

\$~R-12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A.62/2005

% **Judgment dated 21st October, 2013**

AZIZ AHMED @ AJIT Appellants
Through : Mr.Haneef Mohammad, Ms.Harpreet
Kaur and Mr.Imran Ahmed, Advocates

versus

THE STATE Respondent
Through : Mr.Firoz Ahmed Ghazi, Adv for State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. The appellant in this case has been convicted under Section 304B and 498-A of the IPC. The present appeal is directed against the judgment dated 25.11.2004 and the order on sentence dated 29.11.2004 by which the appellant has been convicted to undergo rigorous imprisonment for seven years under section 304-B and rigorous imprisonment for three years with fine of Rs.2500/- and in default thereof to further undergo rigorous imprisonment for one month under section 498-A IPC.
2. On the statement of the father of the deceased, Sh.Sriniwas, made on 4.3.2002 before the SDM, the present case was registered. It was stated by Sh.Srinivas that his daughter, Anita was married with Aziz Ahmed @ Ajit (appellant herein) on 18.2.2002 according to Hindu rites and ceremonies. The appellant has disclosed himself to be a Hindu. Articles of dowry were given at the time of marriage, as per the choice of the appellant and his daughter (deceased). Doli of his daughter had gone to Tigri, however, he was not aware of the address. On 1.3.2002 appellant

and complainant's daughter, Anita had come to the house of the complainant in the evening and the appellant, Ajit had demanded Rs.40,000/- for business purposes, but the complainant had refused to oblige. Both Anita and the appellant left the house; and the appellant was furious. On the next day i.e. 2.3.2002 at about 9:00 or 9:30 a.m. Anita had telephoned and requested that some clothes be sent as her four sisters-in-law and four brothers-in-law were coming to her house, on being invited for food. Anita also demanded a cylinder and burner, which the mother of the deceased refused, but agreed to send a stove. Through her son, Pradeep, PW-4, a stove was sent to the house of Anita at Madangir where she was residing since 26.2.2002. Pradeep came back by noon but he did not know as to whether there was oil in the stove or not. She had again asked her brother to send clothes as well. When Pradeep had come to give the stove, only Anita and appellant were present in their house. In the evening again Pradeep went to the house of Anita along with two pairs of ladies clothes and two pairs of clothes for gents. Anita returned the ladies clothes and kept the clothes meant for gents. At that time she was alone in the house.

3. On 3.3.2002 Sh.Srinivas received a call from S.I. Kalu Ram at about 7:00 a.m. that Anita had expired due to burn injuries. He enquired from the neighbours and came to know that they had seen flames of fire, but did not hear any noise. They had seen the appellant leaving the house with the children of his previous marriage. PCR van was called and the appellant was handed over to the police. According to Sh.Srinivas (complainant) his daughter was killed by her four brothers-in-law, sisters-in-law, mother-in-law and the appellant was also involved. Sh.Srinivas was unable to disclose the names of the brothers-in-law, sisters-in-law and the mother-in-law. Post-mortem of the deceased was got conducted and

the case was registered under Sections 498A/420/304B IPC; site plan was prepared; and the appellant was arrested. After completion of investigation, a challan was filed.

4. In order to prove its case the prosecution has examined as many as 12 witnesses. The defence evidence was also led in this case. Counsel for the appellant submits that the trial court has committed grave error in law in holding the appellant guilty on the basis of the testimonies of PW-1 and PW-2. It is contended that the evidence of PW-1 and PW-2 do not inspire any confidence; there are material improvements in the evidence of the mother, father and brother of the deceased, which go to the root of the case.
5. It is contended that even a bare reading of the statement of the father of the deceased would show that there was no demand of dowry, much less any cruelty inflicted upon the deceased in relation to any demand of dowry. It is submitted that as per the statement of PW-1, the appellant had demanded Rs.40,000/- for business purposes. The statement does not show that the deceased was tortured or any demand of dowry was made or that she was harassed by the appellant at any point of time for non-fulfilment of the alleged demand. Counsel further submits that according to PW-1, the father of the deceased, Rs.40,000/- was demanded on 1.3.2002 by the appellant, but this amount is not mentioned in the statement of PW-2, the mother of the deceased, who on the contrary has testified that a sum of Rs.30,000/- was demanded for purchase of a scooter. There is no such mention of dowry in the statement of the father.
6. Counsel further submits that the statement made before the SDM would show that neither was the deceased unhappy, nor did she inform her parents of any demand of dowry; she merely requested for clothes and that too on her own. She also requested for a gas cylinder to enable her to

cook for her in-laws, who were invited for dinner. It is submitted that in case any cruelty had been committed or any demand for dowry had been raised, she would have mentioned this to her mother during their conversation and since no such mention was made and there is no whisper in the statement with regard to any demand being made from the daughter. It is submitted that on the intervening night of 2/3 March, 2002 the deceased was in constant touch with her family members, which is evident from the statement of the mother, father and brother. The deceased had made the first phone call at 9:30 in the morning, her brother visited her at 12:00 noon, when appellant was also present; the brother again visited at 6:00 p.m. when she was alone at home but there is no evidence on record to show that the deceased had made any complaint to her mother or her brother that she was being harassed, tortured or that any demand was being made by any member of the family for dowry. It is further submitted by counsel for the appellant that even the statement of PW-2, Ganga Devi (mother) is unreliable, as she had stated before the SDM that she gave Rs.30,000/- for scooter on demand of Ajit, but no such statement was made in court either by PW-1 (father) or by PW-4 (brother).

7. It is also pointed out that PW-2 had not deposed about demand of Rs.30,000/- in her statement before the SDM or the police; nor has any such demand been mentioned in the testimony of PW-1 and PW-4; only PW-2 has testified that on the 10th day of her marriage, when appellant and her daughter came to the house, the appellant demanded Rs.30,000/- for purchase of a vehicle which allegation does not find mention in the two prior statements made by her under Section 161 Cr.P.C. and before the SDM respectively. It is also submitted that neither did the learned trial court consider the testimony of public witnesses and the defence

witnesses nor were the same discussed in the judgment of the trial court. It is also submitted that public witnesses have not supported the case of the prosecution at all.

8. Counsel further submits that during cross examination it is stated that about 100 persons had attended the marriage. Counsel contends that in case 100 persons had attended the marriage from the side of the appellant, it is impossible that the father and the mother of the deceased would not come to know that the appellant was a Muslim. It is submitted that the appellant and the deceased had a love marriage against the wishes of the parents of the deceased and thus the appellant has been falsely implicated in this matter by the family of the deceased. It is also submitted that being a love marriage and against the consent of the parents of the deceased, no dowry was given. It is contended that PW-4, Pradeep Kumar did not support the case of the prosecution. He has not deposed that any demand of dowry was made or that the appellant or any member of family had harassed, humiliated or committed any cruelty upon the deceased in connection with dowry demand, soon before her death or at any point of time at all. It is contended that the alleged demand of Rs.40,000/- is concocted. Similar argument is raised with regard to the demand of Rs.30,000/- by the appellant.
9. Counsel further submits that PW-5, landlord of the house where the deceased and appellant were living, has testified that the relationship between the appellant and his wife were normal and that on the fateful day, when PW-5 reached the spot, he saw the appellant trying to extinguish the fire with the help of a *Razai*. During the cross-examination, PW-5 admitted that when the police arrived at the spot, the appellant was present there itself. He submits that it is false that the appellant was arrested on 5.3.2002. It is further submitted that all the

allegations made with regard to the giving of dowry at the time of marriage are vague. No specific article has been mentioned which was given or demanded and only vague and casual reference has been made. It is further submitted that the prosecution has failed to satisfy the ingredients of Sections 304-B/ 498A IPC. It is also submitted that the evidence of DW-1 establishes on record that even the appellant had sustained burn injuries while trying to save his wife and in fact remained under treatment for more than two years in jail by the jail doctor. Necessary documents have been produced by DW-1 during his evidence in Court.

10. *Per contra* learned counsel for the State submits that the prosecution has been able to establish its case beyond any element of doubt. According to the evidence of PW-1, on 1.3.2002 his daughter and the appellant had visited his house and the appellant demanded Rs.40,000/-. It is further submitted that the evidence of PW-2 also establishes demand of dowry and this witness has deposed that Rs.30,000/- was demanded for purchase of a scooter. It is, thus, contended that there was a demand of dowry soon before the death. It is also contended that the daughter of the petitioner died under unnatural circumstances within seven years of her marriage. Thus, taking the presumption of Section 113B of the Evidence Act read with Section 304B of the IPC, the trial court has rightly convicted the appellant.
11. I have heard learned counsel for the parties, carefully examined the evidence placed on record and also duly considered the rival submissions of the counsel for parties. Since the evidence of PW-1, PW-2 and PW-4 are material evidence, it is deemed appropriate to reproduce the same.

“PW-1

Mr. Siri Niwas S/o Murli Singh aged 65 years R/o C-612, Sangam Vihar-A. New Delhi occupation Mason on SA:-

My daughter Anita was married with the accused present in the court on 18.2.02 as per Hindu Rites and ceremony. After the murder of my daughter I came to know that the accused is not Hindu and he is Muslim and he cheated us.

The marriage of my daughter was solemnised at C-612 Sangam Vihar. The accused present in the court Ajit reached at my house along with my daughter and they also stayed at my house. The accused Ajit asked for Rs.40,000/- but I did not pay the same as I was not in a position to pay. He left my house angrily. On 3.3.02 I received a telephone call of SI Kalu Ram regarding burn of my daughter. My statement was recorded before the SDM my statement is Ex.PW1/A.

I reached at Police station where I came to know that the dead body of my daughter was lying in the hospital. I identified the dead body of my daughter vide Ex.PW/B. The marriage card is Ex.PW1/C.

xxxx by the defence counsel for the accused.

Deferred to 26.9.02.”

“PW-2

Ganga Devi W/o Srinivas Age 55 years, Housewife, R/o C-612A, Sangam Vihar New Delhi.

On SA:-

Deceased Anita was my daughter. She was married with accused Aziz Ahmad on 18.2.2002. After marriage my daughter started living with accused at his house. On the 10th day of her marriage accused Aziz Ahmad and my daughter Anita came to my house. It was the day of Wednesday when they came and they stayed there for the night. In the morning time I went for my work leaving accused and my daughter at my house. At about 4 p.m. when I came back to my house accused Aziz Ahmad demanded Rs.30,000/- as he had to purchase a vehicle. I told the accused that I am unable to give Rs.30,000/-. At about 5 p.m. I handed over clothes to accused for his mother, father and accused left my house alongwith my daughter in angry mood. Thereafter on the day of

Saturday on the second day of the next month, my daughter telephoned me at my house that her sister-in-laws and their husbands had arrived at her house and to arrange clothes for them. I sent my younger son to house of the accused alongwith new clothes. After giving the clothes my son returned to my house in the evening time. Thereafter, I do not know what was done by the accused person with my daughter. On account of the money, accused harassed my daughter. When my daughter was murdered, accused telephoned me at about 7.30 a.m. that my daughter had been burned. I went there. I saw my daughter at AIIMS in bad condition. I gave my statement to the SDM dame is Ex.PW2/A bears my sig. at point A.

xxxxxx by Mr.L.K. Upadhyay, Adv. for accused.

I had stated to the police that at 5 p.m. accused left my house alongwith my daughter in angry mood conf. With Ex.PW2/DA where it is not so recorded. I had stated this fact in my statement given to the SDM conf. With Ex.PW2/A where it is not so recorded. I had stated to the police and to the SDM that my daughter telephoned me at my house that her sister in law and her husband had arrived at her house and to arrange clothes for them. conf. With Ex.PW2/A and Ex.PW2/DA where it s not so recorded. I had not stated to the police in my statement that the accused used t o harass my daughter on account of money. I had also not stated to the SDM that accused to harass my daughter on account of money. Vol. I had told the SDM and the investigating authority that the accused has killed my daughter as I did not given him money. (Id. Counsel wishes to confront the vol. Statement with Ex.PW2/A and Ex.PW2/DA where these facts are not recorded. Disallowed.).

Recalled for further cross-examination.

xxxxx By Sh. Hanif Mohd. Adv. for accused.

My statement was recorded by SDM at about 11 AM in the office of SDM at Mehrauli. I myself had gone to the office of SDM and no police official accompanied me. The police officials met me in the police station. I had gone to police station before going to the court of SDM at Mehrauli. At that time my statement was not recorded by police. My husband Srinivas accompanied me to police station. On the next day I went to police station and one police

official Bhardwaj recorded my statement. Several persons accompanied me to police station. I returned back to my house from police station at about 5PM. I came back to my house from the office of SDM, after my statement was recorded. SDM recorded my statement as well as statement of my husband. No other statement was recorded by SDM nor any enquiry was made by SDM from any other person. I received telephonic call about the incident and I went to police station. My husband and my son were present in the house when telephone was received regarding incident. The telephone was picked by my husband. There is no telephone connection at my house. I had not gone to the house of my daughter Anita before the incident at any time. I had stated to SDM that accused had demanded a sum of Rs.30,000/- for Scooter. Confronted with statement Ex.PW2/A where it is not so mentioned. There were about 100 persons in the marriage who came from the side of accused. I handed over Marriage Invitation Card to the IO. I have marriage invitation card of my daughter Anita. It is wrong to suggest that I do not have any marriage invitation card of my daughter Anita. The marriage of my daughter Anita was solemnised in an open plot near my house. I had not handed over any photograph of the marriage of my daughter Anita as I was not having any photograph. The police officials never came to my house after the incident. I alongwith the police officials went to the matrimonial house of my daughter Anita after her death and saw the articles of my daughter. The police officials made enquiry from the neighbourers. I had gone to the house of my daughter alongwith police officials on second or third day of the incident. I had gone to police station and from police station I went to the house of my daughter. It is wrong to suggest that I gave a wrong statement and the same is after thought. It is also incorrect to suggest that I falsely implicated the accused just on account of shock received by me as my daughter had expired. It is further incorrect to suggest that people residing in the neighbourhood of the accused disclosed that it was an accident in which my daughter received burn injuries and the accused had no role in the said incident. It is also incorrect to suggest that he marriage of accused with my daughter Anita was a love marriage or that it was not arranged marriage or that hundred persons had not come in the marriage. It is incorrect to suggest that I had not sent my son to hand over the clothes to my daughter Anita. It is incorrect to suggest that I am deposing falsely.

XXXXX by SH.S.K. Upadhyaya Adv. for accused.

I stated to SDM and police in my statement at about 4 PM when I came back to my house accused demand Rs.30,000/- as he was to purchase a vehicle. Conf with the statement Ex.PW2/A which was made to SDM and statement Ex.PW2/Da which was made to the police where it is not so recorded. I stated to SDM that I was unable to pay the said amount of Rs.30,000/- demanded by accused and I told the same to the accused. Conf. with the statement Ex.PW2/A where it is not so recorded. I did not state to the police and SDM that accused telephoned me regarding burn injuries received by my daughter at about 7.30 AM or that she had been burnt by the accused.”

“PW-4 Pardeep S/o Srinivas Age 18 years, Private Work R/o C-612A, Sangam Vihar, New Delhi.

Anita was my sister. She got marry with accused Ajit on 18.2.2002. He presented himself as Hindu and the marriage was also performed according to the rites of Hindu religion. On 2.3.2002 I visited house of Anita (deceased). I had come after adjusting her household articles. Anita asked me to bring one stove which I had given to her.

At this stage Ld. Addl.P.P. wants to cross examine this witness as he is resiling from his earlier statement given to the police. Heard. Allowed.

xxxxx by Addl.P.P. for the State.

Police recorded my statement in this case. It is correct that on 2.3.2002 my sister had told me that 4 sister in law and their husbands would be coming and that her mother should be asked to send clothes for them, and I delivered the same that very evening. The ladies suits were returned back while the suit for the men were restrained.

xxxxxx by Mr.L.K. Upadhaya, Adv. for accused.

I had stated to the police in my statement that my deceased sister had asked me to bring a stove confronted with statement Ex.PW4/DA where it is not so recoded. I was informed that the accused had four sisters but had no personal verification of the

same. I had taken four sets of unstitched salwar suit (ladies) and four sets for men of unstitched pant and shirts. We had given the clothes as per our prevailing customs, however, we would not have given these if the demands have not been made by my sisters. It is incorrect to suggest that I had not taken any stove to the house of my sister. It is incorrect to suggest that there was a gas stove and a cylinder already at the house of my sister. It is incorrect to suggest that I am deposing falsely.”

12. A careful reading of the evidence of PW-1 would show that the appellant along with his wife (deceased) had visited the house of PW-1. The evidence of PW-1 would further show that although no date has been mentioned as to when the appellant and his wife visited his house, however, it has been stated that the appellant had asked for Rs.40,000/- and when this amount was not paid, he left the house angrily. Subsequently on 3.3.2002 PW-1 had received a telephone call from SI Kalu Ram, who informed him that his daughter has been burnt. It may be noticed that whereas in the statement recorded before the SDM it has been mentioned that the appellant and his daughter had visited his house on 1.3.2002 and the appellant had demanded Rs.40,000/- for business (*KAM DHANDE KE LIE*) when, he was confronted with the statement made under Section 161 Cr.P.C. wherein no such demand of Rs.40,000/- has been mentioned, he reiterated the statement made by him before the SDM i.e. that demand of Rs.40,000/- was made from him by the appellant.
13. A careful analysis of the evidence of PW-1 would reveal that there are material discrepancies in the statements made by PW-1 under Section 161 Cr.P.C. his statement before the SDM and his testimony before the Court. In his statement recorded under Section 161 Cr.P.C., he has made no mention of the demand of Rs.40,000/- by the appellant. Contrary to this, in his statement before the SDM, he has stated that a demand of Rs.40,000/- was made by the appellant for business purposes. In his

deposition before the Court, PW-1, only mentioned that a demand of Rs.40,000/- was made by appellant. It may further be noticed that the factum of demand of Rs.40,000/- does not find mention either in the statement of PW-2 (mother of deceased) or PW-4 (brother of deceased) and hence remains uncorroborated.

14. Coming to the evidence of PW-2, she has deposed that Rs.30,000/- were demanded from her by the appellant. However, a careful analysis of her evidence would reveal the material discrepancies in her statement under Section 161 Cr.P.C., statement before the SDM and her testimony before the Court, whereas her statements under Section 161 Cr.P.C. as well as before the SDM find no mention of any demand of Rs.30,000/- by the appellant, allegations with regard to demand of Rs.30,000/- by the appellant from her for the purpose of purchasing a scooter has been made for the first time in her testimony before the court. Furthermore, no such demand of Rs.30,000/- finds mention in either the testimony of PW-1 (father) or PW-4 (brother), thus the evidence of PW-2 is unreliable and untrustworthy.
15. PW-4 (brother of deceased) nowhere states that either Rs.40,000/- or Rs.30,000/- were demanded by the appellant. He merely states that he had taken some clothes to the deceased's house on 2.3.2002 on the request of his sister (deceased) as her sisters-in-law and their husbands were scheduled to pay a visit to her house. Apart from the clothes, she (deceased) had asked him to bring one stove. PW-4 also clearly stated that the clothes were given as per their prevailing customs and that they would have never given these clothes had the demand not been made by his sister. Therefore a careful reading of the testimony of PW-4 reveals that there is no mention of any sort of demand being made by the appellant and that whatever had been given, was given based on the

demand made by his sister as per the prevalent customs and not based on any demand of the appellant.

16. True analysis of the testimonies of all the material PWs i.e. PW-1 and PW-2 and PW-4 being the father, mother and brother respectively in their statement recorded under Section 161 Cr.P.C., before the SDM and the testimonies in Court would show material contradictions which go to the root of the matter. .
17. At this stage, it would be appropriate to recall the law with respect to 304-B/498-A, IPC. In the case of *Prem Kanwar Vs. State of Rajasthan* reported at (2009) 3 SCC 726, the Apex Court has very elaborately set down the law with respect to a dowry death. The same is reproduced as under:

“12. “6. Section 304-B and Section 498-A read as follows:

‘304-B. *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 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.

* * *

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.’

7. The term ‘dowry’ has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short ‘the Dowry Act’) 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 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.

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).’

8. The 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 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 v. State of Haryana*¹.

9. The offence alleged against the [accused] 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 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 [accused] 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 IPC. This makes it clear that even demand of dowry on other ingredients

¹ (1998) 3 SCC 309 : 1998 SCC (Cri) 740.

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. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

‘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 necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on ‘Dowry Deaths and Law Reform’. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. 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...”

18. In the case of *Hira Lal Vs. State (Govt. of NCT), Delhi* reported at (2003)

8 SCC 80, it was held that:

“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. “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. 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 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. A reference to the 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 their 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 cruelty or harassment concerned 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 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.”

19. As observed by the Apex Court in **Prem Kanwar** (*supra*) and **Hira Lal** (*supra*), the essential ingredients of the offence under section 304-B, IPC are: (i) 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 marriage; (iii) soon before her death she must have been subjected to cruelty or harassment by her husband or relative of her husband; and, (iv) such cruelty or harassment must be in connection with the demand of dowry. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under section 113(B) of the Evidence Act.
20. In a recent decision, in the case of **Vipin Jaiswal v. State of Andhra Pradesh**, reported at (2013) 3 SCC 684, the Supreme Court has observed as under:

“6. We have perused the evidence of PW 1 and PW 4, the father and mother of the deceased respectively. We find that PW 1 has stated that at the time of marriage, gold, silver articles, ornaments, T.V., fridge and several other household articles worth more than Rs.2,50,000/- were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a xerox cum type institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000/- from them as he was intending to purchase a computer and set up his own business. Similarly, PW4 has stated in her evidence that five months after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000/- and that the demand for money is to purchase a computer to start his own business. Thus, the evidence of PW1 and PW4 is that the demand of Rs.50,000/- by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this

demand of Rs.50,000/- that the Trial Court has recorded a finding of guilt against the appellant for the offence under Section 304B, IPC and it is only in relation to this demand of Rs.50,000/- for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961.

This Court has held in *Appasaheb & Anr. Vs. State of Maharashtra* (2007) 9 SCC 721:

“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 conversant 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).”

In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards

the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased.”

21. Applying the settled law to the facts of this case and the evidence placed on record it is clear that the prosecution has failed to establish that there was any demand of dowry by the appellant.
22. Assuming that a sum of Rs.40,000/- was demanded as per the statement made by PW-1 before the SDM, the same was for business (*KAM DHANDE KE LIE*). In my view the trial court has failed to appreciate, firstly, that there was no demand of dowry and, secondly, if at all this is to be treated as a demand, the same was for starting a business and the same was not in connection with the marriage and, thus, the same cannot be termed as a dowry demand within the meaning of Section 2 of Dowry Prohibition Act as per the view expressed by the Supreme Court of India in the case of *Vipin Jaiswal* (supra).
23. There are material contradictions in the testimonies of the mother, father and the brother of the deceased. The prosecution has also failed to establish that there was any evidence to show that soon before her death she was subject to cruelty or harassment in connection with the demand of dowry. In fact the evidence would show that on 3.3.2002 the deceased had made a telephone call to her mother between 9.00-9.30 p.m. and requested for clothes for her in-laws. She also requested her mother to send a gas cylinder and stove so that she could cook for them. These facts would show that the deceased was neither unhappy with her husband or in-laws, nor was there any complaint made by her either to her father, mother or the brother that she is cooking for her in-laws or is demanding clothes for them under any fear, threat of cruelty or that she was being subjected to any cruelty or forced by her husband to make such a demand.

24. In his testimony PW-5, landlord, has deposed that the appellant was his tenant on the first floor. On the fateful night he was sleeping with his family members when he heard noises and saw that the people of the gali had gathered and wife of the appellant was lying burnt in dead condition. He deposed that the appellant and his wife were living normally. He further deposed that he saw the appellant trying to extinguish the fire with a quilt (Rajai), which was lying on his wife and when the Police arrived at the spot the appellant was present.
25. The evidence of PW-5 clearly establishes that the appellant made all efforts to save his wife. The evidence of DW-1 shows that the appellant himself had to undergo medical treatment in jail for a period of two years, which corroborates the evidence of PW-5 that the appellant was trying to save his wife by extinguish the fire.
26. For the reasons stated above, the present appeal is allowed. The bail bonds of the appellant be cancelled and surety be discharged.

G.S.SISTANI, J

OCTOBER 22, 2013

ssn/msr