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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

Crl.A(MD)No.46 of 2017

N. Thamarai Kannan

... Appellant

Vs

The Inspector of Police,
All Women Police Station,
Cantonment, Trichy.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to call for records and set aside the Judgment, dated 02.02.2017 passed in S.C.No.16 of 2016 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli.

For Appellant : Mr. C.Muthusaravanan

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.Side)

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JUDGMENT

The present Criminal Appeal has been filed challenging the Judgment of the learned Sessions Judge, Mahila Court, Tiruchirappalli., dated 02.02.2017 made in S.C.No.16 of 2016. The appellant is the sole accused in this case.

2.The appellant is the sole accused, who has been convicted and sentenced by the learned trial Judge in the following manner:

S. No	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	498(A) IPC	2 years of rigorous imprisonment	Rs.5,000/- in default to undergo six months simple imprisonment
	304(B) IPC	10 years rigorous imprisonment	Rs.10,000/- in default to undergo one year simple imprisonment

The sentences were ordered to be run concurrently.

3.The case of the prosecution as it appears from the records is that the deceased/Pramila was in the custody of her maternal Uncle PW1, as her mother was working at abroad. While she was studying in College, she used to go college in a bus, where the accused was working as a Conductor. They became friends and later, they liked each other. Subsequently, they

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married at the Edamalaipatti Pudur Police Station without informing to the family of the deceased. Thereafter, there was no connection for the deceased with their family members and they were living separately in the rental house.

4.Earlier, the deceased gave a complaint before the Cantonment Police Station, Trichy. The police enquired and advised the accused to take back the deceased and live with her. The accused also assured that he will take her back after 10 days. So till that time the deceased was at the house of PW1. On 19.04.2015, the deceased called the accused, but he responded in a harsh way and disconnected the phone. It is alleged that the accused demanded money, jewels and motorcycle as dowry and only if she brought all those things, he would live with the deceased. While so, on 19.04.2015, at about 09.00p.m., the deceased consumed rat poison and on the next day morning, she was taken to the hospital and admitted. On 22.04.2015, the said Parimala died, due to poisonous effect on her body.

5.Based on the complaint given by PW1, maternal uncle of deceased, a case in Cr.No.15 of 2015 was registered under Section 174 of Cr.P.C. As the deceased died within seven years of her marriage, Assistant Commissioner of Police has taken up the case for investigation and find out

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whether the death of the deceased was a dowry death. As the investigation did not reveal that the death was not a dowry death, he handed over the file to the Inspector of Police, All Women Police Station. On 23.04.2015, Revenue Divisional Officer has conducted inquest on the body of the deceased and gave a report stating that the death of the deceased was a dowry death. Again, investigation was taken back by the Assistant Commissioner of Police and at the conclusion of investigation, charge sheet has been filed under Sections 498(A), 304(B) IPC. Earlier the penal provision was 174 Cr.P.C @ 306 IPC, later, it was altered as 498(A), 304(B) IPC.

6.After taking cognizance of the charge sheet by the learned Judicial Magistrate No.II, Tiruchirappalli in PRC No.33 of 2015 and after observing the legal mandates, the case was committed to the learned Principal Sessions Judge, Tiruchirappalli. Subsequently, it was made over to the learned Sessions Judge, Mahila Court, Tiruchirappalli.

7.The learned trial Judge framed charges against the accused under Sections 498(A), 304(B) IPC and questioned him. As the accused denied the offence and claimed to be tried, trial was conducted.

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8.On the side of prosecution, 20 witnesses were examined as PW1 to PW20 and 26 documents were marked as Ex.P.1 to Ex.P.26. When the accused was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of the Code of Criminal Procedure, the same was denied by the accused. On the side of defence, one witness was examined as DW1.

9.After observing the legal mandates consequent to the completion of trial and hearing both sides and appreciating the evidence on record, the trial Court has found the accused guilty for the offence under Sections 498(A), 304(B) IPC 506(ii) IPC and convicted and sentenced the accused by imposing the punishment as stated *supra*.

10.Aggrieved over that the accused has preferred this appeal.

11.The learned counsel appearing for the appellant submitted that at the very first instance when the Assistant Commissioner of Police had taken up the investigation and given a report stating that there was no dowry death and then the investigation was done by the Inspector of Police. Subsequent to that also the investigation did not reveal that there is a demand for dowry and

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that caused the death of the deceased. Only in view of the enquiry report of the Revenue Divisional Officer, the investigating agency got influenced and filed the charge sheet stating that there was a dowry demand.

12.The learned counsel further submitted that the statement given by the deceased at the hospital also there is nothing seen with regard to the allegations of dowry demand. The neighbours, House Owner of the deceased, where she lived with the accused together after their marriage have not stated in their evidence about the demand of dowry, as alleged by the prosecution.

13.The learned counsel further submitted that the presumption under Section 113-A and 113-B of the Evidence Act (hereinafter referred to as 'the Act') cannot be automatic and the prosecution has got the initial responsibility to prove the fundamental facts that the deceased was subjected to the harassment or cruelty or in connection with demand for dowry immediately before her death also, but the same has not been proved.

14.The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that even in the earlier complaint given by the deceased prior to her death on 29.03.2015, she has alleged that the

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accused had demanded one house, 10 sovereigns of gold and one motorbike and that would show that there was demand for dowry by the accused. As agreed, the accused did not take back the deceased to live with him. These facts are proved the demand for dowry and the trial Court has rightly convicted the accused for the offences under Sections 498(A), 304(B) IPC.

15.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

16.The deceased, Pramila came to know about the accused, while she was traveling in a bus to go to college. As her mother was working abroad, she was under the custody of her maternal uncle, PW1. During that point of time, she actually developed intimacy with the accused and they thought it fit to marry and their marriage took place at Edamalaipatti Pudur Police Station. As the family of the deceased did not accept her to marry the accused, subsequent to the marriage, the couple were living separately and the relatives of the deceased did not develop any connection with her.

17.PW1 in his evidence has stated that due to demand of dowry made by the accused problem arose between the couple and only because of

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that the deceased has given a complaint earlier on 29.03.2015, on the allegation of demand of dowry.

18.In fact, the accused, who married the deceased knowing well that her family is indifferent and they did not like Pramila marrying him. That prompted the marriage to be taken place in the Edamalaipatti Pudur Police Station and thereafter, she was not accepted in her family and there was no connection between herself and her family subsequent to her marriage.

19.PW9, the House Owner of the house where the accused and the deceased were living together after their marriage has stated in her evidence that she had given the house for rent to the deceased and the accused. She has further stated that she has considered them like her children and whenever they picked up some quarrel, she used to pacify them. She has further stated that on one day, when the deceased called the accused through phone, he did not attend the phone call. Immediately, she went to the Police Station and gave a complaint.

20.Her evidence reveals that the couple had some difference of opinion between themselves and their married life was not peaceful. It

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appears that PW9 was closer to the couple as they were living as tenants in her house and she used to involve, whenever there was some fight between the couple. She has also stated that at the first instance, the relatives of the deceased did not come to visit her and later her maternal Aunt alone will come. During the cross examination, she has stated that the problem between the couple got intensified only after her maternal Aunt started visiting her house.

21.PW10, is another neighbour. She is also residing in the portion of the house belonging to PW9 and she has turned as a hostile.

22.PW11, who is the close friend of the accused has clearly stated that the family of Pramila did not like her marrying the accused and they did not accept her marriage also. He only made residential arrangement for the accused and the deceased by arranging a tenancy with PW9. He further stated that the accused used to demand money and he intended to marry some other person. Therefore, he advised the accused. Later, he came to know that the deceased had committed suicide.

23.PW12, who was the driver of the bus, in which, the deceased

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was travelling while she was going to College and in the same bus, the accused was working as the Conductor. He was aware of the affair between the accused and the deceased which was developed during their travel in the bus. He has also stated that the family of the deceased did not accept her to marry the accused. He and his friends helped to convene a marriage between the accused and the deceased at Edamalaipatti Pudur Police Station. Even thereafter, the family of Pramila did not accept her marriage. He has further stated that the couple had a small fight between themselves and he used to advise them. Subsequently, Pramila had gone to her grandfather's house and after 10 days, he came to know about the complaint given by the deceased and thereafter, the accused agreed to take her with him. As the accused did not take her back as agreed, the deceased had consumed poison.

24.There are mixed statements with regard to the demand of dowry made by the accused. The deceased, who had given statement two days before her death, while she was admitted in the hospital has not stated anything in her statement about the demand of dowry made by the accused.

25.In the statement of the deceased she has stated that after she left the accused, she went to her grandfather's house and she had given a

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complaint against the accused on 29.03.2015. After enquiry, the accused agreed to take her back after 10 days. However, the accused did not take her back to live as a family and the deceased continued to live in the house of her grandfather. On 19.04.2015, she tried to call the accused, but the accused did not talk to her properly and hurt her. She has further stated in her statement that due to mental confusion, she took the rat poison. On the next day morning, she had informed it to her grandmother, who took her to the hospital. Even during that time, the deceased was making a request to the authorities to join her with her husband.

26.So it appears from the above statement of the deceased that she would come back and live with her husband. Unfortunately, she died, due to adverse effect of poison on her body and she declared to be died on 22.04.2015 at about 05.30p.m.

27.Until the death of the deceased, nothing surfaced with regard to the demand of dowry. Subsequent to her death, when PW1 has lodged a complaint, Ex.P.1, he has stated that the accused was demanding dowry and even while giving the complaint against the accused on 29.03.2015, it is alleged that the deceased has demanded dowry. But no FIR has been

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registered on the above said compliant by the police and only enquiry has been conducted and the above complaint has been closed, based on the undertaking given by the accused that he would take back the deceased within 10 days.

28.From the enquiry, if it is revealed that the accused had demanded dowry, as alleged in the complaint, it would have resulted in registering an FIR. The closure given to the above complaint on the same day of complaint ie., 29.03.2015 itself would show that the understanding between the couple had arrived after they met and conversed in person. Even in the statement given by the accused, he has stated that he was mentally disturbed due to the problem between himself and his wife and only for that he needed some time to become normal and thereafter, he would take her back and live with her. It might be probably because of the allegations made against him that he demanded dowry. Thereafter, the accused did not take her back. The deceased called him on 19.04.2015 and that was not properly responded by the accused and thereafter, the deceased consumed rat poison.

29.Till 19.04.2015, the deceased and her family members did not have any grievance that the compliant given on the allegation of dowry

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demand has been closed on the same day, by arriving at a compromise between the deceased and the accused. After it was agreed, the deceased and her family members left the matter and did not take any steps to get the case registered against the accused for alleging any demand for dowry. The Assistant Commissioner revealed in his initial investigation that there was no demand of dowry involved in the death of the deceased.

30.Even the investigation officer, PW19, who has taken up the case for further investigation stated in her evidence that she was aware of the fact that the Assistant Commissioner had handed over the file back to the Inspector of Police, as he found that there was no dowry demand.

31.During the pendency of the investigation, the Revenue Divisional Officer, PW14, had conducted the inquest and submitted his Inquest Report by stating that there was dowry demand in the death of the deceased. Only after enquiring PW1 and the grandfather of the deceased, PW2 and other Panchayatars, the Revenue Divisional Officer, who has conducted the inquest has arrived at the conclusion that there was dowry demand by the accused.

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32.Since PW1 and PW2 had given statement that the accused had demanded dowry, once again, the Assistant Commissioner has continued the investigation and after getting legal advise had filed the charge sheet against the accused for the offence under Sections 498(A), 304(B) IPC.

33.However, PW14, Revenue Divisional Officer has stated in his cross examination that during his enquiry, the Panchayatars had stated that the couples used to fight between each other and they have not stated anything about the dowry demand made by the accused.

34.Except the statement of PW1 and PW2, there are no other evidence available on record to show that the accused was in the habit of demanding dowry from the deceased. As stated already, the earlier complaint given by the deceased Pramila on 29.03.2015 was also closed even though it had the allegations of dowry demand and hence, the allegations made in the above complaint cannot be taken seriously, in view of the reasons stated above.

35.As PW1 and PW2 did not like the accused marrying the deceased, they did not have any cordial relationship with the deceased. This

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would be more so, in view of the death of the deceased. So the finding of guilt of the accused for the offence of dowry demand cannot be arrived by relying on the evidence of PW1 and PW2 alone.

36.The House Owner and the neighbours of the house, where the deceased and the accused have started their life for the first time have also stated that there was some quarrel between the couples, but there was no dowry demand.

37.One of the important evidence available on record is the statement of the deceased, which was given shortly before her death without knowing that she would die. The statement of the deceased was marked as Ex.P.11. She has stated that the accused did not talk to her when she called him and that hence she was upset and consumed the rat poison. Even in that statement, she did not allege that the accused had ever demanded dowry.

38.The above statement of the deceased can be considered as a Dying Declaration falling under Section 32 of the Evidence Act. It has been reduced into writing. During that time, the deceased was very much conscious to the extent of expressing her desire to the Authority, who

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recorded the statement that she wished to join her with her husband.

39.The dying declaration of a person is relevant where the cause of that person's death comes into question in any proceedings. This is irrespective of the fact whether the person, who is making such a statement was or was not under the expectation of the death. To add more clarity, the appropriate provision under Section 32(1) of Evidence Act is extracted as under:

> ***"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.*** *— Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —*
>
> ***(1) When it relates to cause of death.****—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question".*

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40.In this context, the statement of the deceased, which is marked as Ex.P.11 is relevant and in that statement, the deceased has not whispered anything about demand of dowry, despite her earlier compliant dated, 29.03.2015 had the averments.

41.As the deceased had given the statement Ex.P.11 voluntarily without anyone's influence, it has to be taken as spontaneous and realistic and it needs to be considered as a dying declaration within the meaning of Section 32(1) of the Evidence Act and it is more relevant to decide in this case about the cause of the death of the deceased. Though the deceased did not expect that she would die, she has stated in clear terms that she had consumed the rat poison in the confused state of mind. On 19.04.2015 when the deceased called the accused over phone, he conversed to her in a harsh tone.

42.When a person is prosecuted for the offence under Section 304(B) or 306 of IPC, the presumptions can be made in terms of Section 113 - A and 113 - B of the Act.

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43.As per Section 113 - A of the Act, presumption can be made as to the abatement of suicide by a married women, if it is shown that she had committed suicide within seven years of marriage and her husband or such relatives of her husband are subjected her to cruelty.

44.So far as the presumption under Section 113 - A of the Act is concerned, it is not a mandatory presumption. It is a discretionary presumption, because of the words implied in the provision as "***the Court may presume...***". To put it in other words, the presumption is not an automatic presumption, the Court has to appreciate the overall circumstances of the case and also about the fact whether the deceased was subjected to cruelty shortly before her death.

45.In the instant case, the accused did not have both of his parents alive. There is no allegation that any of the siblings of the accused had interfered in the life of the deceased and the accused. Even the marriage was convened for the accused by his friends, who had given evidence during the trial. The relatives of the deceased Pramila were also indifferent and they did not give their concern for marriage. There was displeasure in her family as well.

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46.The couple, who fell in love and married without anyone's support, but with the friends, needed to face the consequences of the practical life, after they had constituted a family for themselves. During that course, they happened to fight with each other and that was noticed by the House Owner and the neighbours. Though the couple had love for each other, the situation in which they had started their life would have let them to face a lot of challenges and this would have created misunderstanding between themselves.

47.In fact, the House Owner, who was examined as PW9 has stated in her evidence that for two months, the couple were living happy and the relatives of the deceased did not come there and afterwards, the maternal Aunt of the deceased started to come and the problems also started thereafter. But this does not mean that the maternal Aunt of the deceased had created problems. When the accused and the deceased are exposed to the members of their families, that would have brought more problems.

48.As the deceased had gone to her grandfather's house, the accused was lonely and thereafter, the couple happened to meet only at the

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Police Station on the complaint given by the deceased on 29.03.2015. Even at that point, the accused had given a written declaration that he was disturbed due to the bitter developments and it would take a little time for him to resume the family life with the deceased and hence, he wanted 10 days time..

49.As the accused did not come and pick up the deceased to her marital home and when the deceased called him on 19.04.2015, he was also responded in a harsh manner, the deceased got frustrated and had taken the untoward decision to take her life away.

50.In fact, when the deceased had taken the rat poison while she was at the house of her grandfather and during that time, the couple were living separately. There cannot be any cruelty or harassment caused by the accused are his family members to the deceased. Hence, the Court cannot be expected to take presumption under Section 113 -A of the Act. In fact, the accused has not been charged for the offence under Section 306 IPC, but for the offenses under Sections 304(B) and 498(A) IPC.

51.Coming to a Section 113 - B of the Act, it is to be noted that the presumption is not discretionary but mandatory. Even that mandatory

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presumption cannot be taken at once without a proof from the prosecution that soon before the death of the deceased women, she had been subjected to cruelty or harassment for in connection with any demand for dowry. So long as this fact is not proved before the Court, there cannot be any presumption under Section 113 - B of the Act.

52.Even for the sake of argument, if the report of the Revenue Divisional Officer can be taken as fulfilling the first condition thrown on the shoulder of the prosecution, then presumption can be taken as per Section 113-B of the Act. The said presumption cannot become automatically conclusive without a detailed trial. So the materials obtained during trial should also confirm the initial presumption and if the evidence available on record revealed otherwise, then automatically the benefit has to be given to the accused.

53.In this regard, it is appropriate to refer the decision of the Hon'ble ***Supreme Court*** held in ***Durga Prasad and Another Vs State of Madhya Pradesh,*** reported in ***2010(9) SCC 73***, wherein it is held as follows:

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

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

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

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

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

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

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54.On the same principle, the ***Hon'ble Supreme Court*** has held in ***Mangatarem Vs State of Haryana*** reported in ***2014 (12) SCC 595***, wherein it is held that

> *"29. In the instant case, of course, the wife died few months after the marriage and the presumption under Section 113A of the Evidence Act could be raised. Section 113A of the Evidence Act reads as follows:*
>
> ***113A. Presumption as to abetment of suicide by a married woman**.- when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband and subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*
>
> *30.We are of the view that the mere fact that if a*

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married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor the reasoning adopted by the Courts below would be sufficient enough to draw a presumption so as to fall under Section 113A of the Evidence Act"

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55.In the latest Judgment of the Hon'ble ***Supreme Court*** in ***Karan Singh Vs State of Hayana, in Crl.ANo.1076 of 2014*** also reiterates the same position by clearly giving the ingredients of 304(B) IPC and the relevance of Section 113 - B of the Act. I feel it is essential to extract the following paragraphs:

> *6. The following are the essential ingredients of Section 304-B:*
>
> *a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;*
>
> *b) The death must have been caused within seven years of her marriage;*
>
> *c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and*
>
> *d) Cruelty or harassment must be for, or in connection with, any demand for dowry.*
>
> *7. If the aforesaid four ingredients are established, the death can be called a dowry death, and the husband and/or husband's relative, as the case may be, shall be deemed to have caused the dowry death. Section 2 of the Dowry Prohibition Act, 1961 provides that dowry means any property*

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or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties. The term valuable security used in Section 2 of the Dowry Prohibition Act, 1961 has the same meaning as in Section 30 of IPC.

8. In this case, there is no dispute that the death of the appellant's wife occurred within seven years of the marriage. Section 113-B of the Evidence Act reads thus:

> *"**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*

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death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)."

The presumption under Section 113-B will apply when it is established that soon before her death, the woman has been subjected by the accused to cruelty or harassment for, or in connection with, any demand for dowry. Therefore, even for attracting Section 113-B, the prosecution must establish that the deceased was subjected by the appellant to cruelty or harassment for or in connection with any demand of dowry soon before her death. Unless these facts are proved, the presumptions under Section 113-B of the Evidence Act cannot be invoked."

56.So all these Judgments would only say that even though the cases of dowry death cannot be taken lightly and the prosecution has to be given with the benefit of initial presumption under Section 113 - B of the Act, it can be applied only if the prosecution can establish the prima facie grounds of subjecting the deceased woman to cruelty or harassment in connection with the demand for dowry.

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57.Even if such presumption is given, there should also be a conclusive proof during the course of the trial with the strong evidence, which cannot be rebutted. If there are infirmities or weaknesses found in the evidence of the prosecution, then also such benefit is given in favour of the accused. Thereafter, the prosecution shall have burden to prove the guilt of the accused beyond reasonable doubt.

58.If the rebuttal is completed and the second stage burden has not been discharged successfully by the prosecution, the initial presumption, whether discretionary and mandatory, can be allowed to be culminated as a conclusive proof in order to hold the accused guilty of the offence under Section 304(B) IPC.

59.In the instant case, though Revenue Divisional Officer's enquiry report served as a prima facie ground for an initial presumption, the evidence available during the trial would only show that there are enough substances to rebut the initial presumption and that circumstances have to be given to the benefit of the accused. Thereafter, there was no evidence stronger than the rebuttal circumstances available on the side of the prosecution to hold the accused guilty. Since the trial Court has not properly appreciated the

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implications of Section 113-B of the Act in the case involving the charges under Section 304(B) IPC, I feel the same warrants interference.

60.As the evidence on record only proved the misunderstanding between the couple and both of them were not living happily, in view of the challenges faced by them and the deceased had taken a premature decision of taken away her life, the accused cannot be found guilty for the offences under Sections 498(A) and 304(B) IPC. The evidence available on record did not prove any circumstances that would drive the deceased to take the one and only decision of taking her life away, without resorting to any of the recourse or remedy.

61.In view of the above discussions, this Court is of the considered view that the prosecution has failed to prove the case beyond reasonable doubt against the appellant and the Judgment of the learned Sessions Judge, Mahila Court, Tiruchirappalli, dated 02.02.2017 made in S.C.No.16 of 2016 requires interference.

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62.Accordingly,

- ***the Criminal Appeal stands Allowed;***
- ***The appellant is acquitted from the offence under Sections 498(A), 304(B) IPC;***
- ***The bail bond executed by the appellant if any, shall stand terminated and the fine amount, if any paid by the appellant shall be refunded to him.***

01.07.2025

NCC :Yes/No
Index :Yes/No
PNM

To
1.The Sessions Judge,
Mahila Court, Trichy

2. The Inspector of Police,
All Women Police Station,
Cantonment, Trichy.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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R.N.MANJULA, J.

PNM

JUDGMENT IN

Crl.A(MD)No.46 of 2017

01.07.2025

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