriage for not fulfilling the demands of dowry articles.

16. According to the requirement of Section 304-B IPC and Section 113-B of the Indian Evidence Act, the trial court also examined whether there was evidence that the deceased soon before the death was subjected to harassment and cruelty in connection with the demands for dowry. On this issue also, the trial court carefully analysed the evidence and came to a definite finding that the prosecution was able to prove the fact that due to demands of dowry, the deceased was subjected to harassment before her death. The trial court also examined the manner in which the death had occurred.

17. Section 113-B of the Evidence Act has been inserted with regard to presumption of dowry death. The Section reads as under:-

    "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 connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

    ***Explanation:** For the purposes of this section "dowry death" shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."*

    The accused persons in their defence examined the evidence of Dr. B.K. Jain and Dr. K.N. Singh. Dr. B.K. Jain, DW3, stated that he treated the deceased for the disease of appendix and she remained in his treatment from 15.11.1993 to 16.11.1993. He referred her to Surgeon but in the cross-examination, he admitted that after 15.11.1993, he had not examined the deceased. The defence failed

to give any explanation why she was not examined by any Surgeon after she was referred to by DW3. The trial court after examining the entire evidence came to the conclusion that the death had not occurred in the normal circumstances. The trial court observed that on the day of 'Chhath' i.e. on 17.11.1993, the deceased had gone to the house of accused Ram Badan Sharma for taking 'Prasad'. This is indicative of the fact that till then the deceased was physically in good health. DW1 further stated that after taking the 'Prasad', she started having acute pain in stomach and thereafter she died.

...

20. The trial court came to a definite conclusion that the prosecution had been able to prove the charges under Sections 304-B and 201 IPC against the husband and father-in-law of the deceased and convicted them under Sections 304-B and 201 IPC. The trial court sentenced the accused to undergo 10 years rigorous imprisonment for the offence under Section 304-B I.P.C. They were also sentenced to undergo rigorous imprisonment for two years for the offence under Section 201 IPC. The Court further directed that both the sentences shall run concurrently.

21. The appellants aggrieved by the judgment of the learned Addl. Sessions Judge, Bhojpur, Arrah, preferred an appeal before the High Court. The High Court analysed the judgment of the learned Addl. Sessions Judge and the entire evidence on record. It is not necessary to repeat the findings of the High Court in detail. According to the findings of the trial court, it was a clear case of demands of dowry and harassment on account of not fulfilling the said demands and ultimately the poison was administered to the deceased in the 'Prasad' within seven years of her marriage.

22. The High Court also came to the conclusion that the husband and in-laws of the deceased had been persistently demanding a colour TV, motor-cycle and cash of Rs. 20,000/-. Due to the failure of her parents to give dowry articles, the deceased was harassed and was ultimately killed by administering poison to her by the accused

persons. According to the High Court, clear offences under Section 304-B and 201 I.P.C. were made out against the accused persons.

…

28. In our considered opinion, the trial court has properly analyzed the evidence and justly convicted the appellants under Section 304-B I.P.C. The High Court also examined the entire evidence on record and came to the same conclusion. No infirmity can be found with the impugned judgment of the High Court. Looking to the seriousness of the matter, we also independently examined the entire evidence on record. On critical examination of the evidence, we also arrived at the same conclusion. The trial court was justified in convicting the accused persons under Section 304-B IPC and that the conviction of these two appellants has been rightly upheld by the High Court.

…

33. This Court in Hem Chand v. State of Haryana (1994) 6 SCC 727, dealt with the basic ingredient of Section 304-B IPC and Section 113-B of the Evidence Act. This Court, in this case, observed as follows:

"A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before

her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B I.P.C. also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied."

In cases where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304-B IPC is attracted.

34. In Satvir Singh & Others v. State of Punjab & Another (2001) 8 SCC 633, this Court examined the meaning of the words "soon before her death". The Court observed that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death, should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a close and perceptible nexus between death and the dowry related harassment or cruelty inflicted on the deceased.

…

37. On consideration of the law as crystallized in the decided cases of this Court and evidence on record, we are, therefore, satisfied that the prosecution has successfully proved its case against the appellants. We, therefore, concur with the view of the courts below and affirm the conviction and sentence of the appellants. These appeals are accordingly dismissed.

This Judgment is also reported at (2006) 10 SCC 115.

IN THE SUPREME COURT OF INDIA

DEVI LAL
VERSUS
STATE OF RAJASTHAN

S.B. Sinha, J.

1. In the year 1991, Appellant married Pushpa Devi, the deceased. A male child was born to them.

2. At the time of marriage, father of Pushpa, Hazari Ram, allegedly, spent a lot of money. Appellant's family, however, was not happy with the dowry given by the bride side. Pushpa was allegedly tortured and continuously harassed. She had, however, no grievance against her father in law, namely, Ram Swaroop. He had all along been assuring Pushpa and her parents that he would do his best to see that she is not harassed for not bringing enough dowry.

3. After the birth of the child, she came back to her matrimonial home. A few days prior to the incident which took place on 9.5.1994 her uncle Ranveer (PW-2) visited her. She made complaints about the harassments meted out to her. Ranveer conveyed the same to her father. On 9.5.1994, his nephew, Madan Lal (PW-7) was going to some place. Hazari Ram asked him to take him to his daughter's place. On reaching the house of Pushpa, he enquired about her. No response thereto was made but later on he was informed that she had died and the dead body has been cremated. Hazari Ram allegedly came back to his village. He went back to Umawali. A Panchayat was held. Appellants family accepted the purported mistake that they should have informed Hazari Ram about the death of his daughter. It was agreed that some lands would be settled in the name of the son of Pushpa.

4. On 9.5.1994, a first information report was lodged by Hazari Ram. It appears from the records that investigating agency had been

helping the accused. A purported supplementary statement of Hazari Ram was recorded wherein he had allegedly accepted that he was present at the time of funeral. A final form was submitted. However, a protest petition was filed whereupon cognizance of the offence under Section 304B of the Indian Penal Code (Code) was taken. Charges were framed under Section 304B of the Code and in the alternative under Section 306 read with Section 498A thereof. The Trial Court convicted both the accused, namely, Devi Lal and his mother Sukh Devi.

5. An appeal having been preferred by the accused there against before the High Court, the appeal of the appellant was dismissed; but that of Sukh Devi was allowed.

6. Mr. Sanjay Hegde, learned counsel appearing on behalf of the appellant, would submit that the High Court committed an error in passing the impugned judgment insofar as it failed to take into consideration that no demand of dowry was made in respect of any specific item. It was urged that the prosecution has also not proved as to whether the purported harassment meted out to the deceased was as a result of demand of dowry or not. Section 113-B of the Evidence Act, whereupon reliance has been placed by learned Trial Judge as also the High Court, Mr. Parekh would contend, is not attracted to the facts of the present case.

…

8. Defence of the accused before the learned Trial Judge was that as Pushpa Devi delivered a child, the societal norms by way of custom demanded that the occasion be celebrated by offering gifts and distributing sweets, meal etc. by the maternal grand-father of the child. It was pointed out that almost at the same time, elder brother Banwari Lal's wife also delivered a child and there was a big celebration. Pushpa wanted his father to celebrate the function of her son in a similar manner. But the same was not done. She not only came back from her parents' house but after a few days committed suicide. It was furthermore the case of the defence that

Hazari Ram was informed about the death of his daughter through one Nand Ram, pursuant whereto, he attended the funeral. Prior thereto, a village panchayat was held and he was informed about his right to lodge a first information report but he declined to do so as a representation was made that some land would be transferred in the name of the child.

9. The fact that death of Pushpa took place within the period of seven years from the date of marriage is not in dispute. Unnatural death of Pushpa is also not in dispute.

…

17. The core question which has been raised for our consideration in this appeal is as to whether a case had been made out for application of Section 113B of the Indian Evidence Act (the Act).

18. The Parliament by Act No.46 of 1983 and Act No.43 of 1986 inserted Sections 113A and 113B in the Act. They read as under :

'113A. Presumption as to abetment of suicide by a married woman.

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-*For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).*

113B. 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 connection with, any demand

for dowry, the Court shall presume that such person had caused the dowry death.

***Explanation**.-For the purposes of this section"dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code (45 of 1860).'*

19. Section 113A of the Act relates to offences under Sections 498-A and 306 of the Code, whereas Section 113B relates to Section 304-B thereof. Whereas in terms of Section 113A of the Act, the prosecution is required to prove that the deceased was subjected to cruelty, in terms of Section 113B, the prosecution must prove that the deceased was 'subject by such person to cruelty or harassment for, or in connection with, any demand for dowry'.

20. The question, as to what are the ingredients of the provisions of Section 304B of the Indian Penal Code is no longer res integra. They are : (1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death. {See Harjit Singh v. State of Punjab [(2006) 1 SCC 463]; Ram Badan Sharma v. State of Bihar [(2006) 10 SCC 115]}

...

22. Distinction between Section 113A and 113B was noticed by the Court in Satvir Singh v. State of Punjab [(2001) 8 SCC 633], stating : 'No doubt, Section 306 IPC read with Section 113-A of the Evidence Act is wide enough to take care of an offence under Section 304-B also. But the latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the

marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even up to imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113-A of the Evidence Act) and made a separate offence.'

…

24. Submissions of Mr. Hegde that as Hazari Ram (PW-1) in his deposition did not categorically state that Pushpa was subjected to harassment for and in connection with any demand of dowry soon before her death, no case for convicting the appellant under Section 304-B has been made out.

25. Indisputably, before an accused is found guilty for commission of an offence, the Court must arrive at a finding that the ingredients thereof have been established. The statement of a witness for the said purpose must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the section of a statute. What is needed is to find out as to whether the evidences brought on record satisfy the ingredients thereof.

26. Evidence brought on record by the prosecution clearly suggest that Pushpa had all along been subjected to harassment or cruelty only on the ground that her father had not given enough dowry at the time of marriage. For proving the said fact, it was not necessary that demand of any particular item should have been made.

27. Evidence of Hazari Ram (PW-1) and his brother Ranveer (PW-2) go a long a way to establish the ingredients of offence. Reading their testimonies in their entirety, we have no doubt in our mind that the harassment and cruelty meted out to Pushpa was for and in connection with the demand of dowry. Demand of dowry did not abate at any point of time. Demands were made both before and after the birth of the son. A plain reading of the deposition of

Hazari Ram (PW-1) would categorically show that Pushpa's father-in-law, Ram Swaroop had all along been apologetic. He persuaded the appellant and his mother not to insist for dowry or at least not harass her therefor. He, however, did not succeed in his efforts. Sentimental attachment of Pushpa to her father-in-law becomes apparent when we find that after giving birth to a male child she requested her father to invite him and give him some gifts so that he would be pleased.

28. It is not one of those cases, where omnibus allegations have been made against the members of the family. First information report was lodged against the accused persons only. Nobody else was implicated. Hazari Ram (PW-1) has been categorical in stating that Pushpa's father-in- law was a gentleman. His effort to persuade his wife and son not to harass Pushpa might not have ultimately succeeded but his attempt in that behalf was appreciated by him (PW-1) and other members of his family with gratitude. It is, therefore, cannot be said to be a case where Hazari Ram (PW-1) has falsely implicated anybody. His evidence was supported in material particulars by his brother Ranveer (PW-2). The very fact that harassment or cruelty on Pushpa did not abate even after her coming back to the matrimonial home with a son and the fact that she had been assaulted even a few days prior to the incident, in our opinion, tests of Section 304-B of the Indian Penal Code stood satisfied. Ranveer (PW-2) informed his brother, Hazari Ram (PW-1), about the harassment meted out to Pushpa. He was asked to go there. He went there to find his daughter dead; her cremation having already taken place.

…

30. In this view of the matter, we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is, therefore, dismissed.

This Judgment is also reported at (2007) 12 SCALE 265

IN THE SUPREME COURT OF INDIA

BANSI LAL
VERSUS
STATE OF HARYANA

P.SATHASIVAM, J. AND B.S. CHAUAHN, J.

Dr. B.S. CHAUHAN, J.

…

2. Facts and circumstances giving rise to this case are that the appellant was married to Sarla (deceased) on 4th April, 1988. An FIR was lodged by Shyam Lal (PW.4) father of Sarla (deceased) on 25th June, 1991 making allegations that the appellant, his mother, brother and sister-in-law had consistently harassed his daughter Sarla (deceased) by making dowry demand i.e. a scooter. She had been maltreated by them. After one year of marriage, Sarla (deceased) came and stayed with her family for about 14 months. It was only after convening a panchayat of close relatives, she had returned to her matrimonial home. Again they maltreated and insisted for the demand of a scooter, thus, she had been subjected to cruelty, harassment by demand of dowry to the extent that she committed suicide on 25th June, 1991, at her matrimonial home.

…

5. While making their statement under Section 313 Cr.P.C., the accused persons denied all the allegations against them and set up the defence as under:

   "Sarla was in love with some other person. She was forced to marry with accused Bansi Lal against her will, due to which she felt suffocated and committed suicide, leaving a suicide note to that effect. There was no demand of Scooter."

…

6. After considering the entire evidence on record and the submissions made by the prosecution as well as defence, the trial court convicted the appellant and his mother Smt. Shanti Devi under Sections 498-A, 304-B and 306 IPC and awarded the sentences as referred to hereinabove. The court acquitted Ashok Kumar and Shakuntala of all the charges against them. The Trial Court did not award any separate sentence under Section 306 IPC.

7. Being aggrieved, the appellant and his mother Smt. Shanti Devi preferred Criminal Appeal No. 708-SB of 1998 which has been disposed of by the impugned judgment and order dated 5th May, 2004, acquitting Smt. Shanti Devi, not being beneficiary of the demand of dowry, as only scooter had been demanded but dismissed the appeal so far as the present appellant is concerned. However, considering the facts and circumstances of the case, the sentence under Section 304-B IPC has been reduced from 10 years to 7 years. Hence, this appeal.

8. Shri Mahabir Singh, learned senior counsel appearing for the appellant, has submitted that no charge could be brought home against the appellant under any of the penal provisions as there was no demand of dowry by the appellant. The harassment was not in close proximity of time of death. The prosecution itself had submitted that Sarla (deceased) wanted to marry one Shiv Parkash Singh and thus, she was not happy with the appellant. She had left a suicide note to that effect and the said note had been exhibited before the trial court as Ex.P2. Thus, the appeal deserves to be allowed.

9. On the contrary, Shri Rao Ranjit, learned advocate appearing for the State, has vehemently opposed the appeal contending that the facts and circumstances of the case do not warrant interference with the concurrent finding of facts recorded by the courts below. The suicide note Ex.P2 has to be ignored as it has not been proved as per requirement of law. No witness has been examined for comparing the handwriting of the deceased nor it has been signed by the deceased…

…

11. So far as the theory of love affair of Sarla (deceased) is concerned, it has been disbelieved by the courts below. The Trial Court dealt with the issued observing as under :

"If the husband was doubting her fidelity towards him there was no reason for him to have come with his father and other relatives to the parents of the deceased to take her back after 14 months of her stay with her parents. It also cannot be said that the deceased was not having any liking for her husband and was frustrated because she allegedly could not marry the person of her choice. Rather the circumstances are otherwise. Had she developed hatred for her husband, there was no reason for her to join him after 14 months of her staying away from the matrimonial home ...

12. Again, the High Court has dealt with the issue elaborately and recorded the following findings:

"Much has been said by the learned counsel about Ex.P-2, the note allegedly recovered by the Investigating Officer. In my considered view, this document has to be totally rejected from consideration in evidence for the simple reason that no nexus of the deceased has been established with this document. There is no evidence worth the name from the side of the prosecution or from the defence, which may indicate that the writing Ex.P-2 was, in fact, in the hand of Sarla deceased…

13. In view of the above, we do not see any cogent reason to take a view contrary to the view taken by the courts below that Ex.P2, the suicide note was not worth consideration. It has rightly been held by the courts below that it was to be ignored.

…

14. The demand of scooter had been consistent and persistent as Shyam Lal (PW.4) and Gulshan (PW.5) had specifically deposed that the demand was only in respect of scooter and nothing else. Had this allegation be false, the said witnesses could also mention other

articles purported to have been demanded by the appellant or his other family members…

15. While considering the case under Section 498-A, cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. In the instant case, the conduct of the accused forced the deceased Sarla to leave her matrimonial home just after one year of marriage and stay with her parents for 14 months continuously…

16. In such a fact situation, the provisions of Section 113B of the Indian Evidence Act, 1872 providing for presumption that accused is responsible for dowry death, have to be pressed in service. The said provisions read as under:-

"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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death." (emphasis supplied)

It may be mentioned herein that the legislature in its wisdom has used the word "shall" thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with or demand of dowry. It is unlike the provisions of Section 113A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume to abatement of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113B relatable to Section 304 IPC, the onus to prove shifts exclusively and heavily on the accused.

17. The only requirement is that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

18. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression shown before her death has not been defined in either of the statutes. Therefore, in each case, the court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. (vide: *T. Aruntperunjothi v. State through S.H.O., Pondicherry*, AIR 2006 SC 2475; *Devi Lal v. State of Rajasthan*, AIR 2008 SC 332; *State of Rajasthan v. Jaggu Ram*, AIR 2008 SC 982; *Anand Kumar v. State of M.P.,* AIR 2009 SC 2155; and *Undavalli Narayana Rao v. State of Andhra Pradesh*, AIR 2010 SC 3708).

…

20. In view of the above, the submissions advanced on behalf of the appellant are rejected. The appeal does not have any special features warranting interference by this court. The appeal lacks merit and stands dismissed.

This Judgment is also reported at (2011) 1 SCALE 447

CHAPTER SIX

THE USE OF ‘DYING DECLARATIONS’

Dying declarations are based on the idea that when someone is on their deathbed, they have no reason to lie or skew the truth. In situations of dowry death, they arise frequently and are prima facie admitted because if this evidence is not considered, the very purpose of the justice may be compromised in certain situations especially as there may not be any other witness to the dowry death except the woman who has just died. As these arise frequently, the Court has considered the evidential weight that should be given to a dying declaration and what is required to refute one in several judgments.

In *Om Prakash Vs. State of Punjab*[1], the first appellant's wife was set on fire by the appellants and subsequently died of her injuries in hospital. On the day of arrival in the hospital, the victim made a first information report to the police which later became her dying declaration. On appeal, Supreme Court held that the victim's dying declaration was valid, and so validly relied on at court, as no materials on record showed that she was not in a position to give such a declaration. Materials on record are required if a dying declaration is to be discredited.

This requirement for materials on the record was confirmed in *Sohan Lal @ Sohan Singh & Ors Vs. State of Punjab*[2]. The Court further stated in this case that in general dying declarations any like any other piece of untested evidence. However if the dying declarations 'inspire[s] the full confidence of the Court in its correctness', then they can be used as evidence. In addition, certification of the victim's fitness to make the declaration need not necessarily be given by a doctor as it can be established by other means.

That the dying declaration needs to inspire the 'full confidence of the Court in its correctness' was reiterated in *Muthu Kutty and Anr. Vs. State Inspector of Police, Tamil Nadu*[3]. In this case, the victim was set on fire by the appellants, who were her father-in-law and mother-in-law respectively. Here the Court additionally held that it is possible

1 (1992) 4 SCC 212
2 (2003) 11 SCC 534
3 (2005) 9 SCC 113

for a conviction to be safely based on a dying declaration, even in the absence of corroborating evidence.

The Supreme Court has made many clarifications to this general rule in subsequent cases. In *Balbir Singh & Anr Vs. State of Punjab*[4], it stated that dying declarations must be given voluntarily and that, where there are more than one dying declarations, the first one in time should be preferred. The Court further stated that the effect of the dying declaration being recorded by a Magistrate is fact dependent. However where wholly inconsistent/contradictory statements were made or records indicate that the dying declaration is not reliable then a question may arise as to why a Magistrate was not called for. Further, in *State of UP Vs. Santosh Kumar*[5], the Court clarified that minor inconsistencies between several dying declarations made by the victim would not be fatal to their credibility so long as the 'material particulars' and 'real genesis' of the case were consistent. This was confirmed on the facts of *Keesari Madhav Reddy Vs. State of A.P.*[6].

4 AIR 2006 SC 3221
5 (2009) 9 SCC 626
6 (2011) 2 SCC 790

IN THE SUPREME COURT OF INDIA

OM PRAKASH
VERSUS
STATE OF PUNJAB

SINGH N.P. (J), REDDY, K. JAYACHANDRA (J)

N.P.SINGH, J.

...

3. The prosecution case is that on March 17,1979 Rita (since deceased) went to her sister Shushma (PW 6) in the morning who was residing in the house in front of the house of Rita aforesaid. Rita told her sister that accused persons were compelling her to bring money from her parents. The appellant Om Parkash is the husband, Sheela Wanti is the mother-in-law and Rup Lal is the father-in-law of Rita aforesaid. It is further the case of the prosecution that at about 2.30 p.m. the same day Rita was in her room in the house of the appellants. Om Parkash along with other coaccused including his two sisters Kanchan and Shushma (since acquitted) caught hold of Rita and brought her in the inner compound of the house. Rup Lal the father-in-law of Rita said that she should be burnt. Sheela Wanti, the mother-in-law, brought the Kerosene oil and sprinkled it on her body and then Om Prakash, husband, set her on fire. She raised the cries "save me". His sister Shushma (PW 6) who, as already stated above, was living just opposite the house of the appellants came there along with her father-in-law Bhajan Lal (PW 7). They found the inner door of the house closed from inside. They pushed the door and entered inside the compound. At that very time Tare Lal (PW 8) and Kulbir Chand hearing the cries also entered in the house. Seeing the witnesses aforesaid inside the house the accused persons ran away to the upper storey of the house. The fire was extinguished by the witnesses. They enquired from Rita (since

deceased) regarding the occurrence and she told them as to how she was burnt by her husband with the help of her mother-in-law and sister-in-laws.

4. Thereafter the ambulance car was brought by Shushma (PW6) and victim was taken to S.G.T.B Hospital, Amritsar. Police was informed. ASI Amritlal of Police Station Kotwali came to the hospital. He obtained the opinion of the Doctor as to whether Rita was fit to make a statement. Thereafter at 6.25 p.m the same evening he recorded the statement of Rita giving the details of the occurrence. That statement was treated as the first information report. Rita succumbed to her injuries on March 29,1979.

5. After investigation the charge-sheet was submitted against the three appellants along with the two sisters of appellant Om Parkash. As already stated above, the Trial Court convicted only appellant Om Parkash and acquitted his mother, father and two sisters of the charges levelled against them. However, on an appeal filed on behalf of the State of Punjab,the order of acquittal passed against Sheela Wanti and Rup Lal, the mother-in-law and father-in-law of the deceased, was set aside by the High Court.

6. The Trial Court as well as the High Court have placed reliance on the statement made by the victim which was initially treated as the first information report but after her death has become her dying declaration. She has stated in detail as to how the accused persons used to harass her for not bringing sufficient dowry and pressed her parents to provide sufficient cash in lieu of dowry. For that reason she was beaten by the members of the family and sent to her parental home before the occurrence. Only about 21/22 days before the date of the occurrence due to the intervention of some respectable persons she returned to the house of her husband but there was no charge in the attitude of the family members. Thereafter, she has stated as to how on the day of the occurrence she was taken out from her room and kerosene oil was sprinkled on her body and her husband Om Parkash set her on fire with the matchstick. She also

stated that hearing her cries her sister Shushma (PW 6), her father-in-law Bhajan Lal (PW 7) and others came and extinguished the fire.

7. The learned counsel appearing for the appellants submitted that it is always open to the Court to convict the accused on the basis of a dying declaration but before any such order of conviction is passed the Court must be satisfied that the dying declaration said to have been made by the victim before death is genuine and truthful. She pointed out that the so-called dying declaration which is said to have been made by Rita before ASI Amrit Lal does not appear to be a genuine and natural statement. According to her, because of the burn injuries Rita must not be in a position to make any such declaration… It is true that there were serious burn injuries, on the person of Rita but still she survived till March 29, 1979 i.e. for about twelve days. In this background we are not inclined to hold that because of the burn injuries, Rita was not in a position to make any statement before ASI Amrit Lal.

…

9. Moreover in the present case it cannot be said that the conviction of the appellants rests solely on the dying declaration of the victim. The evidence of Shushma (PW6)sister of the victim, Bhajan Lal (PW 7) father-in-law of the sister of the victim, Tarsm Lal (PW 8), who had also entered in the courtyard, corroborates the statement made by the victim. The Trial Court as well as the High Court have discussed their evidence in detail...

…

11. It was then submitted on behalf of the appellants that it appears that Rita committed suicide and the appellants have been falsely implicated for an offence of murder by the interested witnesses. It is true that sometimes a case of suicide is presented as a case of homicide specially when the death is due to burn injuries. But it need not be pointed out that whenever the victim of torture commits suicide she leaves behind some evidence-may be circumstantial in nature to indicate that it is not a case of homicide but of suicide. It

is the duty of the Court,in a case of death because of torture and demand for dowry,to examine the circumstances of each case and evidence adduced on behalf of the parties, for recording a finding on the question as to how the death has taken place. While judging the evidence and the circumstances of the case, the Court has to be conscious of the fact that a death connected with dowry takes place inside the house, where outsiders who can be said to be independent witnesses in the traditional sense, are not expected to be present. The finding of guilt on the charge of murder has to be recorded on the basis of circumstances of each case and the evidence adduced before the Court. In the instant case, the occurrence took place in the open courtyard during the daytime which is not consistent with the theory of suicide. Apart from that, as already stated above, the Dying Declaration of the victim along with the evidence of PWs 6,7 and 8, which we find no reason to discard, fully establishes the charges levelled against the appellants.

12. In the result, the appeals are dismissed.

This Judgment is also reported in (1992)4 SCC 212.

IN THE SUPREME COURT OF INDIA

Sohan Lal @ Sohan Singh &Ors.
VERSUS
State of Punjab

K. G. Balakrishnan J.,& B. N. Srikrishna J.

SRIKRISHNA, J.

1. This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court dismissing the appeals of the present appellants against convictions, under Section 302 read with Section 109 IPCin respect of appellant No. 1, and under Section 302 IPC in respect ofappellant Nos. 2 and 3.

2. On 1.4.1996 an F.I.R. was lodged at the Sadar Police Station on the basis of information given by one Bansi Ram (Taya i.e. Uncle) at 10.40 p.m. on that night with regard to the unnatural death, in suspicious circumstances,of one Kamlesh Rani. The gist of the F.I.R. was that Kamlesh Rani was being harassed by her husband-Sohan Lal @ Sohan Singh (first appellant),mother-in-law Harbans Kaur (second appellant) and sister-in-law Kanchan (third appellant), who ill treated her to extract dowry from her parents. Thesaid Kamlesh Rani was also thrown out of the house of her in-laws and it was only after intervention of interested parties that she returned to the house of the in-laws on 31.3.1996. On 1.4.1996, Bansi Ram received information that Kamlesh Rani had been admitted in G.N.D. Hospital, New Emergency, Amritsar with extensive burn injuries….

3. …It was alleged against Harbans Kaur and Kanchan that at about 4.00 p.m. on 1.4.1996 they murdered Kamlesh Raniand committed an offence punishable under Section 302 of the IPC. In the alternative, since Kamlesh Rani had died on account of burn injuries otherwise than under normal circumstances, within seven years of

her marriage with Sohan Lal @ Sohan Singh, Sohan Lal (husband), Sarwan Singh (father-in-law), Harbans Kaur (mother-in-law) and Kanchan (sister-in-law)of Kamlesh Rani were charged with subjecting Kamlesh Rani to cruelty and harassment on account of demand of dowry and causing her dowry death, an offence punishable under Section 304B of the IPC. …The trial court held that Kamlesh Rani had died as she was murdered by second appellant Harbans Kaur and third appellant Kanchan abetted by first appellant Sohan Lal @ Sohan Singh. The trial court also recorded a finding that, as far as dowry death was concerned, there was no definite statement of any witness that any of the accused had ever demanded dowry at the time of the marriage or even thereafter. …

4. The case of the prosecution rests mostly on two declarations made by Kamlesh Rani, one on 2.4.1996 to the Naib Tehsildar-cum-Executive Magistrate, Lakhbir Singh (PW 6) at 3.15 p.m. and the second statement made under Section 161 of the Cr. P.C., recorded by Satnam Singh, A.S.I. (PW 11) at 7.10 p.m. on 7.4.1996. It also rests on the oral testimony of the witnesses for corroboration of the statements made in the said declarations.

5. Appellant No. 1, accused Sohan Lal husband of Kamlesh Rani,according to the Charge Sheet, had been charged only with the offence of dowry death, punishable under Section 304B of the IPC. There was no charge under Section 302 or for abetment of murder under Section 109 of the IPC. Counsel for the appellants contended that Section 109 of the IPC,which deals with abetment of a substantive offence, is itself a substantive offence for which punishment is prescribed under the section. Learned counsel contended that unless an accused has been charged for an offence under Section 109 IPC and tried, it was not open to the trial court to sustain the charge under Section 302 with the help of Section 109 IPC for which the accused was never tried. Learned counsel relied on the judgments of this Court in Joseph Kurian Philip Jose v. State of Kerala (1994) 6 SCC 535 and Wakil Yadav and Anr. v. State of Bihar (2000) 10 SCC 500 to buttress his contention.

Joseph Kurian (supra) holds thus:

> *"Section 109 IPC is by itself an offence though punishable in the context of other offences. A-4 suffered a trial for substantive offences under the Indian Penal Code and Abkari Act. When his direct involvement in these crimes could not be established, it is difficult to uphold the view of the High Court that he could lopsidedly be taken to have answered the charge of abetment and convicted on that basis. There would, as is plain, be serious miscarriage of justice to the accused in causing great prejudice to his defence. The roles of the perpetrator and abettor of the crime are distinct, standing apart from each other."*
>
> …

6. Section 211 of the Code of Criminal Procedure requires that the charge against the accused be precisely stated. Sub-section(4) of Section 211 of the Code of Criminal Procedure specifically requires that the law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. The learned counsel for the respondent State, relying on Section 464 of the Code of Criminal Procedure, urged that failure to specify Section 109 in Charge Sheet against Sohan Lal was a mere irregularity which would not vitiate the trial without proof of prejudice to the accused. We cannot agree. The learned counsel for the accused is fully justified in his submission that failure to frame a charge with regard to the substantive offence of Section 109 IPC has certainly prejudiced the accused in the trial court. The accused Sohan Lal @ Sohan Singh was called upon to face trial only for the charge under Section 304B IPC. Neither a charge under Section 302 IPC nor under Section 109 IPC, was levelled against him in the Charge Sheet. In the absence of a charge being framed against the accused Sohan Lal under Section 302 or 109 IPC, it would certainly cause prejudice to him, if he is convicted under either for these offences at the end of the trial. In our view, it was not permissible for the trial court to convict the first accused Sohan Lal for the offence under Section 302 read with Section 109 IPC. His conviction under Section 302 read with Section 109 IPC is, therefore, illegal and is liable to be set

aside. The High Court erred in upholding the conviction of Sohan Lal @ Sohan Singh under Section 302 read with Section 109 of the IPC and dismissing his appeal.

7. The learned counsel for the appellants then strongly assailed the convictions of Harbans Kaur (mother-in-law) and Kanchan (sister-in-law)under Section 302 IPC. He contended that the version given in the First Information Report (FIR) lodged at the instance of Bansi Ram (PW 2) and the version given by Bansi Ram in his evidence before the trial court are irreconcilable and suggest that Bansi Ram could never have had the information with which he rushed to the Police….A number of improvements, variations and inconsistencies between the FIR statement made by Bansi Ram (PW 2)and his evidence before the court were highlighted by the learned counsel for the accused. He also contended that it was impossible for Kamlesh Ranito have spoken to Bansi Ram and given him information as to what transpired at the time of the incident. Strong reliance was placed by the learned counsel on the bed-head ticket (Ex. PQ) which showed that on 1.4.1996 Kamlesh Rani was admitted to the hospital at 6.30 p.m. with alleged history of burns, that she was prescribed several medicines which included a strong sedative and pain killer like Calmpose and Pathidine injections. There is an endorsement at 8.40 p.m. in the bed-head ticket (Ex. PQ): "seriousness of the Pt. explained to the relatives." There is also an endorsement at 9.10 p.m.: "Pt. declared unfit for statement due to sedation."

8. The learned counsel urged that according to the evidence of Bansi Ram, he received information about the burn injuries and admission in the hospital of Kamlesh Rani at about 8.00 p.m.; he immediately went to Usha Rani and accompanied by her and others came to the hospital. By that time, injections Calmpose, Furtulin and Pathidine had already been administered at 7.20 p.m., as seen from the I.O. Chart dated 1.4.1996. It would be improbable that the patient would be in a position to talk to anyone, if these strong sedatives had been administered at 7.20 p.m…

9. …It may be probable that Bansi Ram might have given information to the police which was exaggerated and added things which, probably, he did not learn from Kamlesh Rani on 1.4.1996. It is possible that seeing Kamlesh Rani in the hospital, after suffering extensive burns to the extent of 80 per cent, Bansi Ram might have suspected the in-laws of Kamlesh Rani as having murdered her. The First Information Report is only a report about the information as to the commission of an offence; it is not substantive evidence, as the police has yet to investigate the offence. If Bansi Ram's was the only testimony in support of the prosecution, then perhaps the counsel's was right. We find, however, that the prosecution strongly relied on two declarations, one made to Naib Tehsildar, Lakhbir Singh (PW 6) on 2.4.1996 as well as the statement made by Kamlesh Rani under Section 161 of the Cr. P.C. recorded on 7.4.1986 by Satnam Singh, A.S.I., both of which can be treated as dying declarations.

10. …It was contended that the overall circumstances make it unsafe to convict the accused merely on the said dying declarations. We need to consider these arguments in detail and assess their merit.

11. The first dying declaration (Ex. PN) was recorded on 2.4.1996, on the basis of a complaint (Ex. PL) made by Bansi Ram to the Deputy Commissioner, Amritsar alleging that the police were not cooperating in recording the statement by Kamlesh Rani, who had been admitted in the Emergency Ward. A request was made that some officer may be deputed for recording her statement and legal action be taken. Lakhbir Singh, Naik Tehsildar-cum-Executive Magistrate addressed a letter dated 2.4.1996 to the Doctor on duty in the hospital requesting the doctor to issue a certificate as to whether Smt. Kamlesh Rani was fit to give a dying declaration. According to the evidence of Lakhbir Singh (PW 6), Bansi Ram made an application addressed to the District Magistrate, Amritsar, on which the District Magistrate made an endorsement at 2.05 p.m. on 2.4.1996 directing the Tehsildar to record her statement as an emergency. The document and the endorsement have been proved

by PW 6. PW 6, thereafter, went to the hospital and addressed the letter (Ex. PM) to the Doctor on duty requesting him to certify as to whether Smt. Kamlesh Rani was fit to give dying declaration. The Doctor on duty (Dr. Vikram Dua, Junior Resident, Surgical Unit-4, GND Hospital, Amritsar) made an endorsement on the application(Ex. PM) to the effect: "Pt. is fit for statement." His endorsement (Ex. PM/1) was made at 3.00 p.m.. Thereafter, PW 6 went to Kamlesh Rani,disclosed his identity to her, asked the attendants to go out and, after ascertaining that she was fit to make the statement voluntarily, recorded her statement… This dying declaration (Ex. PN) translated in English reads as under:

"I, Kamlesh Rani wife of Sohan Lal resident of 1-a, Jajj Nagar near V.V. Modern School, Amritsar. I was burnt on pouring kerosene oil by my mother-in-law Harbans Kaur and I am conscious although my body was completely burnt but I understand all the things. Before I burnt I took tea mixed something in it. After that my mother-in-law put kerosene oil on me and my sister-in-law named Kanchan lit the fire. My husband harasses me and demanded for bringing money from her parents if she resides with him. Heard and admitting the correct.

RTI of
Sd/- Kamlesh Rani
W/o Sohan Lal
2.4.96"

12. The learned counsel for the accused criticised the dying declaration(Ex. PN) as not legally sustainable on several grounds. First, it is contended that the certificate of fitness is not endorsed on the dying declaration itself but on a separate paper i.e. on Exhibit PM/1. Secondly, it is contended that the certificate of fitness alleged to have been given by Dr. Vikram Dua,Junior Resident, Surgical Unit-4, G.N.D. Hospital, Amritsar was not proved as the said Dr. Dua was not examined at all. He also criticised the evidence of Dr. Sat Pal,Surgical Specialist, C.H.C. Saroya (PW 10), who produced the bed-head ticket and identified the writing and signature of Dr. Vikram

Dua with his endorsement on the application. Though this witness was not even cross examined, the learned counsel contended that the certificate of Dr. Dua was not proved in accordance with law. He also criticised the evidence of PW 6 by contending that no material was produced by PW 6 to show that he was really appointed as Naik Tehsildar-cum-Executive Magistrate. PW 6 also denied having made a statement to the Police during investigation and that he had not brought the Gazette Notification whereby he had empowered to discharge the function of an Executive Magistrate.

13. Having read the evidence of PW 6, in the light of the law laid down by a Constitution Bench of this Court in Laxman v. State of Maharashtra (2002) 6 SCC 710, and on assessment of the dying declaration, Exhibit PN,we are afraid that none of the contentions can prevail. The Constitution Bench in Laxman (supra), while resolving the conflict of opinion as to the manner of testing the credibility of a 'dying declaration', overruled the view taken in Paparambaka Rosamma v. State of A.P. (1999) 7 SCC 695 and approved the correctness of the view taken in Koli Chunilal Savji and Anr. v. State of Gujarat (1999) 9 SCC 562. According to the Constitution Bench:

"... The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make

the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite…When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. …"

14. The view taken in Paparambaka Rosamma (supra) that in the absence of a medical certification as to the fitness of state of mind, it would be risky to accept a dying declaration on the subjective satisfaction of the Magistrate was overruled as having been too broadly stated and not being the correct enunciation of law…

15. In Koli Chunilal Savji (supra) a Bench of three learned Judges rejected the contention that in the absence of a doctor while recording the dying declaration, the declaration loses its value and cannot be accepted…

16. Ravi Chander and Ors. v. State of Punjab (1998) 9 SCC 303,was approved, in which this Court held that for not examining the doctor,the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court observed that the Executive Magistrate is a disinterested witness and is a responsible officer as long as there was no material on record to suspect that he had any animus against the accused or

was in any way interested in fabricating the dying declaration, no question arises to checking the genuineness of the dying declaration recorded by the Executive Magistrate.

17. In the face of this clear enunciation of law, we are afraid that none of the above arguments urged by the learned counsel can be accepted. Upon careful assessment of the evidence tendered by PW 6, Lakhbir Singh, Naik Tehsildar, we find no circumstance brought on record to suspect his bonafides; nothing has been elicited to show that he was interested in fabricating a case against the accused or that he had any motive to make out a false case against the accused. …

18. It was strenuously urged by the learned counsel for the accused that the testimony of the Naib Tehsildar Lakhbir Singh (PW 6) is unbelievable because the District Magistrate appears to have acted with great haste in deputing Lakhbir Singh to record the dying declaration as soon as he was approached by Bansi Ram (PW 2). It was also urged that the entries in the bed-head ticket suggest that the witness was constantly under administration of heavy sedatives which improbabilises the recording of her dying declaration by Lakhbir Singh (PW 6). In our view, these are arguments of desperation…

19. The bed-head ticket shows that the last injection of Pathidine and other sedative drugs were given at 7.20 p.m. on 1.4.1996. On 2.4.1996, no Pathidine injection was given in the morning. On the contrary, there is an endorsement in the treatment sheet stating, "Sedation dose of evening with held. Pt. declared fit for statement and the same given in the presence of the Magistrate." …

20. We are satisfied that the dying declaration (Ex. PN) was made by the deceased Kamlesh Rani and that there is no need to discard the evidence of PW 6; that when she made the dying declaration she was in a fit mental condition to do so and was fully conscious of what she was saying…

…

22. According to the learned counsel for the accused, the circumstances under which the deceased Kamlesh Rani died have been narrated differently on five different occasions. First, there is the version in the FIR lodged by Bansi Ram (PW 2); second, is the version given in the deposition of Bansi Ram (PW 2); third, is the dying declaration recorded by Naib Tehsildar Lakhbir Singh (PW 6) (Ex. PN); fourth, is the version in the statement of Kamlesh Rani recorded under Section 161 of the Cr. P.C. and fifthly, the version given in the deposition of Jit Singh (PW 7) under cross-examination….Although,at the first blush, the contention of the learned counsel for the appellants seems attractive, upon a careful appraisal it has no substance. We have already analysed the deposition of Bansi Ram (PW 2) in the light of the deposition of Usha Rani (PW 3). A cumulative reading of the two, together with the medical endorsements made on the bed-head ticket of G.N.D. Hospital, clearly ruled out Bansi Ram as having received any information from deceased Kamlesh Rani. It is true that both in the FIR as well as in the deposition of Bansi Ram (PW 2) an exaggerated version had been given. Merely, because Bansi Ram takes it upon himself to give an exaggerated and coloured version of the circumstances under which Kamlesh Rani died,we do not think that it would be proper to reject the dying declaration(Ex. PN) which we have tested on the anvil of the law laid down by theConstitution Bench of this Court in Laxman (supra) and found it to have passed…

…

25. A comparison of the dying declaration (Ex. PN) recorded by PW 6, Naib Tehsildar Lakhbir Singh, and the statement of Kamlesh Rani recorded under Section 161 of the Cr. P.C. (Ex. PV) shows that they tally in material particulars. There is no conflict or inconsistency between these two statements. The contention of the learned counsel as to the inconsistency must, therefore, fail.

…

27. Once we come to the conclusion that the dying declaration is creditworthy, there is no doubt that the accusations against the appellants accused Harbans Kaur and accused Kanchan are fully proved…

28. In the result, we make the following order :

29. First appellant SohanLal @ Sohan Singh is acquitted of all the charges. He shall be released forthwith, if his custody is not required in any other case.

30. The convictions of second appellant Harbans Kaur and third appellant Kanchan are hereby upheld. The appeal is dismissed as far as these accused are concerned.

This Judgment is also reported in (2003) 11 SCC 534.

IN THE SUPREME COURT OF INDIA

MUTHU KUTTY AND ANR.
VERSUS
STATE BY INSPECTOR OF POLICE, TAMIL NADU

ARIJIT PASAYAT & S.H. KAPADIA

ARIJIT PASAYAT, J.

…

3. Factual position in a nutshell is as follow :

   Smt. Selva Backlam (PW-1) is the mother and Pon Pandian (PW2-2) is the brother of the Kodimalar (hereinafter referred to as the 'deceased') who was given in marriage to Bathel Raj (DW-1), son of both the accused. From this wedlock, a female child was born. Due to financial crisis, Bethal Raj went to Bombay seeking for better job, Deceased used to complain to PW-1 that the accused were demanding and asking her to bring money…On 28.5.1995, the date of occurrence, at about 1.30 p.m. on hearing cry from the house of the accused "Save me, Save me" Smt. Perkmen (PW-3) from the neighbouring house went to the house of the accused and found deceased lying on the floor with burn injuries, and smoke was also coming out. On coming to know of the occurrence, Salva Backiam (PW-1), Sundar (PW-4), Ram Lakshmi (PW-5) and Gomathi (PW-6) came and saw the deceased who told them that A-2 poured kerosene on her and A-l lit the match stick.

4. Adbulkhder (PW-7), Village Administrative Officer, Avudayanoor informed the occurrence at about 2.00 p.m. to his higher officials through Thalaiyari. At about 3.20 p.m. deceased was examined by Dr. Ramaswamy (PW-9), Assistant Medical Officer and he recorded the statement of deceased that A-l and A-2 poured kerosene on her and set fire….

5. …Dr. Elangovan Chellappa (PW-11) attached to the Government Hospital, Thenkasi sent an intimation at 9.00 a.m. that deceased who was under treatment succumbed to the burn injuries on the morning of 29.5.1992. On receipt of the intimation from the Government Hospital, Thenkasi P W-15 Investigating Officer altered the case to Sections 498 A and 302 IPC….

…

9. …In the appeal before the High Court primarily two questions were raised. Firstly, there was no evidence of any dowry demand and secondly, the so-called dying declaration is not believable. The State reiterated its stand taken before the Trial Court that evidence is clear and cogent. The High Court found that the appeal was without any merit, and accordingly dismissed it.

10. In support of the appeal, learned counsel for the appellants submitted that there was no cogent evidence to justify conclusion regarding the demand of dowry. Further considering the extent of burns alleged to have been suffered by the deceased, it is highly improbable that she was in fit condition to give any statement. The doctor has not certified that she was conscious, and/or, in a fit condition to make any declaration. Her statements have been treated as the FIR and dying declaration. Though the presence of a small girl who is supposed to witnessed the occurrence was stated by some of the prosecution witnesses, for reasons best known to the prosecution, the said child was not produced as a witness.

11. The acceptability of the defence version has been lightly brushed aside by the Courts below. It was the specific stand of the accused persons that because of depression the deceased had committed suicide and the prosecution case as claimed is totally improbable.

12. In response, learned counsel for the State submitted that the Courts below have analysed the evidence in great detail, found the same to be clear and cogent. The dying declaration was recorded by a Judicial Magistrate (PW-8)in the presence of the doctor. There is

no reason as to why these witnesses would falsely implicate the accused persons. In fact the Judicial Magistrate has categorically stated that the deceased herself in clear terms pointed out accusing fingers at the accused persons and following all requisite formalities the dying declaration was recorded in the presence of the doctor…

13. At this Juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found,etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which" could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a personas to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime,the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made extremity, when the party is at the point of death and when every hope of this world is gone,when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice…

…

14. This is a case where the basis of conviction of the accused is the dying declaration. …

15. …This Court has laid down in several judgments the principles governing dying declaration, which could be summed up asunder as indicated in Smt. Panjben v. State of Gujarat, AIR(1992) SC 1817:

    (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja & Anr. v. The State of Madhya Pradesh, [1976] 2 SCR 764).

    (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of Uttar Pradesh v. Ram Sagar Yadav and Ors., AIR (1985) SC 416 and Ramavati Devi v. State of Bihar, AIR (1983) SC 164).

    (iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. v. The Public Prosecutor, AIR (1976) SC 1994].

    (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg. v. State of Madhya Pradesh, [1974] 4 SCC 264).

    (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See Kaka Singh v. State of M.P., AIR (1982) SC 1021].

    (v) A dying declaration with suffers from infirmity cannot form the basis of conviction. (See Ram Manorath and Ors v. State of U.P., [1981] 2 SCC654).

    (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of

Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR (1981) SC 617].

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and Ors v. State of Bihar, AIR (1979)SC 1505].

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh, AIR (1988)SC 912].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See State of U.P. v. Medan Mohan and Ors., AIR (1989) SC 1519].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v. State of Maharashtra, AIR (1982) SC 839].

16. In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it…

…

18. It was observed by a Constitution Bench of this Court in Laxman v. State of Maharashtra, [2002] 6 SCC 710 that where the medical certificate indicated that the patient was conscious, it would not be correct to say that therewas no certification as to state of mind of

declarant… Further if the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make dying declaration then such dying declaration will not be invalid solely on the ground that the doctor has not certified as to the condition of the declarant to make the dying declaration. (See Rambai v. State ofChhattisgarh, [2002] 8 SCC 83). In the instant case contrary to what accused-appellants plead, the doctors' certificate is there.

19. Judged in the background of the legal principles as stated above, the Courts below have rightly relied upon the dying declaration. But we find something unusual in the conclusion of the trial Court. After having accepted that the accused persons were responsible for setting the deceased ablaze, applied Section 304 Part B IPC and not Section 302 IPC. The Trial Court observed, that the accused without knowing what they were doing at the relevant time poured kerosene and set fire on the deceased and in view of this situation Section 302 IPC was not applied and Section 304B IPC was applied. The reasoning is clearly wrong. But we find that the State had not questioned correctness of the conclusions arrived at by the learned Trial Judge in directing acquittal of the accused persons from the charge under Section 302 IPC. But even then the case would be covered by Section 304 Part II IPC, on the basis of the conclusions arrived at by the Trial Court.

20. …The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment)Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the Courts below…

21. …The appeal being without any merit is dismissed accordingly.

This Judgment is also reported in (2005) 9 SCC 113.

IN THE SUPREME COURT OF INDIA

BALBIR SINGH & ANR
VERSUS
STATE OF PUNJAB

S.B. Sinha J.&DalveerBhandari J.

S.B. SINHA, J:

1. Appellant No.1 was married to Amarjit Kaur (deceased). She had been complaining of ill-treatment at the hands of her in laws… On 12.10.1995, she received 90% burn injuries. She was taken to a hospital. Although she was in her senses, having regard to the extent of burn injuries suffered by her, the doctors attending on her opined that her dying declaration should be taken. Her dying declaration was taken down by one Dr. Anoop Kumar in presence of other doctors including Dr. R.S. Kadiyan, Professor of Skin and VD Department, Christian Medical College, Ludhiana…

2. …The Investigating Officer came to the hospital and recorded a second dying declaration which was marked Ex.P-J…

3. The said dying declaration bore her signature. She died on 16.10.1995 at about 01.15 a.m., whereupon a case under Section 302 IPC was registered. During trial the learned Sessions Judge framed charges under Section 302 IPC read with Section 34 thereof or in the alternative under Section 304-B read with Section 304-B read with Section 34 IPC. Appellants were also charged under Section 498-A read with Section 34IPC…

4. …The learned Sessions Judge convicted the Appellants both under Section 302 IPC as also under Section 498-A thereof and sentenced them to undergo rigorous imprisonment for life under Section 302 read with Section 34 IPC and to pay a fine of Rs.2,000/- each and in default of fine to undergo rigorous imprisonment for six months.

They were also sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each and in default of fine to undergo rigorous imprisonment for three months under Section 498-A IPC. The appeal preferred by Appellants before the High Court has been dismissed by the impugned judgment.

…

8. …Contention of Mr.Malhotra that the Magistrate was not called to record such statement may have any substance but the same by itself cannot be a ground to reject the whole prosecution case…

9. …The law does not provide that a dying declaration should be made in any prescribed manner or in the form of questions and answers. Only because a dying declaration was not recorded by a Magistrate, the same by itself, in our view, may not be a ground to disbelieve the entire prosecution case. When a statement of an injured is recorded, in the event of her death,the same may also be treated to be a First Information Report. Dying declaration, however, must be voluntary. It should not be tutored. It is admissible in evidence in special circumstances. But it must be borne in mind that its admissibility is statutorily recognized in terms of Section 32 of the Indian Evidence Act. The effect of the statement being not recorded before a Magistrate would depend upon the facts and circumstances of each case and no hard and fast rule can be laid down therefore. If, however, wholly inconsistent or contradictory statements are made or if it appears from the records that the dying declaration is not reliable, a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon.

…

12. In Jai Karan v. State of Delhi (NCT) [(1999) 8 SCC 161], it was held :

"A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premiss that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime.

13. In State of Maharashtra v. Sanjay S/o Digambarrao Rajhans [(2004)13 SCC 314], it was observed :

"It is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters…"

15. …We are of the opinion that whereas the findings of the learned Sessions Judge as also the High Court in regard to guilt of Appellant No.1 must be accepted, keeping in view the inconsistencies between the two dying declarations, benefit of doubt should be given to Appellant No.2. We,however, uphold the conviction and sentence of both the Appellants under Section 498-A IPC. This leaves us the alternative question as to whether framing of charge was permissible in law…

16. In Shamnsaheb M. Multtani v. State of Karnataka [(2001) 2 SCC577], the question which arose for consideration of this Court was as to whether in a case where the only charge framed against the accused was under Section 302 IPC, he could be convicted under Section 304-B thereof. In holding that the same would be impermissible, it was stated :

"Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts on to him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304-B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304-B IPC and sentenced to the serious punishment prescribed thereunder, which mandates a minimum sentence of imprisonment for seven years.

The serious consequence which may ensue to the accused in such a situation can be limned through an illustration: If a bride was murdered within seven years of her marriage and there was evidence to show that either on the previous day or a couple of days earlier she was subjected to harassment by her husband with demand for dowry, such husband would be guilty of the offence on the language of Section 304-B IPC read with Section 113-B of the Evidence Act. But if the murder of his wife was actually committed either by a dacoit or by a militant in a terrorist act the husband can lead evidence to show that he had no hand in her death at all. If he succeeds in discharging the burden of proof he is not liable to be convicted under Section 304-B IPC. But if the husband is charged only under Section 302 IPC he has no burden to prove that his wife was murdered like that as he can have his traditional defence that the prosecution has failed to prove the charge of murder against him and claim an order of acquittal."

17. The said decision has also no application in the instant case. As the Appellants had the requisite knowledge of the charges against them, it mayor may not be justifiable for the learned Trial Judge to frame an alternative charge, but from what we have noticed hereinbefore evidently they were not prejudiced in any manner whatsoever. Effect of framing of alternative charges vary from case to case. In the peculiar facts of present case, we are of the opinion that Appellants having not raised any grievance at any stage in that behalf, they cannot be allowed to do so at this stage.

18. For the aforementioned reasons, we are of the opinion that there is no merit in the appeal of Appellant No.1 which is dismissed.

This Judgment is also reported in AIR 2006 SC 3221.

IN THE SUPREME COURT OF INDIA

State of U.P.
Versus
Santosh Kumar

Dalveer Bhandari, J.

…

2. The respondent and other accused were charged under sections 302/34, 304-B and 498-A of the Indian Penal Code,1860 (for short, 'IPC') and sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short, 'the Dowry Act') read with section 34 of the IPC.

3. The IInd Additional Sessions Judge, Unnao, in Sessions Trial No. 483 of 1992, convicted respondent Santosh Kumar under sections 302 and 498-A and sections 3 & 4 of the Dowry Act. He was however acquitted under section 304-B IPC. The IInd Additional Sessions Judge convicted respondents Shiv Pyari and Prem Narain under sections 498-A IPC and sections. 3 and 4 of the Dowry Act. They were however acquitted under sections 302/34 and 304-IPC.

4. The High Court allowed the appeal filed by the accused and set aside the conviction and sentence of the accused respondents imposed by the trial court for the offences for which they were held guilty and convicted.

5. The appellant State of U.P. aggrieved by the impugned judgment has filed this appeal under Article 136 of the Constitution.

…

7. In this appeal, we are concerned with the only surviving accused respondent Santosh Kumar. Brief facts of the case in nutshell are as under.

8. Deceased Sunita, daughter of Dhani Ram was married to Ram Chandra on 1.5.1987. At the time of marriage, Dhani Ram gave dowry to his daughter beyond his capacity, but unfortunately her in-laws were not satisfied and they harassed her by regularly demanding dowry in the form of articles and money. Sunita told her parents repeatedly about the demands of dowry. Her father Dhani Ram met Prem Narain and Shiv Pyari and assured them that apart from whatever he had already given in dowry he would continue giving them throughout his life, but they should not harass his daughter.

9. According to the prosecution, on 15.3.1992 at about 9.00 a.m., Sunita was beaten by Shiv Piyari, Santosh Kumar and PremNarain on account of demand of dowry. Deceased Sunita told them that there was no use of harassing her everyday for dowry and that it would be better if she was finished once forall. PremNarain exhorted at Santosh Kumar saying that,"DAAL DO MITTI KA TAIL JALA DO SALI KO AUR JO 10-20 HAZAR LAGENGE HUM LAGA DENGE" – meaning thereby to pour kerosene oil and kill her and we would take care of litigation expenses of ten to twenty thousand to save Santosh Kumar. Immediately thereafter, Santosh Kumar brought a container of kerosene oil and poured the same on Sunita and lit fire and burnt her alive. Deceased Sunita immediately after the burning episode cried for help and ultimately jumped into a small water pond to save her life.

…

13. The trial court came to a definite finding that it was a clear case of murder and not a case of accidental fire. According to the trial court, Dhani Ram PW1, father of the deceased, on receiving the information about burning of his daughter reached at the place of occurrence. Deceased Sunita categorically told him that accused Santosh Kumar poured kerosene oil and set her on fire. She also stated that before setting her on fire, accused Santosh Kumar and others had beaten her. She further stated that accused Prem

Narain told,

"Pour kerosene oil and set her on fire. I will spend Rupees 10 to 20 thousand required for litigation to defend you (Santosh)".

This was construed to be the first dying declaration according to the prosecution.

14. The second dying declaration is Ext.Ka.16 which was recorded under section 161 of the Code of Criminal Procedure(for short, the Cr.P.C.) in the case diary by the Investigating Officer Shiv Kumar Tyagi PW8. In this dying declaration, it is stated that a day before the occurrence at about 9 a.m. she had a quarrel with her mother-in-law because she had refused to give Rs.20/- demanded by her. That, after some time her husband's younger brother, Santosh Kumar, came from outside and asked her as to what she had been doing in Bombay, then she replied that he could very well inquire from Bombay itself. Immediately thereafter he started hitting her by kicks, fists and blows. At that time, Sunita told him that he could finish her forever instead of killing her slowly. Accused Santosh Kumar immediately thereafter brought kerosene oil in a container and threw it on her body and set her on fire. Sunita rushed towards her mother-in-law Shiv Pyari but she did not save her and, therefore, she rushed towards the water pond and jumped into it. The villagers tried to save her by bringing her out of the pond.

15. The third dying declaration is what was stated bydeceased Sunita to the Tehsildar/Magistrate Rajesh Kumar Shrivastava, PW13. The Tehsildar/Magistrate was summoned to record her dying declaration. Dr. S.N.H. Rizvi of the District Hospital, Unnao gave certificate that he had examined deceased Sunita and she was in her full senses and her statement could be recorded and only thereafter her statement was recorded by the Tehsildar. The said Tehsildar clearly stated that she was in a fit condition to give her statement. Deceased Sunita stated to the Tehsildar/Magistrate that she demanded Rs.20/- from her mother-in-law who refused to give her Rs.20/-. Thereafter, her brother-in-law Santosh Kumar came

from the outside and asked her, "what were you doing in Bombay". She replied, "Go to Bombay and get the matter inquired into". On getting this reply from the deceased, Santosh Kumar started beating her and her father-in-law also abused her. On exhortation of Prem Narain, Santosh Kumar brought a container of kerosene oil and poured the same on her whole body and set her on fire. In that statement, she has also stated that she had no dispute with her husband and Ram Kishore, another brother of her husband. She stated that her mother-in-law Shiv Pyari, uncle-in-law Prem Narain, brother-in-law (Devar) Santosh Kumar and elder brother-in-law (Jeth) Arjun Prasad had been harassing her from the very beginning. She also stated that her brothers-in-law Santosh Kumar and Arjun Prasad always used to tell her, "Bring 'Roti' (Bread) from your father".

…

18. The trial court after analyzing the entire evidence, while acquitting respondent Santosh Kumar under section 304-BIPC, convicted him under sections 302 and 498-A IPC and under sections 3 and 4 of the Dowry Act. Respondents Shiv Pyari and Prem Narain were convicted by the trial court only under section 498-A IPC and sections 3 and 4 of the Dowry Act.

19. The High Court in the impugned judgment observed that when the State has not filed any appeal against the order of acquittal under section 304-B IPC, the order of acquittal for the charge of offence punishable under section 304-B IPC has become final. The respondents preferred appeal against conviction under sections 302 and 498-A IPC and sections 3 and 4 of the Dowry Act by the trial court.

20. The High Court while acquitting the respondents herein under all the charges observed as under:

"When the charge under section 304-B I.P.C. was held to have failed, then there was no logic in convicting the appellants for offences punishable under sections 3 and 4 of the Dowry Prohibition Act as well as under section 498-A I.P.C. The trial

Court ought to have acquitted all the appellants for offences punishable under section 498-A IPC and 3 and 4 of the Dowry Prohibition Act."

21. This finding of the High Court is palpably wrong and unsustainable. The ingredients of sections 498-A IPC and sections 3 and 4 of the Dowry Act are different from the ingredients of section 304-B IPC. This erroneous understanding of law has led to entirely erroneous and unsustainable findings by the High Court. The High Court was entitled to re-appreciate the entire evidence in appeal, but in doing so the High Court could not ignore the vital features of the prosecution evidence. The High Court has given no reasons for setting aside a well reasoned judgment of the trial court and acquitted the accused under section 302 IPC. In this appeal, we are called upon to primarily decide about the legality of acquittal of the respondent under section 302 IPC.

22. The entire prosecution case hinges on the three dying declarations made by the deceased. On careful analysis of these dying declarations, it leads to only one conclusion that respondent Santosh Kumar after beating deceased Sunita poured kerosene oil on her and set her on fire and that she died because of burn injuries sustained by her. The High Court unnecessarily gave undue importance to the minor contradictions in the testimony of witnesses and dying declarations.

23. The High Court ought to have examined this case in the proper perspective. The doctor also certified that the deceased was in a fit mental condition to give statement. The Tehsildar/Magistrate PW13 also stated the same in his statement.

…

25. The veracity of the dying declarations is proved beyond any shadow of doubt because the deceased specifically did not level any allegation against her husband and her other brother-in-law Ram Kishore…

…

28. In any criminal case where statements are recorded after a considerable lapse of time, some inconsistencies are bound to occur. But it is the duty of the court to ensure that the truth prevails. If on material particulars, the statements of prosecution witnesses are consistent, then they cannot be discarded only because of minor inconsistencies. …

…

30. We have carefully examined all the three dying declarations. The guilt of the accused Santosh Kumar of committing murder of the deceased Sunita is fully and clearly made out. … The High Court erroneously set aside a well reasoned judgment of the trial court and acquitted the respondent and other accused. The High Court's finding that when the charge under section 304-BIPC could not be proved, then conviction under section 498-AIPC and sections 3 and 4 of the Dowry Act also cannot be sustained. This approach of the High Court is wholly erroneous and unsustainable.

31. In order to correctly appreciate the legal position, it is necessary to examine ingredients of these sections…

…

32. On analysis of the section, the following essential ingredients of section 304-B IPC emerge and they are set out as under:

"Essentials

(i) That the accused caused death of a woman;

(ii) that the accused was husband, or any relative of the husband of that woman;

(iii) death of such woman,

(a) was caused by any burns, or bodily injury, or

(b) occurred otherwise than under normal circumstances;

(ci) such death was caused within seven years of the marriage of that woman;

(d) soon before her death such woman was subjected to cruelty, or harassment;

(iv) the accused had subjected such woman to such cruelty or harassment for, or in connection with any demand for dowry."

…

34. The following are the essential ingredients of Section 498-A IPC:

"Essentials

(i) That there was a married woman;

(ii) that such woman was subjected to cruelty;

(iii) that such cruelty consisted of any wilful conduct of such nature as was likely to drive such woman – to commit suicide, or to cause grave injury or danger to her life, limb or health, whether mental or physical;harassment of such woman where such harassment was – with a view to coercing such woman or any person related to her to meet any unlawful demand for any property or valuable security, or on account of failure by such woman, or any person related to her to meet the unlawful demand in able and the woman was subjected to such cruelty by – the husband of that woman; or any relative of the husband of that woman."

35. The High Court gravely erred in coming to the finding that once the charge under section 304-B IPC could not be proved,then conviction under section 498-A IPC and sections 3 and 4 of the Dowry Act also cannot be recorded. In *State of Karnataka* v. *Balappa* 1999 Cri LJ 3064 (Kant), at pages 3068, 3069 and 3070, the court has dealt with in great detail that even if the charge under section 304-B IPC is not made out, the conviction under section 498-A IPC can be recorded. Sections 304-B and 498-A IPC are both distinct and separate offences. The 'cruelty' is a common essential ingredient of both the offences. Under section 304-B, it is the 'dowry death' that is punishable and such death should have occurred within seven years of the marriage. In the statute, no such period is mentioned in section 498-A IPC. The husband or his relative would be liable for subjecting the woman to 'cruelty' any time after the marriage.

36. The legal position is absolutely clear that a person charged and acquitted under section 304-B can be convicted under section 498-A IPC. This court in *Smt. Shanti & Another* v. *State of Haryana* (1991) 1 SCC 371 has taken the same view.

37. The demand of dowry is an essential ingredient to attract section 304-B IPC, whereas under section 498-A IPC the demand of dowry is not the basic ingredient of the offence. Therefore, even if there is acquittal under section 304-B IPC, still conviction under section 498A can be recorded under the law.

…

39. Section 3 of the Dowry Act deals with penalty for giving and taking of dowry. The scope and ambit of section 3 is different from the scope and ambit of section 304-B IPC.

40. Section 4 of the Dowry Act deals with penalty for demanding dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. The object of section 4 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under section 3 read with section 2 of the Act.

41. Thus, the ambit and scope of sections 3 and 4 of the Dowry Act is different from the ambit and scope of section 498-A IPC.

…

44. All three dying declarations made by the deceased are totally consistent and lead to only one conclusion that the respondent Santosh Kumar had poured kerosene oil on the deceased and lit the fire. The fact is clearly corroborated from the testimonies of Dhani Ram PW1, the Investigating Officer Shiv Kumar Tyagi PW8 and the Tehsildar/Magistrate Rajesh Kumar Shrivastava PW13. The respondent is clearly guilty of offence under section 302 IPC.

45. The High Court without assigning any cogent reason set aside a well reasoned judgment of the trial court and acquitted the respondent under section 302 IPC. The impugned judgment of the High Court cannot be sustained.

46. This Court has always been slow in reversing the order of acquittal, particularly in a case where the other view is possible or plausible. We are fully conscious of our bounden obligation and duty that we are dealing with appeal against acquittal by the High Court. Unfortunately, in the instant case, on proper analysis of all three dying declarations, no other view is possible and the view taken by the High Court is perverse and un sustainable in law.

47. Consequently, this appeal is allowed. The impugned judgment of the High Court is set aside and that of the trial court is restored as far as the sentence of the respondent under section 302 IPC is concerned. The accused Santosh Kumar is directed to surrender in order to serve out the remaining sentence.

48. This appeal is accordingly disposed of.

This Judgment is also reported in (2009) 9 SCC 626.

IN THE SUPREME COURT OF INDIA

KEESARI MADHAV REDDY
VERSUS
STATE OF A.P.
AND
STATE OF A.P.
VERSUS
KEESARI MADHAV REDDY & ANR.

H.S.BEDI J., & CHANDRAMAULI KUMAR PRASAD

HARJIT SINGH BEDI J.

…

1. The deceased Keesari Kalavathi, the daughter of P.Ws. 1 and 2 of village Kondur, was married to A1 Keesari Madhav Reddy son of the other two accused A2 and A3, Keesari Venkata Reddy and Keesari Promila…During the course of the settlement of the marriage P.W. 1 had agreed to pay Rs. 80,000/- towards dowry and also supply articles worth Rs. 6000/-but at the time of the pooja held at the house of the accused, P.W. 1 paid Rs. 40,000/- and promised to pay the balance amount after the accused and the deceased had lived happily and peacefully for about one month. The accused were, however, not happy with this arrangement and they told the deceased to bring the balance amount and for that purpose would beat and abuse her and when P.W. 1 visited his daughter she narrated the harassment meted out to her…On the 20th of April, 2000, at about 8:00 a.m. the deceased came running out of her matrimonial home with burn injuries raising a hue and cry and fell down in front of the house. P.W. 12 noticed the deceased with burn injuries and immediately rushed to the house of P.W. 3 who in turn rushed to the house of the accused and found the deceased lying

there with burn injuries. At that time, A1 and A3 were also present whereas A2 was missing. The deceased was thereafter shifted to Dr. Jogu Kistaiah' Hospital in an auto rickshaw. The doctor refused to treat her as she was in a serious condition and they accordingly shifted her in a jeep to MGM Hospital, Warangal. On the way to the hospital, P.W. 1 enquired from the deceased as to the circumstances in which she had received the injuries and she stated that on the 19th of April, 2000, that is a day earlier, the accused had refused to give her any food and that at about 8:00 a.m. on the 20th of April, 2000, A2 and A3 had got hold of her and poured kerosene oil on her whereas A1 had set her fire with a match stick and that she rushed out crying in pain. The deceased was ultimately admitted to the MGM Hospital at about 10:25 a.m. on 20th April, 2000 and intimation was sent to the police post in the hospital itself. A Judicial Magistrate was also deputed to the hospital for recording her dying declaration and he did so on the 20th April, 2000, Exhibit P5 between 1:30 and 1:55 p.m. In this dying declaration, the deceased stated that A1 had set fire to her sari in culmination of the harassment that had been meted out to her over the last several days...The trial court relied primarily on the evidence of P.W. 1 and P.W. 2, the parents of the deceased, P.W. 3 the sister of the deceased, P.W. 4, the sister's husband, who had deposed that he was instrumental in arranging the marriage between A1 and the deceased on 31.05.1997, P.W. 5 the mother of P.W. 4 and P.W. 9 a witness to support the proceedings of the Panchayat held on the 6th April, 2000,and to the incident of 19th April, 2000 in which an effort had been made to settle the dispute between the deceased and her in laws and to support the demands for dowry, and the actual incident of 20th April,2000. The Court also relied on the evidence of P.W. 17 Dr. Hanumantha Rao, the doctor who had performed the autopsy on the dead body and the Judicial Magistrate First Class, PW-15 who had recorded the dying declaration Exhibit P5.

2. The trial court relying on the aforesaid evidence held that the case against the accused had been proved beyond doubt and they were

liable to conviction under Sections 498A, 304B, 302 and 302 read with Section 34 IPC and under Sections 3, 4 and 6 of the Dowry Prohibition Act. The trial court observing that the conduct of A1 in particular, had been reprehensible awarded him a sentence of death under Section 302 of the IPC whereas accused Nos. A2 and A3 were sentenced to life imprisonment with fine…The High Court by the impugned judgment set aside the conviction of all the accused for the offence under Section 302 and 302/34 and they were acquitted of that charge and a sentence of ten years was imposed on A1 under Section 304B. The conviction of A1 under Section 498A was also upheld but no separate sentence was awarded…

3. …It will be seen that the High Court has not really disbelieved the evidence of P.W. 1 and the others or the evidence with regard to the demands of dowry made over a period of time and the harassment meted out to the deceased by A1 in particular. The evidence of P.Ws. 1 and 2 on the aspect of dowry and harassment has been supported by the evidence of independent witnesses including those of the Panchayat and the mediators who had tried to sort out the differences between the deceased and her husband and in-laws. The High Court has, however, found that the dying declaration Exhibit P5 which had been recorded by the Judicial Magistrate was a suspicious document and could not be relied upon. It has been pointed out that in the oral dying declaration which the deceased had made to P.Ws. 1 to 5when she was being taken to the hospital, the story was that kerosene oil had been poured on her by A3 in the presence of A2 and that A1 had thereupon lit the match and set her on fire but in the dying declaration which had been recorded by the Judicial Magistrate, Exhibit P5, there was no reference to the pouring of kerosene oil on her. The High Court was, therefore, of the opinion that this apparent discrepancy went to the root of the matter, the more so as there was no smell of kerosene oil on the dead body and no receptacle which could have carried kerosene oil had been found when the police officer had examined the site of

the incident. The High Court also observed that in Exhibit P7, that is the medico-legal examination of the deceased prior to her death, it had been noted that the injuries had been caused in an attempted suicide and the Court, accordingly, inferred that this information must have been given to the doctor either by the deceased herself or by her father who had reached the hospital in the meanwhile. The High Court also concluded that in the light of the fact that the First Information Report had been recorded about 17 hours after the death of the deceased, it appeared that there was some suspicion about the prosecution story…

4. We are of the opinion, however, that some of the observations made by the High Court are not justified on facts… The primary evidence in this case is the dying declaration Exhibit P5. This had been recorded by PW-15 J. Ramamurthy Additional Magistrate First Class on the 20th April, 2000. This statement was recorded in the presence of Dr. Karunakar Reddy who certified that she was fit to make a statement. In this dying declaration, the deceased clearly stated that her husband A1 was always abusing her and that she had been set afire by him. PW-15 also stated that the dying declaration had been recorded after the doctor had given a certificate of fitness. It is true that there is no reference whatsoever to the fact that kerosene oil had been poured on her but we have absolutely no reason to doubt the statement made by the deceased and recorded by a Magistrate. We also see that in so far as A2 and A3 are concerned she clearly did not say anything about their involvement with the burning incident on the 20th of April, 2000. It is equally relevant that P.W. 15 also deposed that the parents of the deceased were not around at the time when the dying declaration had been recorded by him. In this view of the matter, we are of the opinion that the observation of the High Court that a case under Section 302 of the IPC was not made out against A1 does not appear to be correct. We,accordingly, dismiss Criminal Appeal No. 339 of 2004 filed by the accused A1 and allow the appeal filed by

the State of A.P. – Criminal Appeal No. 613 of 2006 and order that A1 was liable to be convicted under Section 302 of the IPC. We, accordingly, award him a life sentence under that provision. The acquittal of A2 and A3 is, however,maintained.

This Judgment is also reported in (2011) 2 SCC 790.

CHAPTER SEVEN

THE USE OF THE DEATH PENALTY

Though the death of a woman within a period of seven years from the date of her marriage in connection with dowry is punishable under section 304-B of the Indian Penal Code, entailing a minimum of seven years imprisonment and a maximum sentence of imprisonment for life, the Supreme Court has in a series of recent judgments equated 'dowry deaths' with murder, fitting under the 'rarest of the rare category' and mandated all trial courts to 'ordinarily add Section 302 (IPC, murder charge) to the charge of section 304B so that death sentence can be imposed in such heinous and barbaric crimes against women'.

Though the said reasoning given by Justice Katju in *Satya Narayan Tiwari @ Jolly, & Anr. Vs. State of U.P.*[1], *Rajbir Singh @ Raju Vs. State of Haryana*[2], *Thatham Setty Suresh Vs. State of A.P.*[3], may seemingly appear to be plausible given the rising instances of crimes against women, the same suffers from legal infirmities and is patently arbitrary.

It is interesting to note that though in the aforementioned cases Justice Katju has gone beyond the prescription of the statute to add charges of murder in cases of dowry death, in *D Veluswamy Vs. D Patchaiammal*[4], while adjudicating on the issue of 'maintenance to women in live in relationship' the bench headed by Justice Katju was categoric in emphasising that 'courts should only interpret the law and it is not for the court to amend or legislate'. Use of the term 'keep' to categorise women in live in relationships of certain nature, created much furor within human rights and civil society groups. It is but ironic that where there has been much progress in recent years regarding the abolishment of the death penalty elsewhere, the Supreme Court has gone a step forward in endorsing it here. One is forced to believe that the endorsement by Justice Katju does not reflect the collective idea of the Supreme Court of India.

1 2010 (11) SCALE 481
2 2010 (12) SCALE 319
3 2010 (13) SCR 318
4 2010 (10) SCC 469

IN THE SUPREME COURT OF INDIA

SATYA NARAYAN TIWARI @ JOLLY & ANR.
VERSUS
STATE OF U.P.

MARKANDEY KATJU, J. AND GYAN SUDHA MISHRA, J.

MARKANDEY KATJU, J

…

4. This Appeal has been filed against the impugned judgment and order of the Allahabad High Court dated 12.07.2005.

5. The facts of the case are that Geeta (deceased) was married to the appellant No. 1 Satya Narayan Tiwari @ Jolly on 9th December 1997. On 03.11.2000 an FIR was lodged by the father of the deceased Surya Kant Dixit alleging that dowry was being demanded from him and the accused was insisting that a Maruti car be part of the dowry. He further stated that three months before the date of the incident the first informant along with his relative went to the house of the accused and explained his financial difficulty in giving the Maruti car to the accused but they were insulted by the accused and were told to get out.

6. On 03.11.2000 at about 12 noon the first informant received information on telephone that his daughter had died. The FIR was lodged as stated above and after investigation a charge sheet was filed. The appellants - the husband and mother-in-law of the deceased – were acquitted by the trial court but the High Court convicted them under Sections 304B, 498-A IPC and Section 4 of the Dowry Prohibition Act and awarded life sentence under Section 304B IPC, 3 years rigorous imprisonment under Section 498A, and six months rigorous imprisonment under Section 4 of the Dowry Prohibition Act. The sentences were to run concurrently.

7. We have carefully perused the impugned judgment and order of the High Court and the judgment of the trial court and other evidence on record. We see no reason to disagree with the judgment and order of the High Court convicting the appellants. In fact, it was really a case under Section 302 IPC and death sentence should have been imposed in such a case, but since no charge under Section 302 IPC was levelled, we cannot do so, otherwise, such cases of bride burning, in our opinion, fall in the category of rarest of rare cases, and hence deserve death sentence.

8. Although bride burning or bride hanging cases have become common in our country, in our opinion, the expression "rarest of rare" as referred to in Bachan Singh Vs. State of Punjab, AIR 1980 SC 898 does not mean that the act is uncommon, it means that the act is brutal and barbaric. Bride killing is certainly barbaric.

9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialization of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand.

…

16. As held by the Apex Court in the case of Kunhiabdulla Versus State of Kerala, 2004 (4) SCC 13, in order to attract application of Section 304B IPC, the essential ingredients are as follows:

    (1) The death of a woman should be caused by burns or bodily injury or otherwise than in normal circumstances;

    (2) such a death should have occurred within seven years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand of dowry;

(5) Such cruelty or harassment is shown to have meted out to the woman soon before her death.

17. As generally happens in a crime of dowry death, this case is also based on circumstantial evidence. As regards ingredients No. 1 and 2 of a crime of dowry death detailed above, it is an admitted fact that the deceased Geeta died otherwise than in normal circumstances vide her post mortem report and that the death had occurred within seven years of her marriage in her Sasural in the bedroom…

18. As regards ingredients No. 3, 4 and 5, the relevant testimony is contained in the statement of the deceasd's father Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 (son in law of Bua of Surya Kant). Both of them have deposed about the persistent demand of Maruti Car in dowry by the accused persons (husband and mother-in-law of the deceased) since after six months of the marriage and harassment/maltreatment of the deceased over the score of non-fulfilment of the said demand. The gist of the testimony of Surya Kant Dixit PW 1 was that he had performed a decent marriage spending Rs. 4 Lacs giving household goods in dowry but after six months of the marriage, the two accused started torturing his daughter Geeta pressing for the demand of a Maruti Car…

19 Then he received a telephonic message from someone at about 12 O'clock in the noon on the day of incident about the death of his daughter Geeta in her Sasural at Farrukhabad, he at once rushed from Mainpuri to Farrukhabad covering a distance of about 80-85 km. Reaching the Sasural of his daughter he found her dead in the bedroom of the first floor of the house.

…

22. There is an important feature of the case. In the present case, Surya Kant Dixit PW 1 has described Ghanshyam Tiwari (father-in-law of his daughter) as a gentleman. He has all the respect and regard for him. Even when he was humiliated by the two accused about three months before the incident on his expressing inability to meet their demand of Maruti Car in dowry, he (PW1) had gone to him at his employment place in State Bank and had not taken any action on the consolation offered by him…

23. Only the husband and mother-in-law of the deceased have been accused of the offences in question. …

24. Learned counsel for the appellants argued that the alleged demand of Maruti Car made after about six months of marriage does not answer the test of 'soon before' the death of the deceased. She reasoned that as per the own case of the prosecution, there was no interaction between the two sides since before three months of the death of the deceased when Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 had allegedly been humiliated and turned out by the two accused from their house with the direction not to come there again without a Maruti Car and that there was no evidence that any such demand was made during the period of three months intervening between the alleged incident of turning them out of the house by the accused and the death of the deceased. The counsel for accused made reference to the case of Balwant and another Vs. State of Punjab AIR 2005 SC 1504 to stress the point that proximity test has to be applied. The argument, in our opinion, cannot be accepted.

25. As held by this Court in Kunhiabdullah and another Vs. State of Kerala, 2004 (4) SCC 13, 'soon before' is a relative term and it would depend upon the circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of 'soon before the occurrence'. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for

raising a presumption under Section 113-B of the Evidence Act. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression, 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

26. There can be no quarrel with the proposition that the proximity test has to be applied keeping in view the facts and circumstances of each case. Regarding the aforesaid decision, the facts were somewhat different in that the deceased was not shown to have been subjected to cruelty by her husband for at least 15 months prior to her death. On the fact of that case, it was held that Section 304B IPC was not attracted.

27. On the other hand, the present case fully answers the test of 'soon' before'. There is the testimony of demand of Maruti Car being pressed by the two accused persons after about six months of the marriage of the deceased (which took place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to her parental home and on telephone.…

…

32. …As stated above, the doctors found a half burnt piece of cloth around her neck with a knot half burnt. It was the constricting material used by the accused for compressing the neck of the deceased.

33. Dr. R.K. Singh PW 3 explained that strangulation would mean pressing the neck with force. He also emphatically stated that strangulation was made by the cloth found around the neck of the deceased which was bearing a knot.

…

38. We record with dismay that the trial judge has taken it to be a ground against the prosecution that the knot found around the neck of the deceased was not produced before the Court. It is beyond comprehension as to how the knot of cloth found wrapped around the neck of the deceased could be produced before him. It is obvious that he completely misinterpreted the matter relating to the knot and took it as a circumstance against the prosecution. While conducting post mortem, the knot found around the neck of the deceased was untied and removed. In other words, the body was freed from the knot so as to facilitate the post mortem. Therefore, there could be no question of the knot bring produced before the court. On close scrutiny and careful appreciation of the evidence, we are of the firm view that the trial judge wrongly accepted the plea of alibi put forth by the two accused persons to get away from the consequences of the serious crime committed by them. …

43. To sum up, the prosecution has been able to prove the following :

    (1) the death of the deceased was caused by strangulation and burning within seven years of her marriage;

    (2) the deceased had been subjected to cruelty by her husband and mother-in-law (the two accused appellants) over the demand of Maruti Car in dowry raised and persistently pressed by them after about six months of the marriage and continued till her death.

    (3) The cruelty and harassment was in connection with the demand of dowry i.e. Maruti Car.

(4) The cruelty and harassment is established to have been meted out soon before her death.

(5) The Two accused were the authors of this crime who caused her death by strangulation and burning on the given date, time and place.

…

44. The accused are established to have committed the offences under Sections 498-A and 304 B IPC and under Section 4 of Dowry Prohibition Act and the findings of the High Court are correct.

45. As a result of the above discussion, this Appeal is dismissed accordingly.

This Judgment is also reported at (2010) 11 SCALE 481

IN THE SUPREME COURT OF INDIA

RAJBIR @ RAJU & ANR
VERSUS
STATE OF HARYANA

MARKANDEY KATJU, J. AND GYAN SUDHA MISRA, J.

MARKANDEY KATJU, J.

…

2. The petitioner No.1 Rajbir (husband) was found guilty of murdering his pregnant wife Sunita for demanding cash amount barely 6 months after their marriage. He was awarded life sentence under Section 304 B, IPC, apart from sentences under other sections. The Punjab & Haryana High Court has reduced the sentence to 10 years rigorous imprisonment. Petitioner No.2 (mother of Rajbir) was awarded two years rigorous imprisonment.

3. We fail to see why the High Court has reduced the sentence of petitioner No.1 Rajbir. It appears to be a case of barbaric and brutal murder. This is borne out by the injuries which are in the evidence of Doctor, PW 2, which are as follows:

   "1. A diffused contusion radish in colour on right side of face extending between left half of both lips and upto right pinna. And from the zygomatic area to right angle mandible. On dis-section underline tissue was found Ecchymosed.

   2. On right side of neck, a diffused contusion 3.5 cm x 2.5 cm situated 2.5 cm posterior inferior to right angle of mandible. On dis-section underlying area was Ecchmosed.

   3. A contusion size of 7.5 cm x 5 cm over left side of neck just below angle of mandible. Underlying area on dissection was Ecchymesed.

   4. Multiple reddish contusion of various sizes from 0.5 cm x 0.5 cm to 1 cm x 0.5 cm on both lips including an area of 6 x 4 cms. On dissection, underlying area was Ecchymesed.

5. *A laceration of size of 1.5 cm x 1 cm present inside the lower lip corresponding to lower incisor tooth and all of the neck on both sides below thyroid bone was found Echhymesed on dis-section.*

   Scalp and skull were healthy. Uterus contained a male foetus of four months. Cause of death in our opinion was due to smothering and throttling which was ante-mortem in nature and was sufficient to cause death in ordinary course of nature."

4. The above injuries, prima facie, indicate that the deceased Sunita's head was repeatedly struck and she was also throttled.

5. We have recently held in the case of *Satya Narayan Tiwari @ Jolly & Another vs. State of U.P., Criminal Appeal No.1168 of 2005 decided on 28th October, 2010* that this Court is going to take a serious view in the matters of crimes against women and give harsh punishment. This view was reiterated by us in another special leave petition in the case of *Sukhdev Singh & Another vs. State of Punjab* and we issued notice to the petitioner as to why his life sentence be not enhanced to death sentence.

6. Issue notice to petitioner No.1 why his sentence be not enhanced to life sentence as awarded by the trial Court.

…

9. We further direct all trial Courts in India to ordinarily add Section 302 to the charge of section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women.

This Judgment is also reported at (2010) 12 SCALE 319

IN THE SUPREME COURT OF INDIA

THATHAMSETTY SURESH
v.
STATE OF A.P.

MARKANDEY KATJU, J. AND GYAN SUDHA MISRA, J.

MARKANDEY KATJU, J.

…

2. In his case the petitioner has been accused of murdering his wife. The injuries shown by the Doctor are as follows:-

   "1. A diffused contusion over the left temporal area of the head size about 5x4 cms. A diffused elevated injury. Cut section shows all the types of inflammatory changes or vital reactions. Cause may be blunt. It is only ante-mortem.

   2. A diffused contusion over the posterior occipital area of the head. The size about 6 x 6 cms crushing of the scalp with oozing of blood. Injury may be due to blunt. Cut section shows diffused haemotoma underneath the scalp at posterior occipital of scalp with crush in nature. Bleed with clot showing with crush in nature. Bleed with clot showing all types inflammatory signs. It is only ante-mortem.

   3. A diffused contusion over the posterior frontal and mid sagittal plain of the parietal area of the head. Size about 4 x 3 cms surface elevated and diffused. The cause may be blunt. Cut section shows underneath the scalp a diffused haemotama at mid sagital plain of the mid parietal area of the skull. This is only ante-mortem."

   PW-8, the doctor, who conducted post mortem, in unequivocal terms said that the ante mortem injuries that were noted on the body of the deceased constitute the cause of the death. Therefore,

it emerges that the deceased died on account of injuries mentioned in Ex.P. 5 and pouring of kerosene or settling her on fire, was only a subsequent event…

3. … The above injuries show that the head of the deceased was battered repeatedly by a blunt weapon (probably a lathi) and then kerosene was poured on her and she was put on fire.

…

5. The above facts prima facie reveal that the deceased was killed in a barbaric and brutal manner. The appellants said to have been alone with her a that time.

6. It was contended by learned counsel for the appellant there is only circumstantial evidence against the appellant accused.

7. In such cased ordinarily there is only circumstantial evidence but that does not mean that a person cannot be convicted on the basis of circumstantial evidence.

8. We have recently held in the case of satya *Narayan Tiwari @ Jolly & another Vs. State of U.P.,* Criminal Appeal No. 1168 of 2005 decided on 28thOctober, 2010 that this Court is going to take a serious view in the matters ofcrimes against women and give harsh punishment.

9. This view was reiterated by us in another special leave petition in the case of *Sukhdev Singh & another Vs. State of Punjab* and we issued notice to the petitioner as to why his life sentence be not enhanced to death sentence.

10. In this petition we also notice to the petitioner why his sentence should not be enhanced from life sentence to death sentence.

This Judgment is also reported at (2010) 13 SCR 890

Conclusion

The surge in crime against women, particularly crime by reason of demand for dowry, has prompted the Supreme Court to adopt an approach of purposive construction when interpreting the provisions of the various sections of the Dowry Prohibition Act, 1961. The progressive approach by the Supreme Court in giving meaning to the provisions, where they are not restricted to the letter but implement the spirit of the statute, has helped in creating a reliable and effective avenue for the redressal of a long persistent grievance. Notwithstanding the commendable approach by the Apex Court, several factors have contributed to the large number cases from reaching the highest Court for adjudication. One of the main reasons has been the general practice of not treating cases on harassment due to demands for dowry on par with other criminal matters. Quite often these cases are referred to mediation resulting in 'settlement' and 'compromise' between parties, thereby precluding the matter from being adjudicated on its merits. Despite the enactment of purposively-interpreted legislation, much has been left to be achieved on the ground.

Citing misuse of Section 498-A and unreasonable assumption under section 304B of the IPC, certain sections of the society have demanded amendments be made to the said provisions. On these lines, the Malimath Committee Report of 2003 proposed to make section 498-A a bailable and compoundable offence on the unsubstantiated presumption of the willingness of the wife to 'condone and forgive the husband.' These proposed amendments to section 304-B and section

498-A are a further step towards diluting the grip of the law over the persistent evil of dowry.

As much as the Apex Court's approach in adopting a purposive construction of the provisions achieves, we must not lose sight of the fact that dowry in its existing form and nature is a reflection of the dominance of brahminical laws of social order over the customary rules of local and indigenous groups. Under pressure to conform to the 'predominant' socio-cultural and economic predispositions of the ruling elite, many of the local customs of various rural groups have given way to the patriarchal ideas of the dominant class. The 'sankritization' of groups at the 'lower hierarchy' of the caste system has given social legitimacy to the concept of dowry, making it an almost indispensible entity intricately woven into the existing social superstructure.

Human Rights Law Network

ANDAMAN & NICOBAR ISLANDS
AB – 31, Babu Lane
Aberdeen Bazar
Port Blair 744101
Phone: 03192-230756
Email: portblair@hrln.org

ANDHRA PRADESH
H No 21-7-761, First Floor
Lane opposite High Court
Post Office Ghansi Bazar
Hyderabad - 500 002
Tel 040 - 24573094
Mobile: 09849729258
Email: ap@hrln.org

ARUNACHAL PRADESH
Anam Building
Opposite Civil Secretariat, Itanagar
Phone: 0360-2212099
Email: arunachal@hrln.org

ASSAM
C/O P.N. Chaudhury
Lamb Road, Ambari
Guwahati-781001
09864034505

BIHAR
G-1, Noor Apartment
Infront of Masjid, Road No. 3J
New Patliputra Colony
Patna-800013

CHHATTISHGARH
Mangal Bhawan, 1st Floor,
Vyapar Vihar Road, Bilaspur
Phone: 09977897237,
08085069661

GOA
H. No. 589, 2nd Floor, Plot No. C-9
Law-Compala Colony, Miramar
panjim, Goa
Phone: 0832-2464898

GUJARAT
B–5, Sushil Nagar Society
Near Octroi Naka, Opp. Gandhi
Labour Institute, Drive in Road
Ahmedabad – 380 052
Phone: 079 – 2747 5815
Email: ahmedabad@hrln.org

HIMACHAL PRADESH
Set No. 6, Vimal Sadan
Near State Co Operative Bank
Chhotta Shimla,
Shimla – 171 002
Phone: 0177–262 4629
Email: shimla@hrln.org

Human Rights Law Network
Village Lower Barol
PO Dari Tehsil Dharamshala,
District Kangra
Phone: 01892–223 417
Email: dharmshala@hrln.org

JAMMU & KASHMIR
Bee Dee House, First Floor
Near Maulana Azad Urdu University
Kursoo Rajbagh Srinagar,
Kashmir – 190 001
Phone: 0 99066 67957
Email: srinagar@hrln.org

Human Rights Law Network
Sub-Unit Pulwama
Court Road, Pulwama.
Tel.: 09419933327, 09797044433

JHARKHAND
64, MIG Flats, Harmu Housing
Colony, Surajanand Chowk,
Ranchi-834012
Phone: 0651&2341740

KARNATAKA
No. 20, Park Road, Tasker Town
Shivaji Nagar, Bangalore – 560 051
Phone:080-65624757
Email: bangalore@hrln.org

KERALA
58/340, Manavalan Appartments
Amulya Street, Opp: Banarji Road
Cochin 18
Phone: 0484–2390 680
Email: kochi@hrln.org

Human Rights Law Network
TC – 25/2952, Old GPO Building
Ambujavilasom Road
Thiruvananthapuram – 695 001
Phone: 0471–5581466, 2460652
Email: trivandrum@hrln.org

MADHYA PRADESH
E-3/212, Arera Colony,
Bhopal - 16
Phone: 0755–4202514
Email: hrln_bpl@rediffmail.com
bhopal@hrln.org

MAHARASHTRA
409, 4th Floor, Prospect Chambers,
D.N. Road, Fort, Mumbai 400 001
Phone: 022–2204467/68
Email: admin.mumbai@hrln.org

Human Rights Law Network
51-B Mata Mandir Road
C/o Alliance Avrutta Church
Gokulpeth, Nagpur
Email: hrlnnagpur@gmail.com

MANIPUR
KVIC Building, 2nd Floor
Opposite Videocon House,
Paona Bazar, Imphal 795001
Phone: 0385 – 2442165
Email: manipur

NAGALAND
C/o NVHA, 2nd Floor
New NST Complex
Kohima–797001
Tel: 0370–2291304
E–mail: kohima@hrln.org

ORISSA
Plot No. 1209-C, 2nd Floor
CDA, Sector-6
Cuttack - 14
Email: bhubaneswar@hrln.org

PUNJAB, HARYANA & CHANDIGARH
House No. 2439, Sector 37–C
Chandigarh – 160 036
Phone: 0172 – 460 3177
Email: chandigarh@hrln.org

SIKKIM
2nd Floor, Satey Bazar
Above Mahesh Saloon
Upper Sichey,
Near District Court Gangtok
Sikkim 737 101
Phone: 03592 – 203557
Email: sikkim@hrln.org

TAMIL NADU
319/155, 2nd Floor
Linghi Chetty Street
George Town, Chennai 600 001
Email: chennai@hrln.org
hrlnchennai@yahoo.co.in

UTTAR PRADESH
20A, Hasting Road,
Ashok Nagar
Allahabad 211 001
Phone: 0532– 242 1893
Email: allahabad@hrln.org

UTTARAKHAND
Ishwari Bhawan
West Pokharkhali, Ranidhara Road
Almora – 263601
Phone: 09412092159
Email: almorah@hrln.org

WEST BENGAL
Sohini Apartment, Flat 1A 3 Parbati
Chakrabarty Lane Kalighat
Kolkata 700 026
Phone: 033–2454 6812
Email: kolkata@hrln.org

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This book is a compilation of the leading judgments from the Supreme Court of India on the laws relating to dowry – In this book, an attempt has been made to analyze the approach of the Apex Court in interpreting the scope and ambit of the provisions that apply when dealing with the offence of dowry. Demands for dowry are a stark manifestation of the gender inequality prevalent in society, the dominance of gender-biased laws and the existence of oppressive social practices which have for centuries added to the plight of women across the country. Often perceived as burdens to their families, women across all social strata are generally seen as a liability to be discharged by their families in marriage. The commodification of women as objects and property to be monetarily valued has ensured the sustenance and development of the phenomenon of giving and taking dowry. Though prominent in the eyes of the legislature, the menace caused by the practice of dowry remained largely unaddressed for several years after independence, with the provisions under the Penal Code proving insufficient to tackle the offence. The rigidity of laws caused huge problems in leading evidence against the accused because often the circumstances in which the crime was committed left the prosecution with little or no ground to lead direct evidence. This in many cases prevented a successful case from being presented before the Court. The already broken victim and her family had no option but to refrain from haggling with the already prejudiced laws and their scope. The advent of women's movement in India and awareness among progressive groups in the country has created a space conducive to addressing this issue at a macro level. Sustained pressure from rights groups and activists to ensure basic justice for the victims of this brutal social indulgence prompted the legislature to enact the Dowry Prohibition Act, 1961. The Act makes the giving and taking of dowry a punishable offence under Section 3, providing imprisonment for a term not less than 5 years and fine not less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. In addition to being the first concrete step by the legislature to provide for specific laws against the practice of dowry, the Act attempted to consolidate for the first time the definition of 'dowry'.

HRLN
Human Rights Law Network
576, Masjid Road, Jangpura,
New Delhi-110 014
Phone: +91-11-24379855/56
publications@hrln.org
www.hrln.org

John and Editha Kapoor Charitable Foundation, USA

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