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

Reserved on: December 21, 2017

Pronounced on: January 08, 2018

CRL. A. 766/2017

STATE

...Appellant

Through: Ms Radhika Kolluru, APP for State with
SHO/Inspector Suresh Chand and SI Shailendra
Kumar Singh, PS Gokulpuri.

versus

SANJAY SINGH

...Respondent

Through: Mr V.K. Upadhyay, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

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JUDGMENT

Dr. S. Muralidhar, J.:

1. The State in this appeal has challenged the order dated 30th March, 2016 passed by the learned District and Sessions Judge, North East in SC No.45066/2015 (Old SC No.45/15) arising from an FIR No.460/97 registered at Police Station ('PS') Gokalpuri to the extent that by the said judgment, the Respondent/Accused has been acquitted of the offence under Section 304B Indian Penal Code ('IPC') even while he was convicted for the offence under Section 498A IPC.

Earlier round of litigation

2. This is the second round of litigation in this Court. In the earlier round, against the judgment 31st January, 2000 and order on sentence dated 8th January 2000, passed by the trial Court, the Respondent and the co-accused Satbir had filed Crl. Appeal Nos. 156 and 90 of 2000 respectively in this Court. By the said judgment, the learned trial Court had convicted the Respondent for offences under Sections 304B and 498A of the IPC whereas the co-accused Satbir had been convicted for the offence under Section 498A IPC. By the order on sentence dated 8th February 2000, which was also challenged in those appeals, the Respondent herein had been sentenced to rigorous imprisonment ('RI') for life for the offence under Section 304B IPC and for the offence under Section 498A IPC, to RI for 3 years and fine of Rs.20,000/-, and in default to undergo RI for 8 months.

3. By the judgment dated 28th May 2015, in the aforementioned Crl. Appeal Nos. 156 and 90 of 2000, this Court set aside the judgment of the trial Court. This Court held that in light of the evidence and material on record, the conviction of the co-accused Satbir under Section 498A IPC was not justified and, therefore, allowed his appeal.

4. As far as the Respondent was concerned, while setting aside the judgment convicting the Respondent for the offences under Section 498A and 304 B IPC, the Court remanded the case to the trial Court for fresh proceedings from the stage of recording of the statement of the Respondent Sanjay under Section 313 of the Code of Criminal Procedure, 1973 ('Cr PC').

Background

5. The background to the present case is that Suman ('deceased') daughter of Nathu Singh (PW1) was married to the Respondent/Accused Sanjay Singh on 26th April, 1995. According to the prosecution, the in-laws of the deceased were not satisfied with the dowry given by her parents. She was, therefore, ill-treated by the accused and his family members in the matrimonial home. Her ill-treatment increased after she delivered a baby girl.

6. For a period of about 2 months in May and June, 1997, the deceased stayed at her parental house. The co-accused Vijay Singh, the father of the Respondent, visited the parental house of the deceased along with his younger son on 26th June, 1997 and brought the deceased back to her matrimonial home. At night, she had coitus with her husband. In the early hours of 27th June 1997, the deceased Suman and her daughter Sweta were both found lying dead. The body of the deceased was found suspended with a hook with the help of a ligature.

7. The Respondent informed PW1, who talked to co-accused Satbir (maternal uncle of the Respondent) and reached Village Khajuri, along with the members of his family. PW1 lodged a report with the Sub-Divisional Magistrate ('SDM'), Seelampur, in which he stated that his daughter had been subjected to cruelty and torture at the hands of the accused on account of dowry demands. She was pregnant at the time of her death. Her in-laws wanted the deceased to abort the child, but Suman had not agreed. According to PW1, the Respondent and the co-accused Satbir had made an

extra-judicial confession over the telephone to PW1 that they had killed his daughter. FIR 460/97 was then registered under Sections 302/304B/498A IPC at PS Gokalpuri.

Charge

8. There were six accused arraigned. Apart from the Respondent, his parents (Vijay Singh and Nirmala), uncle (Satbir), his brothers Sashi and Kapil (declared juvenile) were the accused. The charge that was framed by the trial Court on 15th May, 1998 read as under:

“That from 27th of April 1995 till 27th of June 1997 at house no. 134 Village Khajuri Khas, Delhi, you all in furtherance of your common intention, you Sanjay being husband of Smt. Suman, you Vijay Singh being her father-in-law, you Sashi being her brother-in-law and you Satbir being brother of her mother-in-law along with Kapil (facing trial at Juvenile Court) and Nirmala @ Bimla (her mother-in-law who is PO) treated Smt. Suman with cruelty and thereby committed an offence punishable U/s 498 A read with section 34 of the Penal Code.

Secondly at the night intervening 26th and 27th of June 97 at aforesaid house, you all along with your associates Kapil (facing trial of Juvenile Court) and Nirmala @ Bimla (mi), in furtherance of your common intention to murder Smt. Suman and Kumari Sweta strangled them and caused their death and thereby committed an offence of murder punishable U/s 302 read with Section 34 of the Penal Code and within my cognizance.”

9. The accused pleaded not guilty. The prosecution examined 19 witnesses. In his statement under Section 313 Cr PC, recorded by the trial Court on 30th July 1999, while denying the circumstances put to him, the Respondent specifically denied that the deceased had been sent back to her matrimonial home on 23rd June, 1997 on the assurance of his father that he would advise

the Respondent not to beat the deceased and not raise any dowry demand. The Respondent replied: "It is incorrect as there is no question of demand of dowry and as such there is no occasion to give assurance to the father of the deceased Suman." He also denied making any extra-judicial confession on 27th June, 1997 to PW1 that he and his family members had killed the deceased and their daughter Sweta. When asked whether he had anything else to say, the Respondent stated as under:

"I am innocent. I have been falsely implicated. I was ill in those days and was preparing for B.A 1st year and so, my father had gone to bring Suman and Sweta from their parental home. Due to illness, I could not go there. Suman committed suicide due to hanging as she was not happy with her parents for not supplying the clothes etc. commensurate with the clothes supplied to Rekha, younger sister of deceased. There was no harassment or demand of dowry from our side. Before committing suicide, Suman might have committed murder of Shweta by strangulating her."

10. In the judgment dated 31st January, 2000, the trial Court concluded that the offence under Section 302 IPC read with Section 34 IPC had not been proved against any of the accused persons and accordingly they were acquitted. However, all of them were stood convicted for the offence under Sections 498A IPC.

11. As far as the Respondent Sanjay was concerned, the trial Court concluded that on the unfortunate night he had dealt the deceased with cruelty and she perceived the act coupled with the past conduct of her husband and her in-laws and took it that, "the only way out for her was to take the extreme step of putting an end to her life." It is concluded that, "the particular mental frame of the victim, which was groomed by persistent

cruel behaviour of accused Sanjay, offered meaning and value of his behaviour to the victim, suggesting her to act in a particular way.”

12. What weighed with the trial Court was that the deceased had shared the bed with her husband on that fateful night and that “in such a situation the facts give hypothesis to the events that when the lady was in the bed with her husband, she was mentally harassed or ill-treated by her husband. Absence of injury on her person ruled out physical injury to her. But mental torture pushed her in the stage of gloomy depression and she took the decision of self-destruction as well as murder of her daughter.” Therefore, “it was clear that momentum of depression can be attributed to the husband of the victim.”

Judgment of this Court

13. However, when the matter travelled in the appeal to this Court, it was noticed that in fact no charge under Section 304B IPC had been framed by the trial Court and yet it had proceeded to convict the Respondent for the offence under that charge. It is important at this stage to set out, in some detail, portions of the judgment dated 28th May, 2015 passed by this Court.

14. This Court first noticed the consequence of proceeding to convict a person under Section 304B IPC without framing a charge for such offence. This Court discussed in detail the judgment of the Supreme Court in ***Shamnasaheb M. Multtani v. State of Karnataka (2001) 2 SCC 577*** and concluded that “there was a lapse on the part of the Additional Sessions Judge in not framing charge in alternative under Section 304B IPC though the charge-sheet had invoked such section.” The Court then proceeded to

observe as under:

“14. On the question, whether there should be fresh de novo trial or whether proceedings should begin from the stage of recording of statement of the appellant Sanjay under section 313 Cr.P.C we are inclined to follow the dictum and the directions given by the Supreme Court in the case of *Shamnasaheb M. Multtani (supra)*, wherein, it has been directed that the trial would begin from the stage of recording of statement under Section 313 Cr.P.C. One of the reasons why we have held and given the said direction, is that charge had also been framed under Section 498A IPC. No doubt Section 498A is wider and includes mental cruelty in addition to demand for dowry, but when we read the evidence relied upon by the prosecution and the cross-examination, it is apparent that allegations with regard to demand of dowry was a subject matter of evidence-in-chief as well as cross-examination. It would not be appropriate to direct recording of fresh evidence in the said situation. As noticed above, in the case of *Shamnasaheb M. Multtani (supra)* also, the Supreme Court had not directed recording of entire evidence afresh.

15. In view of the aforesaid discussion, the Criminal Appeal No. 156/2000, filed by appellant Sanjay has to be allowed but with an order of remit/remand of fresh proceedings from the stage of recording of statement of the appellant Sanjay under Section 313 Cr.P.C.

16. As we have set aside the impugned judgment against the appellant Sanjay Singh, his conviction under Section 498A IPC has to be also treated as set aside and the trial court will examine afresh, whether or not offence under Section 498A IPC has been committed. We find it necessary to set aside the conviction under section 498A IPC, in view of our directions in respect of offence under section 304B of the IPC, as otherwise it would cause confusion and ambiguity.

17. The appeal of Sanjay Singh, (Crl. A, 156/2000) is accordingly disposed of.”

Proceedings on remand

15. On remand, the case recommenced before the trial Court from the stage of the recording of the statement of the Respondent under Section 313 Cr PC. This took place on 17th August, 2015. Although the entire recording of the statement took place afresh, the following questions and answers are of significance:

“Q13. It is further in evidence against you that Smt. Suman expressed apprehension due to ill treatment meted to her by you, your mother, brothers Kapil and Shashi and maternal uncle Satbir and for that reason Sh. Nathu Singh .father of Suman took her to his house. What have you to say?

Ans. It is incorrect. Sh. Nathu Singh had not taken his daughter Suman to his house. His son, Mr. Ashok brother of Suman had taken her to her parents’ house about two months before her death.

Q 14. It is further in evidence against you that Suman stayed in her parents’ home for 5 months and she was not sent to your house till that period. What have you to say?

Ans. It is incorrect to suggest that she had stayed at her parental house for five months. Suman had gone to her parental house on 26.04.97 and had returned on 26.06.97.

Q 26. It is further in evidence against you that you informed Sh. Nathu Singh on 27.06.1997 that you and your family members had killed her as well as her daughter baby Shweta. What have you to say?

Ans. It is correct that I had called Sh. Nathu Singh on 27.06.97. It is incorrect that I informed me about killing of Suman and Shweta. I had told him that Suman had committed suicide but I did not tell him about the death of Shweta as I was not aware till that time.

The impugned judgment of the trial Court

16. The trial Court, thereafter, pronounced the impugned judgment on 30th March, 2016 affirming the conviction of the Respondent for the offence under Section 498A IPC while acquitting him for the offence under Section 304B IPC. The reasoning of the trial Court was as under:

(i) The death of the deceased was suicidal. She was brought to the matrimonial home only on 26th June, 1997 after about 2 months of staying at her parental house.

(ii) She was brought to the matrimonial home by the father and brother of the accused. They had persuaded the parents of the deceased to send her. Her parents have agreed to send her only after getting assurances that the deceased will not ill-treated at her matrimonial home.

(iii) The deceased reached her matrimonial home on the evening of 26th June, 1997 and committed suicide in the peak hours. There was no evidence that she was ill-treated by the Respondent on that night. In fact, the medical report Ex.PW19/A revealed that she had coitus that night. In such a situation, it is evident that, “she has not been mentally harassed or ill-treated by the accused Sanjay that night.” Absence of any injury on her person rules out physical injury to her.

(iv) She took the decision to commit suicide and also kill her daughter. The only inference that could be drawn was that, “she was under some sort of depression.” It was, however, certain that, “accused could have done nothing to aggravate the situation that could have led Suman to commit suicide.”

The trial Court was therefore of the view that, “accused Sanjay would not have done anything on the night intervening 26.06.1997 and 27.06.1997 which could have forced her to commit suicide.”

17. The trial Court by a separate order of the same date held:

“Considering all the facts and circumstances of the case, particularly, the fact that convict has already suffered incarceration for about 6 1/2 years, I am inclined to take a lenient view against him and sentence him to period already undergone by him in custody for the offence under Section 498-A IPC.”

18. The trial Court overlooked the fact the maximum sentence for the offence under Section 498-A IPC was three years. Therefore it could not have sentenced him to the period already undergone, by taking a ‘lenient view’ as what he had undergone by then, i.e. 6 ½ years, was twice the maximum sentence.

Submissions of counsel for the State

19. Ms Radhika Kolluru, learned APP for the State, submitted that this was plainly a case of dowry death as defined under Section 304B IPC. She pointed out that the death in this case was otherwise than under normal circumstances and within 7 years of marriage. The fact that the Respondent had not challenged his conviction under Section 498A IPC meant that the finding of the trial Court that the deceased was subjected to cruelty and harassment by him soon before her death was not challenged by him. Therefore, the major ingredient of Section 304B IPC already stood fulfilled. She placed reliance on the decision in ***Bhupendra v. State of Madhya Pradesh (2014) 2 SCC 106*** which held that even a suicidal death was

“otherwise than under normal circumstances.” Ms. Kolluru submitted that the trial Court gravely erred in not appreciating the legal position of the presumption that could be drawn under Section 113B of the Indian Evidence Act (‘IEA’) with the burden shifting on the accused to show that it was not a dowry death and that he was not responsible for it.

20. As an alternative plea, Ms. Kolluru placed reliance on the decision in ***Gurnaib Singh v. State of Punjab (2013) 7 SCC 108*** to urge that the conviction could have been recorded of the Respondent even under Section 306 IPC read with Section 113A of the IEA although no charge may have been specifically framed for that offence.

Submissions of counsel for the Respondent

21. Mr. V.K. Upadhyay, learned counsel for the Respondent, on the other hand submitted at the outset that even after the judgment dated 28th May, 2015 of this Court in the first round, the fact remained that the Respondent was not charged under Section 304B IPC much less for an offence under Section 306 IPC. He pointed out that this flaw continued even after the judgment of this Court. There was no question put to the Respondent under Section 313 Cr PC that he had caused the dowry death of the deceased. A valuable opportunity to the Respondent to defend himself against the charge was denied even in the second round under Section 313 Cr PC. According to him, this was a fatal flaw which could not be held to be merely irregular.

22. As far as the merits of the case are concerned, Mr. Upadhyay submit that there was no evidence whatsoever to show that the deceased was treated with mental cruelty by her husband soon before her death. Reliance was

placed on the decision in *Mangat Ram v. State of Haryana (2014) 12 SCC 595* where it was held that the mere fact that a married woman committed suicide within a period of 7 years of her marriage would not straightway attract the presumption under Section 113A of the IEA. The important ingredient of showing that she had been subjected to cruelty had to be shown to exist. He further submitted that there is no automatic presumption that Section 113A of the IEA would apply unless it was shown that the suicide was abetted by the accused.

23. Mr. Upadhyay placed reliance on the decision in *Pinakin Mahapatre v. State of Gujarat (2013) 10 SCC 48* and *S. Anil Kumar @ Anil Kumar Ganna v. State of Karnataka (2013) 7 SCC 219*. Reliance was also placed on the decision in *Sher Singh v. State of Haryana (2015) 3 SCC 724*. He also placed reliance on the decision in *Baijnath v. State of Madhya Pradesh (2017) 1 SCC 101* where it was held that the presumption as regards dowry death was triggered “only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment in connection with any demand of dowry by the accused and that too with reasonable contributory to death.” In *Ramo Devi v. State 2016 (3) JCC 1579* it was held that Section 306 IPC is not a minor offence nor Section 304B IPC and the ingredients of the two offences being different, in the absence of a charge under Section 306 IPC, the Appellant could not be convicted under the said offence.

Charge under Section 304 B IPC

24. It requires to be noticed at the outset that in its judgment dated 28th May, 2015, the Court did not propose to disturb the conviction of the Respondent

under Section 498A IPC. However, the Court felt that since it was remanding the matter to the trial Court for rectifying the failure to frame charge under Section 304 B IPC, it was expedient to set aside the conviction under Section 498A IPC as well since the trial Court would examine afresh whether that offence was also made out.

25. An important part of the remand order dated 28th May 2015 of this Court, is the observation in para 16 that, “We find it necessary to set aside the conviction under Section 498A IPC **in view of our directions in respect of the offence under Section 304B IPC**, as otherwise it would cause confusion and ambiguity.” Clearly, therefore, this Court was remanding the matter to the trial Court only because the Additional Sessions Judge erred, “in not framing charge in alternative under Section 304B IPC, though the charge-sheet had invoked such section.” It is only when it came to framing the consequential directions that the Court decided to follow what had been done by the Supreme Court in *Shamnasaheb M. Multtani v. State of Karnataka* (*supra*).

26. In *Shamnasaheb M. Multtani v. State of Karnataka* (*supra*), the Supreme Court had stated in para 35 that since the Appellant had been convicted under Section 304-B IPC “without such an opportunity being granted to him” it was necessary in the interest of justice, “to afford him that opportunity.” That opportunity was to disprove the presumption under Section 304-B IPC. The Court was affording such an opportunity to the accused to “discharge his burden by putting him to notice regarding the prima facie view of the Court that he is liable to be convicted under Section

304B IPC, unless he succeeds in disproving the presumption.”

27. Therefore, it was clear from the discussion in this Court’s judgment dated 28th May, 2015 that the only purpose for which it was sending the matter back to the trial Court for recording the statement of the accused under Section 313 Cr PC was that he should now be given an opportunity to succeed in disproving the presumption that would be drawn under Section 304-B IPC. The Court was conscious at that stage that the Respondent had already suffered incarceration of about 6 years 5 months and 7 days and also earned remission of 11 months and 16 days as per the nominal roll dated 3rd January, 2004. The Court then proceeded to record the circumstances relied upon by the prosecution without offering its opinion thereon. Therefore, it is clear that the Respondent was put to notice that the remand was only for the purposes of his defending himself against the charge under Section 304B IPC and that there was no need to separately frame a charge now that the matter was being remanded for his defence.

28. As explained by the Supreme Court in *Shamnasaheb M. Multtani v. State of Karnataka* (*supra*), the case in the trial Court was asked to proceed from the stage of defence since the “accused was put to notice that unless he disproves the presumption, he is liable to be convicted under Section 304B IPC.” Consequently, this Court negatives the preliminary objection raised by the Respondent that since even on remand, no specific charge was framed against the Respondent under Section 304-B IPC, he could not be convicted for that offence. This plea was already noticed in the first round and dealt with by this Court. It is only because that this plea was accepted, that the

matter was sent back to the trial Court to be recommenced from the stage of Section 313 Cr PC following the decision of the Supreme Court in *Shamnasaheb M. Multtani v. State of Karnataka* (*supra*). Therefore, in the second round, the Respondent was aware that he was required to defend himself against the charge for the offence under Section 304-B IPC.

Offence under Section 304-B IPC

29. Now turning to the merits of the case, the central thrust of the argument of learned counsel for the Respondent was that there was no automatic presumption of a dowry death under Section 304-B IPC unless the important ingredient that the deceased was subjected to cruelty soon before her death, was proved.

30. As far as the present case is concerned, the above submission overlooks the fact that the Respondent has not questioned his conviction under Section 498-A IPC. That provision reads thus:

“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.”

31. One of the main ingredients of Section 498A IPC is 'subjecting the woman to cruelty'. Explanation (a) envisages mental or physical cruelty of the woman. Explanation (b) is on the aspect of harassment, which could be in the form of a dowry demand, which would also amount to cruelty.

32. It is this aspect under Explanation (b) to Section 498 A IPC that is relevant in the context of Section 304-B IPC which reads thus:

“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 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.

33. In the present case, since the offence under Section 498A IPC, with reference to Explanation (b) thereof, stood proved against the Respondent, there was no need for it to further prove for the purposes of Section 304-B IPC that the deceased was subjected to cruelty for the purposes of dowry.

The specific finding of the trial Court in this regard in the impugned judgment requires to be set out in full. It reads thus:

“(15) From the testimony of the aforesaid witnesses, it becomes evident that Smt. Suman was treated with cruelty by the accused. Dowry demands were raised and she was taunted and beaten by the accused. She was not only subjected to physical injury/cruelty but accused used every mean to cause mental cruelty/harassment to her. It stands established on record that the objective of harassment was to coerce her or any person related to her with a view to meet their unlawful demands of dowry. The evidence brought on record through the testimony of these witnesses is sufficient to conclude that Smt. Suman was dealt with harassment and cruelty by the accused in order to force her and any other person related to her to meet their unlawful dowry demands. The ingredients of offence under Section 498-A IPC have been amply brought over the record against accused Sanjay.”

34. Therefore the trial Court returned a finding about the guilt of the Respondent under Section 498 A IPC specifically relating it to Explanation (b) viz., that the deceased “was dealt with harassment and cruelty by the accused in order to force her and any other person related to her to meet their unlawful dowry demands.” As already noticed, this finding has not been challenged by the Respondent.

35. Now turning to Section 304B (1) IPC which defines ‘dowry death’, the ingredients of that offence are that:

- (a) The death should have occurred within 7 years of marriage;
- (b) The death should have occurred other than under normal circumstances;
- (c) Soon before her death, the woman should have been subjected to cruelty or harassment by her husband or any relative of her husband for, or in

connection with, any demand for dowry.

If the above three ingredients are present, the husband, “shall be deemed to have caused her death.”

36. There is no escape from the fact that in the present case, all the ingredients have been shown to exist. First, the death of the wife of the Respondent occurred within 7 years of their marriage. As far as the second ingredient is concerned, the Supreme Court in *Shanti v. State of Haryana (1991) 1 SCC 371* held that unnatural death whether homicidal or suicidal would attract Section 304-B IPC. This was reiterated in *Bhupendra v. State of Madhya Pradesh (supra)*.

37. Turning to the third ingredient, the finding of the trial Court in the impugned judgment, which has not been challenged by the Respondent, is that she was subjected by him to “harassment and cruelty” in order to “force her and any other person related to her to meet their unlawful dowry demands”. Thus all three ingredients of Section 304-B (1) IPC stand satisfied in the present case. It would, therefore, be ‘deemed’ that the Respondent caused the dowry death of his deceased wife.

38. Section 113-B of the IEA further engrafts a rule of presumption that cements the deeming nature of the offence under Section 304-B IPC. Section 113B IEA reads 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 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).”

39. The two ingredients of Section 113-B IEA are:

- (a) The woman must be subjected to cruelty or harassment in connection with a demand for dowry
- (b) Such cruelty or harassment of the woman should have occurred ‘soon before’ her death.

40. As already noticed, ingredient (a) stands fulfilled in the present case. As regards ingredient (b) the expression ‘soon before her death’ has been explained by the Supreme Court in *Hira Lal v. State (Govt. of NCT of Delhi) (2003) 8 SCC 80* as under:

“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. 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 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.”

41. In *Sher Singh v. State of Haryana* (*supra*) the Supreme Court observed:

“We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt.”

42. In the present case, the deceased was at her parents’ home for two months prior to her death. She had been sent there in light of her being persistently harassed for dowry, which fact the trial Court held to be proved.

The trial Court, however, failed to appreciate that this was a case where all the ingredients of a deemed dowry death in terms of Section 304-B (1) IPC stood fulfilled. It also failed to notice the interplay of Section 304-B IPC and Section 113-B of the IEA and the fact that the burden had shifted to the Respondent to rebut the presumption under Section 113 B IEA.

43. The trial Court misdirected itself by presuming that that only because there was coitus between the Respondent and the deceased, there was no question of the Respondent subjecting her to mental cruelty. In light of Section 113 B IEA there was no occasion to draw a negative presumption on this crucial aspect. In the facts of the present case, the expression 'soon before' would include the period earlier to the two months when the deceased remained with her parents. The proven facts had to be seen in their total perspective. The effect of the harassment for dowry suffered by the deceased could not be expected to be wiped out entirely in the two months she stayed with her parents. It is likely that added to the above, whatever happened between the evening when she came back to the matrimonial home, and her committing suicide, caused her so much mental anguish that she committed suicide. Even the sexual act was apparently not without physical discomfort as the medical report showed (and which was noticed by this Court in its order dated 28th May, 2015) that there was a bruising on the lower and external side of lower orifice in the vaginal region of the deceased. There was, therefore, no legal or factual basis for the trial court to conclude that the Respondent could not have subjected the deceased to cruelty or harassment 'soon before her death'.

44. The Respondent failed to rebut the presumption both under Section 113B IEA as well as under Section 304B IPC. He did lead defence evidence by examining one Dharamvir as DW-1. This was an interested witness since he admitted that the Respondent was the son of the cousin brother of DW-1. This witness was not of much help to the Respondent. In his cross-examination, apart from admitting that he could not, from his house which was in the vicinity of that of the Respondent, know what was happening in the house of the Respondent, he conceded that: "It is correct that I have come to court because accused had told me that I had to depose in the Court in this case." Surprisingly, he also admitted that "I cannot say as to whether Suman had committed suicide or that she had been killed."

45. The Respondent cannot possibly plead that he had no opportunity to rebut the presumption under Section 113 B IEA and section 304-B IPC. He was fully aware that it was in order to provide him with that opportunity that the matter was remanded by this Court to the trial Court and asked to be recommenced from the stage of recording his statement under Section 313 Cr PC. He availed that opportunity but failed to rebut the statutory presumption.

46. For all of the aforementioned reasons, the Court is of the considered view that the trial Court erred in acquitting the Respondent of the offence under Section 304-B IPC and, therefore, sets aside that portion of the impugned judgment. This Court, accordingly, convicts the Respondent for the offence under Section 304-B (1) IPC.

Sentence

47. Now turning to the question of sentence, the minimum sentence for the offence under Section 304-B (1) IPC, as set out in sub-section (2) thereof, is imprisonment for 7 years. The maximum is imprisonment for life.

48. Even at the stage of remand to the trial Court, it was noticed by this Court in para 11 of its judgment dated 28th May 2015, that the Respondent had undergone incarceration of about 6 years 5 months and 7 days and also earned remission of 11 months and 16 days as per the nominal roll dated 3rd January, 2004. In other words, he had already completed, together with remissions, incarceration of 7 years. The factors that weigh with this Court in considering the appropriate sentence to be awarded to the Respondent for the offence under Section 304-B IPC are: (i) The long period of trial, and re-trial over nearly two decades (ii) the fact that the Respondent has already undergone imprisonment for 7 years including remissions even as of January 2004 (iii) the fact that for the offence under Section 498A IPC he had already served out the maximum sentence of three years and a further three and a half years.

49. Keeping in view the above factors, this Court sentences the Respondent for the offence under Section 304B IPC to imprisonment for a period of 7 years, inclusive of the remission already earned, with the further direction that the said sentence would be concurrent with the sentence for the offence under Section 498-A IPC. In effect, since the Respondent has already served out the sentence awarded to him for the offences under Section 304B and Section 498 A IPC, inclusive of the remission, he need not surrender to

serve out any remaining period of sentence. The bail bonds and surety bonds, if any, of the Respondent stand discharged.

50. The appeal is disposed of in the above terms but, in the circumstances, with no orders as to costs. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 08, 2018

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