

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 247 of 2000

Nur Salim Mallick & Ors.

-Vs-

The State of West Bengal

For the Appellant : Mr. Prabir Kumar Mitra
Mr. Pinak Mitra
Ms. Ariba Shahab

For the State : Mr. Avishek Sinha

Heard on : 28.11.2023, 18.12.2023, 22.01.2024, 07.02.2024,
24.04.2024

Judgment on : 22.05.2024

Ananya Bandyopadhyay, J.:-

1. The instant criminal appeal is preferred by the appellant against a judgment and order dated 16th June, 2000 passed by the Learned Additional Sessions Judge, 1st Court, Midnapore in Sessions Trial Case No. XL/November 1997, convicting the appellants under Section 498A/34, 304B/34 of Indian Penal Code and under Section 4 read with Section 3 of the Dowry Prohibition Act and sentenced the appellants to suffer rigorous imprisonment for two years and fine of Rs.2,00,000/- each, in default, whereof further rigorous imprisonment for three months each under Section 498A of the Indian Penal Code and to suffer rigorous imprisonment for seven years each under Section 304B of the Indian Penal Code and to suffer rigorous imprisonment for four months and a

fine of Rs.2,000/- each, in default whereof, a further rigorous imprisonment for three months each under Section 4 read with Section 3 of the Dowry Prohibition Act and all the three sentences of substantive imprisonment will run concurrently.

2. The prosecution case originated on the basis of a complaint filed by the brother of the victim precisely stating that the victim was married to Nur Salim Mallick, son of Siddique Mallick. A sum of Rs.7,000/-, and 3 bhories of gold, Titan wrist watch was provided to the bride groom as dowry with a promise to provide 1 bhor of gold later on. The victim was tortured time and again on demand of such remaining portion of dowry. The complainant had given 8 annas of gold later on when the victim visited their house to attend a marriage. On 28/39-07-1997 at about 2 hrs. at night the elder brother of the victim's husband namely Nur Islam Mallick and brother of the husband of his sister Nur Alam Mallick visited their house and informed that his sister was ill with vomiting and loose motion. The complainant accompanied his brother and mother reached the matrimonial home of his sister and found her lying on the bedsted, the body being covered by a cloth. The complainant opined that the present appellants had killed his sister in collusion.
3. Based on the aforesaid complaint Kolaghat P.S. Case No. 97/97 dated 29.07.1997 was registered under Sections 498A/304B/302 of the Indian Penal Code.
4. Investigation pursued and on completion of the same charge-sheet was framed. Charges were framed against the appellants to which the appellants pleaded not guilty and claimed to be tried.
5. The appellants were placed on trial before the Learned Additional Sessions Judge, 1st Court, Midnapore in Sessions Trial Case No.

XL/Nov/1997, facing the charge under Sections 498A/34, 304B/34 of the Indian Penal Code alternatively under Sections 302/34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act.

6. By judgment and order dated 16th June, 2000, the Learned Additional Sessions Judge was pleased to convict the appellants under Sections 498A/34 and 304B/34 of the Indian Penal Code and under Section 4 read with Section 3 of the Dowry Prohibition Act. The appellants were sentenced to suffer rigorous imprisonment for two years and a fine of Rs.2,000/- each, in default whereof, a further rigorous imprisonment for three months each under Section 498A of the Indian Penal Code and rigorous imprisonment for seven years each under Section 304B of the Indian Penal Code and further sentenced to suffer rigorous imprisonment for four months and a fine of Rs.2,000/- each, in default whereof, a further rigorous imprisonment for three months each under Section 4 read with Section 3 of the Dowry Prohibition Act.

7. The circumsppection of the prosecution witnesses revealed as follows:-

- (i) PW-1, Arjina Begum who the neighbour turned hostile, candidly stating that Nawsar was treated well at her matrimonial home, who died 3 years ago.
- (ii) PW-2, SK Rahim Ali the matchmaker turned hostile stating that he negotiated the marriage and after marriage, Nawsar used to live in her husband's place. She was treated well at her matrimonial home by the accused. PW-2 heard that Nawsar died of cholera.
- (iii) During his cross-examination PW-2 stated that dowries settled in the marriage were put into writing. PW-2 along with others signed that paper along with the elder brother of Nawsar. He did not remember if the father of Nawsar signed the paper. He did not deny

that a sum of Rs.7,000/- and gold ornaments of 3 bhoris were settled in the marriage and that at the time of marriage, 2 bhoris of gold ornaments and the cash of Rs.7,000/- were given.

- (iv) PW-3, Jamala Khatoon mother of the victim deposed that Nawsar was her daughter. Cash of Rs.10,000/-, Cycle and 3 bhoris of gold ornaments were settled as dowries in the marriage of her daughter Nawsar. All other dowries except 1 bhoris of gold ornament were given at the time of marriage. Nawsar used to live at her husband's place after marriage. The accused used to assault her daughter Nawsar after marriage and they also denied her food as 1 bhoris of gold ornament was due. The accused gave a proposal of marriage of the 3rd brother of her son-in-law with her daughter, but they did not agree to that proposal. Torture upon her daughter increased after they had not agreed to the above proposal of marriage of her daughter with the 3rd brother of her son-in-law.
- (v) During her cross-examination PW-3 stated that she did not report to any neighbor regarding the assault on her daughter. She did not state to any neighbor of the village of the accused that her daughter was being put to torture at her matrimonial home on account of the due ornament of $\frac{1}{2}$ bhoris. She never lodged any complaint in Court or at the P.S. over the assault of her daughter at her matrimonial home.
- (vi) PW-4, Mansura Khatoon the younger sister of the victim deposed that Nawsar was married to Nur Selim in 1996. Gold ornament of 1 bhoris was kept due. Nawsar used to live at her matrimonial home after marriage. Nawsar was put to torture at her matrimonial home by the accused. Nawsar used to report this to her. Her elder brother

Manirul Molla went to the house of the accused and compromised the matter. Torture upon her elder sister Nawsar increased all the more as the proposal of the accused for marriage of her with the accused Nur Alam was turned down by them.

(vii) PW-5, Dr. Ashim Chakraborty the autopsy surgeon on examination he found the face was congested and cyanosed, rigor mortis positive, bruises around neck, brain congested, both lungs congested, liver, spleen, kidney congested, concept in uterus. Death in his opinion was due to asphyxia which is ante-mortem and homicidal in nature.

(viii) During his cross-examination PW-5 stated that *“I found only bruises around the neck at the time of holding P.M. Examination. There is no length and breadth of the bruises I found in my report. There may be bleeding from nose and mouth in case of asphyxia, but not always. There is possibility of breaking of hyoid bone in case of throttling. There may be nail marks and finger prints on the neck if one is throttled to death. But in case of throttling to death by pressing with a pillow of something else, such nail marks and finger prints cannot be expected. The word ‘bruises’ mentioned by me indicates that there were bruises in a scattered way all over the neck. If one is throttled to death with the help of pillow, the person who is throttled will try to resist and in that case injuries may appear on some other parts of the deceased. Right cavity of the heart may be full of blood if one is throttled to death. Here also the right cavity was full and the left cavity was empty.”*

(ix) PW-6, Sanjay Paul the Constable had taken the body for P.M.

(x) PW-7, Noor Islam Mallick father of the victim deposed that his daughter Nawsar was married to the accused Nur Salim in 1996. The accused used to put pressure upon Nawsar for bringing Gold Necklace of 1 bhorī from him. His daughter Nawsar reported to him when she came to his house. On the occasion of the marriage of his nephew Sekendar, Gold Necklace weighing 8 annas was given to his son-in-law Selim who came to his house on the occasion of the marriage along with his daughter, he promised to give the due Gold ornament of 8 annas afterwards. His daughter narrated the torture meted out to her at her matrimonial home at that time also. On 29.07.97 in the morning he got the information from Nur Islam and Nur Alam that his daughter was attacked with Cholera. His eldest son and wife went to the matrimonial home of his daughter after getting the information.

(xi) The evidence of PW-8, Manuara Begum was based on hearsay.

(xii) PW-10, Jahurul Mollah brother of the victim deposed that Nawsar Begum was his eldest sister. After marriage Nawsar used to live at her matrimonial home. Nawsar used to report to him that she was put to torture at her matrimonial home by her husband and the others accused on account of the due Gold Necklace of 1 bhorī. His mother gave a Gold Necklace of 8 'anna' at the time when his sister Nawsar along with her husband came to their house on the occasion of the marriage of Sekendar Molla, the son of his uncle, in the month of June, 1997. He lodged an F.I.R. with the P.S., over the death of his sister. The F.I.R. was written by Shyamsur Alam, Son of Latfar Alam.

(xiii) During his cross-examination PW-10 stated that dowries were settled in presence of the members of their house as well as in presence of the members of the accused house. Dowries which were settled were put into writing and it was signed by both sides. The paper in which the dowries were written, was not made over to the police. His sister stated on 15th June, 1997 to us that she was put to torture at her matrimonial home over the non-payment of the due dowries. He did not inform the P.S. of it. He filed no case in court over the torture upon his sister. No outsider was present at the time when a Gold Chain of 8 'anna' was given to the accused Selim on the occasion of the marriage of Sekendar.

(xiv) PW-11, Murshida Begum (Sister)

Nawsar was put to torture at her matrimonial home by the accused for the due Gold Necklace of 1 Bhari. Nawsar used to report this to me as and when she came to our house. Our house and the matrimonial home of Nawsar are intervened by 15 minute's walk.

During her cross-examination PW-11 stated that "Nawsar reported to me about the torture upon her for the first time in the month of Asar of the year in which she was married. I told it in court for the first time that Nawsar reported to me about the torture upon her."

(xv) PW 12 – Amiruddin Mallick

Nur Islam went to called me at their house. PW-12 was a pathology technician. He went to the house of the accused to see Nawsar but he could not understand whether Nawsar was alive or dead. PW-12 asked the accused to call a good doctor.

During his cross-examination PW-12 stated that When he went to the house of the accused, he found that Nawsar had vomited. He found marks of vomiting.”

(xvi) PW 13 – Rakesh Mishra the Ex. Magistrate held inquest over the dead-body of Nawsar Begum in presence of witnesses. PW-13 received the written complaint on that day the P.O. from one Jahural Islam Mollah. He seized the wearing apparels of the deceased being produced by the constable. He arrested accused Noor Islam Mallick on 01.08.97 and on 03.08.97 he arrested accused Noor Selim Mallick.

(xvii) During his cross-examination PW-13 stated that he examined Manwara Begum, Noorseda Begum, Manira Begum, Noor Islam Mollah and Naysara Khatoon on 18.08.97. PW-3 Jamela Khatoon did not state to me specifically that Cycle and Cash of Rs.10,000/- were given at the time of marriage of her daughter. She did not state to him that food was denied to her daughter at her matrimonial home. PW-3 stated to me that she gave Gold Ornament weighing and annas to her daughter, but she did not state to him that it was given at the time when her daughter along with her husband had come to her house on the occasion of the marriage of the son of her 'Debar'. PW-4 Mansura Begum did not state to him specifically that at the time of marriage, 3 bhoris of Gold Ornaments one Cycle and Cash of Rs.9000/- were given. PW-4 did not state to him that her elder brother Manirul Mollah had gone to the house of accused and compromised the matter. PW-7 Noor Islam Molla did not specifically stated to him that he gave cash of Rs.9000/-, Gold

Ornaments of 3 bhoris, one Cycle and one wrist watch in the marriage of his daughter. PW-7 did not state to him that he sent his eldest son to the house of the accused to tell them that he would give the due Gold Necklace of one Bhari some days after. PW-11 Murshida Begum told him that she used to be insulted by her husband, father-in-law, elder brother-in-law and younger brother-in-law but she did not tell that she (Nawsar Begum) was put to torture by them.

8. The Learned Advocate for the appellant submitted as follows:

- i. F.I.R. is very omnibus in nature implicating the appellants without ascribing any specific role by them.
- ii. Inquest was done by Ex-Magistrate who was not examined in presence of witness. No injury was noticed. Witness could not inform the reason.
 - (1) Thanedar Singh Vs. State of M.P. 2002 (1) S.C.C. Page 487, para 12
 - (2) Meharaj Singh Vs. State of U.P. 1994 (5) S.C.C. Page 188, Para 12
- iii. No independent witness supported the prosecution case viz PW-1, PW-2, PW-12.
- iv. Only the interested witness supported the prosecution case, in an omnibus manner, without ascribing any role save and except 8 'annas' of Gold which was due to the appellant who were PW-3 (mother), PW-4 (sister), PW-7 (father), PW-8 (Neighbour of the complainant), PW-10 (Complainant brother of victim), PW-11 (sister).

As per I.O. (PW-13) - PW-3 (mother), PW-4 (sister), PW-7 (father), PW-11 (sister) did not say anything to I.O. in their statement. The statement of PW-7 and PW-8 recorded on 18.08.97 long after the complaint being lodged on 29.07.97 and the appellant was arrested on 01.08.97. Therefore, the witness had tried to develop the story subsequently.

- v. The interested witnesses stated there was a written agreement of dowry by and between both the family but none could produce the same neither the I.O. seized the same.
- vi. Right from F.I.R. – a story that victim died due to Cholera had been surfaced. PW-2 heard that victim died of Cholera. PW-12 who went immediately and found the victim to have vomited and found marks of vomiting. PW-13, I.O., seized the wearing apparels of the victim which was not sent for FSL which could have establish the fact whether the defence version that victim died from Cholera or not.
- vii. PW-5, P.M. Doctor was confused by his opinion; he deposed victim's death was due to asphyxia which was homicidal in nature. Again, he stated in case of asphyxia there would be bleeding from nose and mouth. However, PW-12 did not see any bleeding from the nose and mouth of the victim. PW-5 stated in case of throttling by pressing with a pillow such nail marks and finger prints cannot be expected and the person who is throttled by pillow, will try to resist – injuries may appear on some part of the body which is not available in the body of the victim. Due to throttling hyoid bone will be fractured but in the present case it is not there.
- viii. As per his opinion death was due to asphyxia –

The features available as per the doctor either in case of throttling or by pressing pillow not present, the evidence of the PM doctor cannot be accepted as it is confusing in nature.

- i. State of Haryana VS Ashok Kumar Alias Bill 2002 S.C.C (9) Page 658, Para 6 Page 34. The cause of death due to asphyxia by throttling is doubtful in absence of any external injury or marks of ligature.
- ii. 1982 (2) S.C.C. Page 396 - Mayur Pal Salus Guy P No irrebuttable presumption that doctor is always a truthful witness

As per PW-3 and PW-4 who are mother and sister respectively, they have deposed that victim was tortured by in laws due to refusal of marrying by the brother of the husband with PW-4 so the story is different from torture due to dowry demand.

From the evidence of all the PW's nowhere it seemed that the victim was tortured for dowry demand soon before her death which is the condition precedent to invoke the offence under Section 304B. On the other hand PW-11 in the cross examination said that the victim told her about the torture in the month of Asar of the year in which she was married, if that be so it was one year before her unnatural death and all other witnesses in their deposition did not and could not mention any dates when the dowry demand was made.

(5) That to attract 304B of Indian Penal Code the consistent view of the Hon'ble Apex Court the death of victim should be caused on demand of dowry "Soon before the death" not soon after the marriage.

9. The Ld. Advocate for the State submitting the following cases:-

- a. On the moot point that the evidence of the PM doctor cannot be accepted due to its confusing nature, the Ld. Advocate for the Appellant submitted the case of **State of Haryana v. Ashok Kumar¹, (2002)** where the Hon'ble Supreme Court held the following:-

“6. The viscera of the deceased had been sent for chemical examination and pathological report. According to the Chemical Examiner's report Ext. PE, stomach, small and large intestines, liver, spleen, kidney and lungs had aluminium phosphide poison in them. The first post-mortem report given by Dr Janak Raj Singhla, PW 2 had disclosed that the cause of death was asphyxia as a result of “throttling”. In his evidence, however, it was admitted that there was no mark of ligature or any other external injury or mark present on the neck or any other part of the body. In the second post-mortem examination conducted by the Board under Dr S.C. Aggarwal, PW 3 it was also noticed that there was no mark or external injury present on the dead body and in the opinion of the Board, the cause of death was given to be asphyxia as a result of aluminium phosphide poisoning and strangulation. The prosecution led no evidence to establish that aluminium phosphide poison, which it is conceded before us, can lead to fatal consequences, had ever been procured by the respondent or was in his possession or was even administered by him, even if it may be presumed that he had an opportunity to administer the same, had he been in possession of it. The prosecution apparently gave up its case of death by poison and did not pursue it for reasons best known to it. It instead rested its case on death being caused by asphyxia due to strangulation. The absence of any external injury or marks of ligature creates a doubt about the correctness of the theory of death by strangulation. Some of the symptoms noticed by the doctors are common both if death is caused due to asphyxia caused by

¹(2002) 9 SCC 658

poisoning as well as asphyxia caused due to strangulation. There is, thus, a considerable doubt about the cause of death of the deceased.

b. Furthermore, in **Panabhai Shah v. State of Gujarat**², the Hon'ble

Supreme Court observed the following:-

“2. This is an appeal by special leave directed against the judgment passed by a Single Judge of the Gujarat High Court summarily dismissing an appeal preferred by the appellant against an order passed by the Additional Sessions Judge No. 11/Ahmedabad convicting the appellant of the offence under Section 376 of the Penal Code, 1860 and sentencing him to imprisonment for a period of one year. We think that this is not a case which should have been summarily rejected by the learned Single Judge and moreover we do not think the learned Judge was right in observing that “our courts have always taken the doctors as witnesses of truth”. Even where a doctor has deposed in court, his evidence has got to be appreciated like the evidence of any other witness and there is no irrebuttable presumption that a doctor is always a witness of truth. We would therefore allow the appeal, set aside the judgment of the Single Judge and remand the appeal to the High Court with a direction that the appeal may be admitted and after issuing notice to the State it may be disposed of on merits. It would be preferable if the appeal is heard by a Judge other than the learned Judge who heard the appeal at the stage of admission.”

c. With regards to the fact that the death of the victim should be caused on demand of dowry, ‘soon after death’ and not soon after marriage, the Ld. Advocate for the appellant submitted the case of **Mungeshwar Prasad Chaurasia v. State of Bihar**³, where the Hon'ble Supreme Court held the following:-

²(1982) 2 SCC 396

³(2002) 10 SCC 163

“4. Learned counsel for the appellants submitted that A-1 Mungeshwar Prasad and his wife A-3 Devanti Devi are very old people having crossed 80 years of age even at the time of death of Sudama Devi. The plea made on that score was to have the sentence reduced. But when we perused the evidence of the prosecution we have noticed that the prosecution did not succeed in showing that the present appellants did anything for subjecting Sudama Devi to harassment with the demand for dowry “soon before her death”. PW 1 to PW 4 were the witnesses examined by the prosecution to prove that Sudama Devi was subjected to harassment with the demand for dowry. All of them said in one accord that husband of Sudama Devi demanded dowry a few months prior to her death. Even if the said period can be treated as falling within the proximity range of “soon before death”, the said acts can be attributed only to Ram Pukar, the husband of the deceased Sudama Devi. None of the witnesses said either directly or indirectly that the present appellants did anything during the said period as against Sudama Devi. Of course some of the witnesses said that soon after marriage these appellants asked for more dowry. But that demand was made at a time which was beyond the range of “soon before death” of the deceased.

5. In the above circumstances it is difficult to sustain the conviction under Sections 304-B and 498-A IPC so far as the appellants are concerned. As Section 201 IPC cannot be separated from the substantive offence, we think it is an idle exercise to consider whether conviction under Section 201 IPC can independently be fastened with the appellants. We, therefore, allow the appeal and set aside the conviction and sentence passed on the appellants. They are acquitted.”

d. The Hon’ble Supreme Court in the case of **Balwant Singh v. State of Punjab**⁴ observed the following:-

“5. Having regard to the charge levelled against the appellants it is not necessary to refer to the evidence of other witnesses who

⁴(2004) 7 SCC 724

have deposed about matters unrelated to the facts which constitute an offence under Section 304-B IPC. The evidence on which reliance has been placed by the courts below is the evidence of Mohinder Singh (PW 6). The only other relative witness examined by the prosecution is Darshan Singh (PW 9), but a perusal of his evidence discloses that whatever he had stated was based upon his knowledge derived from Mohinder Singh (PW 6).

6. *Counsel for the appellants urged before us that having regard to the allegations levelled by the prosecution witness Mohinder Singh (PW 6), even if the facts stated are taken to be true and proved, the offence under Section 304-B is not made out. He submitted that there is no material to show that the deceased Manjit Kaur had been subjected to cruelty or harassment by her husband or any other relative, for or in connection with any demand for dowry “soon before her death”. He further submitted that in any event, so far as Nishan Kaur (Appellant 2) is concerned, there is no evidence whatsoever against her. The allegations are all against the appellant Balwant Singh, though some general allegations have been made against the in-laws. Having perused the evidence of Mohinder Singh (PW 6) we find that he has referred to two occasions when his daughter reported to him that she had been maltreated or harassed by her husband Balwant Singh who was demanding a scooter. All that is said about Nishan Kaur is that PW 6 had paid the money to Balwant Singh in the presence of Nishan Kaur and her son Gurcharan Singh. We, therefore, find that there is no material whatsoever to prove the charge against the appellant Nishan Kaur. The mere fact that she happens to be the mother-in-law is no ground to convict her on mere suspicion.*

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8. *Learned counsel for the appellants has relied upon the decision of this Court in Satvir Singh v. State of Punjab [(2001) 8 SCC 633 : 2002 SCC (Cri) 48] and emphasised the observations in paragraph 22 of the said judgment wherein this Court has*

succinctly enunciated the principle underlying the use of the words “soon before her death” in Section 304-B IPC. This Court has observed as under: (SCC p. 643, para 22)

“22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B 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. The legislative object in providing such a radius of time by employing the words ‘soon before her death’ is to emphasise 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 perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. 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’.”

9. *Counsel for the appellants submitted that having regard to the principle enunciated in this judgment it must be held in the facts of this case that for a period of one year and three months there was no complaint of harassment or cruelty. The words “soon before her death” in Section 304-B connote that the death in all probability should have been the aftermath to such cruelty or harassment. In the instant case, there is no perceptible nexus between her death and the dowry-related harassment or cruelty, and therefore, the harassment or cruelty would not have been the immediate cause of her death. The phrase “soon before her death” must necessarily refer to a period either immediately before her death or a few days earlier. But the phrase indicates*

that the incriminating events which took place had proximity to her death. He submitted that applying the said test, it must be held that the proximity test has not been fulfilled in this case. He also relied upon the decision of this Court in Hira Lal v. State (Govt. of NCT), Delhi [(2003) 8 SCC 80 : 2003 SCC (Cri) 2016] . In that case as well the expression “soon before her death” used in Section 304-B IPC fell for consideration. This Court observed 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 exist a proximate and live link between the effect of cruelty based on dowry demand and the death of the victim. 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. In that case, the evidence on record disclosed that though at the time of marriage there was no demand for dowry but subsequently such demands were made and failure to meet those demands resulted in ill-treatment of the victim whereafter a complaint was made before the Crime Against Women Cell and ultimately a reconciliation was brought about on 30-11-1998, in which inter alia, it was resolved that the parties should take up separate residence. The Court concluded that there was no definite evidence about the ill-treatment of the deceased at any time proximate to the date of death of the deceased on 14-4-1999 so as to attract Section 304-B IPC. The basic requirement of cruelty or harassment soon before the death which would have attracted the application of Section 304-B, was absent.

10. *These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that “soon before” is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link*

between the effect of cruelty based on dowry demand and the death of the victim.

11. *Since one of the ingredients of the offence under Section 304-B is that such cruelty should have been meted out to the deceased soon before her death, it is for the prosecution to establish affirmatively that the victim was subjected to cruelty and harassment based on dowry demand soon before her death. In the instant case, we find that at least for a year and three months before her death there is no evidence to even remotely suggest that the victim was subjected to cruelty or harassment of the nature specified in Section 304-B IPC. The proximity test is, therefore, not satisfied. We, therefore, hold that there is not sufficient evidence on the basis of which conviction under Section 304-B IPC can be founded.*

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14. *In the result, Criminal Appeal No. 1415 of 2003 preferred by Balwant Singh is allowed to the extent that his conviction under Section 304-B IPC is set aside, but he is convicted of the offence under Section 498-A IPC and sentenced to the period already undergone. He shall pay a fine of Rs 500, and in default he shall undergo one month's simple imprisonment. On payment of fine he shall be released forthwith."*

e. In **Harjit Singh v. State of Punjab**⁵, the Hon'ble Supreme Court observed the following:-

"11. *PW 2 (Gurlal Singh), father of the deceased, merely stated: "My daughter had died due to non-payment of dowry to the satisfaction of the accused, by me." He did not say that any other demand was made or his daughter was subjected to any other form of cruelty or harassment. In the cross-examination, he contended that he had stated before the investigating officer that the accused persons started taunting his daughter for not bringing refrigerator, cooler and television but such a statement was not found to have been made before the investigating officer.*

⁵(2006) 1 SCC 463

He even did not make any statement before the police that the accused persons either in unison or individually demanded dowry.

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14. *Concededly, there is no evidence on record to show that the deceased was subjected to any cruelty or harassment between April 1988 and the date of her death. In the light of the abovementioned evidence, the question which arises for consideration is as to whether a case under Section 304-B of the Penal Code can be said to have been made out.*

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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. Parliament has also inserted Section 113-B of the Evidence Act by Act 43 of 1986 with effect from 1-5-1986 which 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 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 304-B of the Penal Code, 1860.”

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19. *In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration*

before a Division Bench of this Court in Satvir Singh v. State of Punjab [(2001) 8 SCC 633 : 2002 SCC (Cri) 48] wherein it was held: (SCC p. 643, paras 21-22)

“21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is ‘at any time’ after the marriage. The third occasion may appear to be an unending period. But the crucial words are ‘in connection with the marriage of the said parties’. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of ‘dowry’. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B 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. The legislative object in providing such a radius of time by employing the words ‘soon before her death’ is to emphasise 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 perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which 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'."

20. Yet again in *Hira Lal v. State (Govt. of NCT), Delhi* [(2003) 8 SCC 80 : 2003 SCC (Cri) 2016] this Court observed that: (SCC pp. 86-87, para 9)

"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."

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22. In the aforementioned situation, the presumption arising either under Section 304-B of the Penal Code or Section 113-B of the Evidence Act could not be invoked against the appellant. The prosecution, therefore, must be held to have failed to establish any case against the appellant herein.

f. The following was observed by the Hon'ble Supreme Court in *T.*

***Aruntperunjothi v. State*⁶:-**

“22. *The mother of the deceased did not depose that she had ever been intimated by the deceased about harassment meted out to her. She is said to have received the information from her son who was not examined. Her evidence, thus, being hearsay in nature is inadmissible in evidence. She allegedly came to know about the alleged harassment through her son and daughter only. PW 8, however, does not say that she had ever stated the same to her mother. PW 7's statement as regards harassment, thus, is not admissible at all.*

23. *We have noticed hereinbefore that when PW 8 visited the deceased for the first time i.e. three months after the marriage, she did not speak about any harassment. Only when she allegedly came to see her sister after the delivery of the child and asked as to how she was, she allegedly cried stating that she was in apprehension of danger to life. She is said to have made a similar statement before the police also but in relation thereto no date or month was mentioned. She deposed that she allegedly had told the Tahsildar that the deceased was beaten up by the appellant; but no such statement appeared to have been made. She in her evidence categorically stated that:*

“... When I invited my sister to come to my house along with her husband, she told that her husband would come only after his mother-in-law come and go to his house....”

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25. *We may at this juncture notice the peculiar features of the case. PW 1, the mother of the accused and PW 3, the teacher, who were responsible for the demand of dowry had not been made accused in the case. They have been examined as prosecution witnesses. PW 1 has not even been declared hostile. She was examined by the prosecution, because as presumably before the police she had deposed against the accused and in*

⁶(2006) 9 SCC 467

support of the prosecution. As regards the suicide committed by the deceased, she offered an explanation not as a defence witness but as a prosecution witness stating that after a month of her coming back after delivery of child, the deceased had requested her son to permit her to go to her parents' house, but he had told her that she could do so only after her parents come to their house but despite the same she had been insisting to visit her parents. According to PW 1 she was a short-tempered girl. She categorically stated that she committed suicide for not being allowed to go to her parents' house by the appellant and there was no other reason therefor.

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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.*

38. *The trial court has not given any cogent reason for disbelieving the evidence of PW 1; upon whom even the prosecution placed reliance. The statement of PW 1 that the deceased was a short-tempered girl has not been discarded. The statement of PW 2 that even half an hour before committing suicide the deceased behaved normally had also not been taken into consideration. The prosecution did not cross-examine PW 3, except making some suggestions; although he was declared hostile. Even the trial court did not discard the explanation given by the accused as regards suicide of the deceased. It proceeded on the basis that there was no evidence either directly or indirectly as regards harassment or cruelty committed by the appellant against his wife and there are only circumstantial evidence therefor. The necessary ingredients of circumstantial evidence for holding the appellant guilty of commission of the offence had not been deliberated upon either by the trial court or by the High Court. Even an attempt had been made to show that*

the accused had on an earlier occasion tried to murder the deceased but the same was found to be false by the trial court holding that there was no evidence that the “accused had already attempted to burn away his wife”. The trial court opined:

“... The fact that the deceased was living with her mother for about eight months after delivery would speak volumes of the misunderstanding between the accused and his wife....”

10. The Learned Advocate for the State submitted that the death of the victim occurred within seven years of marriage and attracts the presumption under Section 113B of the Indian Evidence Act.

11. The relevant sections of the Indian Penal Code, 1860 has been reproduced below:-

“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 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.]

XXX

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.]”

12. In **Hira Lal v. State (Govt. of NCT), Delhi**⁷, the Hon’ble Supreme Court held the following:-

“8. ...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 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 304-B of the Penal Code, 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

⁷(2003) 8 SCC 80

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 of 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. 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 the 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.

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...”

13. In **Harjit Singh v. State of Punjab**⁸, the Hon’ble Supreme Court held the following:-

“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. Parliament has also inserted Section 113-B of the Evidence Act by Act 43 of 1986 with effect from 1-5-1986 which 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 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 304-B of the Penal Code, 1860.”

17. *From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code.”*

⁸(2006) 1 SCC 463

14. The Hon'ble Supreme Court held the following in **State of Rajasthan v.**

Teg Bahadur⁹:-

“18. Our attention was drawn to Section 113-B of the Evidence Act and Section 304-B of the Penal Code, 1860 by the learned counsel appearing for the accused. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Penal Code, 1860 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”....”

15. In the case of **Paranagouda v. State of Karnataka**¹⁰, the Hon'ble Supreme Court held the following:-

“25. In Dinesh Seth v. State of NCT of Delhi, (2008) 14 SCC 94, this Court has examined the width and scope of two Sections i.e., 304B & 498A and was held to be different. Section 304B deals with cases of death as a result of cruelty or harassment within 7 years of marriage. Whereas 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 any unlawful demand of property or valuable security. We have already discussed hereinabove as to there being no nexus for the deceased to self-immolate herself on account of such demand having preceded immediately before her death. As such we have opined that convicting the accused/appellants under Section 304B was improper or the prosecution had failed to establish that the death had occurred and soon before her death she was subjected to cruelty or harassment by the appellants.

26. *It has been held in Dinesh Seth's (Supra) Case*

⁹(2004) 13 SCC 300

¹⁰2023 SCC OnLine SC 1369

24. Section 498-A was added to IPC by amending Act 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 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 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.

25. After three years, Section 304-B was inserted by amending Act 43 of 1986 to deal with cases involving dowry deaths occurring within seven years of marriage. Sub-section (1) of Section 304-B 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.

26. The ingredient of cruelty is common to Sections 304-B and 498-A IPC, but the width and scope of the two sections is different, inasmuch as Section 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498-A 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.”

27. *Section 498A having a wider scope, it will have to be examined as to whether the accused is to be convicted for the offence punishable under Section 498A or in other words, the order of conviction passed by Sessions Court and affirmed by High Court deserves to be affirmed, notwithstanding the conviction under Section 304B having been set aside. Irrespective of the fact that accused have been acquitted for the offence punishable under Section 304B, Section 498A would cover the cases in which the wife is subjected to cruelty by husband or relatives 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). In the light of dying declaration (Ex.P-45) having been accepted to have been made by the deceased and the contents of the same disclosing that she was unable to withstand the torture meted out, which resulted in her committing suicide would suffice to convict the accused for the offence punishable under Section 498A.”*

16. The following was observed in **Arvind Singh v. State of Bihar**¹¹ by the Hon’ble Supreme Court:-

“25. *Coming back to Section 498-A the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. The word “cruelty” in common English acceptance denotes a state of conduct which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the section. In the instant case there is no*

¹¹(2001) 6 SCC 407

evidence whatsoever. It is on this score Mr Verma contended that there is no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. No outside person has been called to give evidence and even the witnesses being in the category of interested witnesses also restricted their version to sufferings of burn injury and the purported dying declarations to the matter as noticed hereinbefore — apart therefrom nothing more is available on record to attribute any act or acts on the part of the husband or on the part of the husband's relatives — is that evidence sufficient to bring home the charge under Section 498-A? The answer obviously cannot be in the affirmative having regard to the non-availability of any evidence in the matter.

26. *Significantly however, upon recording of the fact of no dowry demand prior to the date of occurrence the High Court thought it fit to record that charge under Section 498-A stands proved and as such passed the sentence. We are however unable to record our concurrence therewith — torture is a question of fact — there must be proper effort to prove that aspect of the matter, but unfortunately not even an attempt has been made nor any evidence tendered to suggest the same excepting the bold interpolated allegations which stand disbelieved and ignored by the High Court, and in our view rightly.”*

17. In **Wasim v. State (NCT of Delhi)**¹² the following was held by the Hon'ble Supreme Court:-

“12. *Conviction under Section 498-A IPC is for subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of “cruelty”. It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for wilful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no*

¹²(2019) 7 SCC 435

evidence of dowry demand, the trial court convicted the appellant under Section 498-A IPC for his wilful conduct which drove the deceased to commit suicide. The appellant was also convicted under Section 306 IPC as the trial court found him to have abetted the suicide by the deceased.”

18. The evidence of doctor corroborated the demand of dowry since post-mortem doctor opined the death was homicidal in nature. Moreover, there was a constant torture upon the victim for non-payment of 1 bhoori of gold ornaments which was further intensified by the fact of refusal of the marriage of the sister of the victim to the brother-in-law and, therefore, the prosecution was able to prove offence under Sections 498A/304B of the Indian Penal Code.

19. In view of the above discussions and trends of evidence of the prosecution witnesses the torture upon the victim for demand of 1 bhoori of gold is established. There was an animosity between the families whereby the refusal or rejection of the sister of victim to be given marriage to her brother-in-law did not materialize to the angst and discontentment of the members of the matrimonial house. The presumption is beyond probabilities under Section 113B of the Indian Evidence Act, since the victim committed suicide within the seven years of marriage being unable to tolerate the torture inflicted upon her. However, the prosecution failed to prove an immediate demand of dowry aggressive and violent enough to have severely tortured the victim compelling her to commit suicide in order to comply with the ingredients to constitute the offence under Section 304B of the Indian Penal Code.

20. In view of the above discussions, appellants are acquitted under Section 304B of the Indian Penal Code and convicted under Section 498A of the Indian Penal Code. However, there has been a lapse of 27 years from the

date of incident. The Sentence is modified to the extent of incarceration underwent by the appellants with regard to the conviction under Section 498A of the Indian Penal Code.

21. There is no order as to costs.

22. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

23. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)