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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-323-SB-2008

Date of Decision: 17.07.2025

BHUVNESH KAPOOR

.. Appellant

Versus

STATE OF HARYANA

...Respondent

CRR-2294-2008

CHETAN MADAN

.. Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. R.S. Rai, Sr. Advocate assisted by
Ms. Radhika Mehta, Advocate
Mr. Anurag Arora, Advocate
Mr. Ankur Mehta, Advocate
for the appellant in CRA-S-323-SB-2008.

Mr. H.S. Randhawa, Advocate (Amicus Curiae)
for the petitioner in CRR-2294-2008.

Mr. Vinay Phogat, DAG, Haryana.

JASJIT SINGH BEDI, J.

This order shall dispose of one criminal appeal and one revision
i.e. CRA-S-323-SB-2008 preferred by the accused-appellant, namely,
Bhuvnesh Kapoor against the judgment of conviction and order of sentence
dated 27/29.11.2007 passed by the Addl. Sessions Judge, Yamuna Nagar
and CRR-2294-2008 preferred by the complainant challenging the acquittal
of Shakuntla Kapoor, Sanjay Kapoor, Rakesh Kapoor and Anju Duggal.



2. The FIR in the present case (CRA-S-323-SB-2008) came to be registered on 26.02.2006. The judgment of conviction and order of sentence was passed on 27/29.11.2007 by the Addl. Sessions Judge, Yamuna Nagar. The Appeal dated 28.01.2008 preferred against the aforesaid judgment of conviction and order of sentence has come up for final hearing now i.e. after a period of more than 19 years from the date of registration of the FIR.

3. For the sake of convenience, the facts being are taken from CRA-S-323-SB-2008.

4. The brief facts are that on 25.2.2006 a wireless message was received in Police Station City, Yamuna Nagar regarding admission of Bhavita Wife of Bhuvnesh resident of House No.2, Jawahar Nagar, Yamuna Nagar in Government Medical College, Sector 32, Chandigarh as a poison case. On receipt of that information, ASI Karan Singh along with other police officials reached there and moved an application Ex.P13 seeking opinion of the doctor regarding fitness of Bhavita to make the statement. The doctor vide opinion Ex.P13/1 declared her unfit to make a statement. Nobody was found present there to record her statement. On 26.2.2006 the doctor declared injured Bhavita as dead. Ruka to that effect was collected by the Investigating Officer from Police Post. Govt. Medical College, Chandigarh. Complainant Chetan Madan, brother of the deceased, met the Investigating Officer and got his statement EX.P4 recorded to the effect that he was a resident of House No.1592, Sector 17, HUDA, Jagadhri and a law student. He had two sisters. His elder sister, namely, Rachita was married at Karnal and his younger sister namely, Bhavita, was married with accused



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Bhuvnesh @ Rajan on 3rd July, 2003 according to Hindu rites and ceremonies at Madhu Hotel, Yamuna Nagar. They had spent Rs.6 lacs in the marriage and had given sufficient dowry articles in the marriage including Rs. 35000/- in cash for the purchase of scooter. However, the husband of his sister, namely, Bhuvnesh, her mother-in-law Shakuntla Kapoor, Jeth/brother-in-law Sanjay Kapoor and Jethani/sister-in-law Rakesh Kapoor used to maltreat and harass his sister on account of insufficient dowry and also used to give beatings to her while stating that her parents had not given a car in the marriage. They raised a demand of a car. On 09.11.2003 they turned out his sister from the matrimonial home after giving beatings. She narrated the episode to them. Thereafter, he along with his elder brother-in-law (jija), his father, uncle and friend, namely, Sunil Sheoran, went to the house of the accused on 16.11.2003 where Bhuvnesh, Shakuntla, Sanjay Kapoor, Rakesh Kapoor, and Anju Duggal, sister of Bhuvnesh were present. They requested them not to harass his sister, but they insisted on their demand of a car and stated that if they wanted to rehabilitate their daughter, they have to give a car, otherwise, they would not keep her in their house. Upon that, his father requested them with folded hands that they would try and give a car and they sent his sister to her matrimonial home after 2-4 days. After about one year his sister delivered a male child, namely, Krishna. Even after that the accused used to harass and maltreat his sister and remained adamant on their demand for dowry. On 06.11.2005 his sister was again turned out of the matrimonial house along with the child and she came to them. On 17.11.2005 his (complainant's) marriage was solemnized and

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after that they gave Rs. 51,000/- in cash and jewellery to his sister but in spite of that they remained adamant for a car. On 25.02.2006 at about 10 O'clock his sister Bhavita told him on telephone that on that day the intentions of her in-laws were not good. Thereafter, at about 1.00 PM his brother-in-law Bhuvnesh Kapoor informed him on telephone that Bhavita had consumed poison. Upon that he along with his mother, namely, Sudesh Madan and friend, namely, Sunil Sheoran reached Jawahar Nagar where the matrimonial house of his sister was located and it was revealed that her in-laws had taken her to Sachdeva Hospital, Jagadhri. On reaching there they came to know that she had been referred to Govt. Medical College Hospital, Sector 32, Chandigarh. Thereafter, they reached there and found his sister admitted there. She disclosed to them that her above named in-laws under the greed of dowry and with intention to kill her had administered celphos (aluminum phosphide) powder to her by mixing the same in water and that she would not survive. On 26.02.2006 his sister passed away. He prayed for legal action against the accused persons. On this statement Ex.P4, ASI Karan Singh (PW 11) made his endorsement Ex.P4/2 and on the basis of that F.I.R. Ex. PS was registered against all the accused under Section 304-B/34 IPC on 26.02.2006 and the investigation was set into motion.

5. During investigation, PW11 ASI Karan Singh conducted the inquest proceedings and prepared the inquest report Ex. P14. Post mortem examination on the dead body of deceased Bhavita was got conducted by moving an application Ex. P15 and the autopsy was conducted by PW12 Dr Neha Gupta vide post mortem report Ex.P16. After post mortem



examination the doctor handed over the viscera to the police which was taken into possession vide memo Ex.P12. Medical record i.e. MLR Ex.P17 and progress sheet Ex.P10 and death report Ex.P11 were also procured. Scaled site plan of the place of occurrence Ex. P1 was got prepared. The matrimonial house of the deceased i.e. place of occurrence was examined by PW6. Inspector Surender Pal, Investigating Officer of the case, on 28.02.2006 and rough site plan Ex. P7 was prepared. Statements of the witnesses under Section 161 Cr.P.C. were recorded and accused Bhuvnesh and Sanjay Kapoor were arrested on 27.02.2006. Accused Shakuntla was arrested on 11.03.2006. Accused Rakesh Kapoor and Anju Duggal were joined in the investigation on 12.03.2006. The viscera were sent to the Forensic Science Laboratory and reports Ex.P8 and Ex.P9 were procured. On completion of all formalities of the investigation, the final report under section 173 Cr.P.C. was presented before the Magistrate.

6. All the five accused were charge-sheeted for the offences punishable under Sections 302 read with section 34 IPC or in the alternative under Section 304-B IPC to which they pleaded not guilty to the charges.

7. In order to substantiate its case, the prosecution examined as many as 13 witnesses. The details are as under:-

Const. Ramesh Kumar who had delivered the special report to the Area Magistrate and other higher police officers appeared as PW1.

Const. Ram Kumar, Draftsman, who had prepared the scaled site plan Ex./P1 of the place of occurrence appeared as PW2.

PW3 HC Rakesh Kumar tendered his affidavit Ex. P2 in



evidence.

PW4 Const. Gurmail Singh tendered his affidavit Ex.P3 in evidence.

ASI Suresh Kumar, author of F.I.R. Ex.P5 appeared as PW5.

Inspector Surender Pal, SHO Police Station, Farakpur, Investigating Officer of the case appeared as PW6 and deposed about the steps taken by him in the investigation of this case.

Dr. Anurag Jindal, Senior Resident, Department of General Medicines, Sector 32, GMCH, Chandigarh, who had provided the treatment to the deceased appeared as PW7 and proved the case summary Ex. P10 and death report Ex.P11.

S.I. Baljeet Singh who had prepared the final report under Section 173 Cr.P.C. on completion of the formalities of the investigation, appeared as PW8.

Sunil Sheoran, Advocate, a close friend of complainant Chetan Madan being conversant with the facts of the case appeared as PW9 and narrated the occurrence in detail.

Complainant Chetan Madan, brother of deceased Bhavita appeared as PW10 and corroborated the prosecution version in detail.

ASI Karan Singh, initial Investigating Officer of the case appeared as PW11 and deposed about the steps of investigation taken by him in this case.

Dr Neha Gupta who had conducted the autopsy on the dead body of deceased Bhavita appeared as PW12 and proved the post mortem



report Ex.P16. This witness after going through the report of the Chemical Examiner Ex.P8 deposed that in her opinion the cause of death was due to poisoning i.e. consumption of aluminum phosphide.

PW13 Dr Sandeep Chhabra, Medical Officer who also provided some treatment to the deceased in Govt. Medical College and Hospital, Sector 32, Chandigarh, appeared as PW13 and proved the MLR Ex.P17 and on the basis of report Ex.P9 he stated that as per report the cause of death in this case was consumption of aluminum phosphide.

Besides the aforesaid oral evidence, the prosecution also tendered in evidence the report of the FSL, Ex. P8 and Ex. P9.

8. When examined under Section 313 Cr.P.C. all the accused pleaded their innocence.

Accused Anju Duggal pleaded that she was married in the year 1985. She along with her husband and children was living separately since then at the house of her in-laws. Whenever, she met the deceased, she met her with great love and affection. She had nothing to do with her living and she never raised any demand of car or any other dowry article. She had nothing to do with the alleged unnatural death of Smt. Bhavita.

Accused Sanjay Kapoor, Shakuntla Kapoor and Rakesh Kapoor pleaded that they were residing separately from the deceased and her husband Bhuvnesh on the ground floor on the house, whereas the deceased and her husband Bhuvnesh were living on the first floor. They never raised any demand for a car nor raised any other demand. They had nothing do with the alleged unnatural death of Bhavita. They had cordial relation with

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the deceased and treated her with love and affection. Accused Shakuntla stated that the deceased was feeling depressed for the last few days due to the problems in her parental house.

Accused Bhuvnesh Kapoor stated that since his marriage he had kept Bhavita since deceased with great love and affection. They were residing happily. He along with Bhavita was residing separately on the first floor of the house and his brother Sanjay Kapoor and his wife Rakesh Kapoor and his mother Shakuntla were residing separately on the ground floor. His sister Anju Duggal was married in the year 1985 and since then she was residing at her in-laws house. He further pleaded that as a matter of fact Smt. Bhavita had great love and regard for her father, who died after this marriage due to illness. Bhavita was very much shocked due to the death of her father and she became upset. The second reason of her disturbance was her brother Chetan Madan who lost a huge amount in the business and could not succeed in any business. He wasted a lot of money. Chetan Madan was disobedient from the very beginning. He was out of control of his parents and after the death of her father Smt. Bhavita tried her level best to make her brother Chetan Madan set right but in vain. Two days prior to date of incident Bhavita came back from her parental house as she had gone there at the call of her mother to make Chetan Madan understand, who was bent upon to have partnership with his uncle in the business but Chetan Madan refused to listen her and she came back in a very sad mood and was upset and remained under depression till the incident. On the day of incident, he was away at his job and he received a message from his house that Bhavita



was not feeling well. He rushed to his house and called their family doctor, namely, Dr Vijay Kumar who checked and referred her to some big hospital. He immediately informed his in-laws who came to his house and then he along with his in-laws including mother-in-law and brother-in-law took the deceased to Sachdeva Hospital in a car driven by Chetan Madan. Dr Sachdeva referred her to GMCH, Chandigarh. He along with Chetan Madan took her to GMCH, Chandigarh and got admitted. She was treated by the doctors but her life could not be saved. He and his family members never harassed Smt. Bhavita for demand of dowry including a car and never raised any kind of demand from her or her parents. Smt. Bhavita was upset and due to the act and conduct of her brother Chetan Madan and due to this reason she had consumed something. While taking her to Sachdeva Hospital he asked her and she disclosed that she was very much upset and said that due to the act and conduct of her brother Chetan Madan after the death of her father she had consumed poison. He and his whole family was innocent and had been falsely implicated in this case. He and his family members never tried to administer any poisonous substance to the deceased.

9. The accused in their defence evidence examined four witnesses.

Dr Sanjeev Sachdeva whom the deceased was initially taken to for treatment appeared as DW1 and deposed that she was brought to his hospital on 25.02.2006 by her husband as a case of Celphos (aluminum phosphide) poisoning. The stomach wash of the patient was already done by the family physician Dr. Vijay Gupta. He deposed that she came to him on foot. He did not enquire anything from the patient and advised to take her to



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some big hospital. The patient did not level any allegations in his presence or before him against the accused. Accused Shakuntla was his old patient and was suffering from hyper-tension, diabetes, hypothyroidism and cancer breast for the last many years and proved her medical certificate Ex.D2.

Ramesh Chand, Asstt. Supervisor, Time Office, Indian Sugar and General Engineering Corporation, Yamuna Nagar appeared as DW2 and deposed that accused Kapoor was their employee and on 25.02.2008 he was present on his duty from 8:30 AM to 5:00 PM and proved the extract of attendance register Ex.D3.

Sanjay Sharma, Inspector Food & Supply. P.R. Cene, Yamuna Nagar appeared as DW3 and proved the ration cards of the accused Ex.D7 to Ex.D9 as well as Forms D1 Ex.P4 to Ex.P6 respectively.

Prahalad Bhagat, a neighbour of accused appeared as DW4 and deposed about the separate residence of accused, namely, Shakuntla Kapoor. Sanjay Kapoor, Rakesh Kapoor and Anju Duggal from the deceased and her husband, namely, Bhuvnesh Kapoor (accused) and further deposed that the deceased was never maltreated by the accused persons and she was residing there in nice manner.

10. Based on the evidence led, while Shakuntla Kapoor, Sanjay Kapoor, Rakesh Kapoor and Anju Duggal were acquitted under Sections 302 & 304B IPC Bhuvnesh Kapoor while being acquitted under Section 302 IPC came to be convicted and sentenced by the Court of Addl. Sessions Judge, Yamuna Nagar vide judgment and order of sentence dated 27/29.11.2007 as under:-



Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
304-B IPC	RI for 10 years	-	-

11. It is the aforementioned judgment, which is under challenge, in the present appeal.

12. The learned Senior counsel for the appellant contends that as the husband had already purchased a second hand car there could not have been a demand for another care. Be that as it may, there is no demand ‘soon before’ the unnatural death of the deceased. The marriage took place on 03.07.2003 and as per the prosecution case, a car was last demanded on 17.11.2005. The deceased died an unnatural death only on 25.02.2006. As the ingredients of Section 304B IPC are not fulfilled, the impugned judgment is liable to be set aside and the accused/appellant be acquitted of the charges framed against him.

13. The learned Amicus Curiae and the learned State counsel, on the other hand, contends that there is a consistent demand of dowry including a car from the date of the marriage onwards till the deceased committed suicide by consuming poison. ‘Soon before’ does not mean ‘immediately before’ death. Merely because the accused had purchased a second car did not mean that he could not demand another one. They thus contend that as the offence stands established beyond doubt, the present appeal is liable to be dismissed.

14. I have heard learned counsel for the parties and examined the record.

15. The conviction of the appellant is under



Sections 304B and 498A IPC raising presumption regarding dowry death within seven years of marriage. To appreciate the arguments raised by the learned counsel for the parties, a perusal of Section 304B and 498A IPC and section 113B of the Indian Evidence Act would be required. The same are extracted hereinbelow:-

"304B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

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.

113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

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

16. The interpretation of Sections 304B and 498A IPC came up for consideration in the case of **Baijnath Vs. State of M.P. (2017) 1 SCC 101.**

The opinion was summed up in paras 25 to 27 thereof, which are extracted below:-

"25. Whereas in the offence of dowry death defined by Section 304B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

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

The offence under Section 498A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) 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), or (ii) 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

17. As the aforesaid case was also pertaining to dowry death, presumption under section 113B of the Indian Evidence Act was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:-

"29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus



the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty".

18. A conjoint reading of Section 304B IPC and section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:-

"32. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in Shindo v. State of Punjab [Shindo v. State of



Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

19. Now, coming to the facts of the present case, the unnatural death of the deceased within 7 years of her marriage stands established from the deposition of complainant/Chetan Madan (PW10) and Dr. Neha Gupta (PW12) who conducted the postmortem examination of the deceased and on examining the report of the chemical examiner Ex.PF opined that the cause of death was aluminum phosphide poisoning.

20. As per the prosecution version, the appellant and the deceased Bhavita got married on 03.07.2003. There was a consistent demand of a car up until 25.02.2006 and the deceased committed suicide on 25.02.2006. As per the prosecution version, the last specific demand was for a car on 17.11.2005 on the occasion of the marriage of the complainant who states



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that on the said occasion a sum of Rs.51,000/- each had been given to the deceased as also their other married sister Rachita. Apparently, there is no demand 'soon before' the death of the deceased, the last demand being more than 03 months prior to the unnatural death by suicide.

21. As regards what constitutes cruelty and harassment 'soon before' the unnatural death and what offence if any made out in case there was cruelty and harassment on account of demand of dowry but not 'soon before' the unnatural death. The Hon'ble Supreme Court In **Hira Lal & others Versus State (Govt. of NCT) Delhi, 2003(3) RCR (Criminal) 830**

held as under:-

"10. The evidence of PWs 1, 5, 10 and 11 shows that at the time of marriage there was no demand for dowry. But subsequently, the demands were made, and ill-treatments were meted out. The crucial question is whether they were soon before the death. PWs 10 and 11 stated that grievances were made before the Crime against Women Cell and the authorities brought about reconciliation. It however was candidly admitted that there was no mention about any dowry aspect while the differences were ironed out. The settlement arrived at on 30.11.1998 was essentially for separate residence. Therefore, there is no definite evidence about ill-treatment to the deceased at any time having immediate proximity to the date of death of the deceased on 14.4.1999 about ill- treatment by the accused persons to attach culpability under Section 304B Indian Penal Code. Therefore, the basic requirement of cruelty or harassment soon before the death to bring application of Section 304B is absent.

11. Further question is whether a case under Section 498A has been made out, even if accusations under Section 304B fail. Section 498A reads as follows :



"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 purpose of this section 'cruelty' means -

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

(b) harassment of the woman where such harassment is with a view to coercing her or any persons 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."

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A Indian Penal Code. Cruelty has been defined in the explanation for the purpose of Section 498A. Substantive Section 498A Indian Penal Code and presumptive Section 113B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, Indian Penal Code cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The explanation to Section 498A gives the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself



*amounts to an offence. Under Section 304B it is 'dowry death' that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498A. A person charged and acquitted under section 304B can be convicted under Section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections. [See *Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 Supreme Court 1142) : 1991(3) RCR (Criminal) 642 (SC)*]. Section 498A Indian Penal Code and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.*

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

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

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

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

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

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



marriage of the said parties.

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

12. As was observed by this Court in *Satvir Singh and Ors. v. State of Punjab and Anr.*, (2001(8) SCC 633) : 2001(4) RCR (Criminal) 355 (SC), "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused or occurs otherwise than under normal circumstances" as expressed in Section 304B Indian Penal Code.

13. Section 306 Indian Penal Code deals with abetment of suicide. The said provision reads as follows :

"306 : Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

14. It may be noted that though no charge was framed under Section 306 Indian Penal Code that is inconsequential in view of what has been stated by a three-judge Bench of this Court in *K. Prema S. Rao and Anr. v. Yadav Srinivasa Rao* (2003(1) SCC 217) : 2002(4) RCR (Criminal) 697 (SC).

15. On the facts of the case even though it is difficult to sustain the conviction under Section 304B Indian Penal Code, there are sufficient materials to convict the accused-appellants in terms of Section 306 Indian Penal Code along with Section 498A Indian Penal Code.

16. Custodial sentence of three years for the offence punishable under Section 306 Indian Penal Code would meet the ends of justice. The sentence awarded for offence punishable under Section 498A by Trial Court and upheld by the High Court is maintained. Both the sentences relatable to Sections 498A and 306 Indian Penal Code shall run concurrently."



(Emphasis supplied)

22. In **Charan Singh @ Charanjit Singh Versus The State of Uttarakhand, 2023 AIR Supreme Court 2005**, the Hon'ble Supreme Court held as under:-

“16. The cruelty or harassment has to be soon before the death. In his evidence, Pratap Singh (PW-1), father of the deceased stated that two months after the marriage his daughter came to the parental home stating that the appellant was demanding motorcycle, however, she was sent back. Thereafter, she again came and apprised him that the demand of motorcycle was being pressed by the appellant. Besides motorcycle, land was also demanded. There is nothing in the statement that any such demand was raised immediately before the death as the incidents sought to be referred to are quite old. He admitted in his cross examination that at the time of funeral, his mother-in-law and two brothers-in-law were present. However, they were threatened not to lodge the complaint. Balbir Singh (PW-2), maternal uncle of the deceased, merely stated that at the time of marriage sufficient dowry was given by the father of the deceased. However, later he heard that the appellant had demanded the motorcycle. In his cross-examination, he admitted that he was living at the distance of about one furlong from the house of the appellant. No dowry was demanded at the time of marriage of the deceased. He did not state that the deceased ever shared with him about the demand of dowry or any harassment on account of non-fulfilment thereof though he was living close to the matrimonial house of the deceased.

17. Beero Bai (PW-3), the maternal grandmother of the deceased, stated that her house is located at a distance of about one mile from the house of the appellant. She used to go to the house of the deceased. The deceased was being treated badly. She was not allowed to go to her parental house. The deceased



informed her that the appellant used to ask her to bring motorcycle from her maternal grandmother. After the death of her husband in February 1995, the appellant asked the deceased to get land from her maternal grandmother. On a demand made to her, she replied in negative. However, in her cross-examination, she stated that the land was not demanded from her. Even in her statement, there is nothing to suggest that soon before the death, any cruelty or harassment was made to the deceased, either by the appellant or his family members. All what is stated is regarding the demand. There are no details of any cruelty or harassment, though this witness was living about a kilometre from the house of the deceased and is her maternal grandmother.

18. Joginder Singh (PW-4) is another witness produced by the prosecution, who is maternal uncle of the deceased. He was declared hostile.

19. Rajindra Singh (PW-5), Sub Inspector was a formal witness who had only registered the FIR and arrested the accused.

20. Babban Singh (PW-6), Circle Officer, Faridpur was the Investigating Officer. In his examination-in-chief, he admitted that he recorded the statement of Jagir Singh. He is the person who, as per the complaint made to the police, had informed the father of the deceased about the death of his daughter. However, he was not produced in evidence.

21. In the aforesaid evidence led by the prosecution, none of the witnesses stated about the cruelty or harassment to the deceased by the appellant or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the



pre-requisites to invoke presumption under Section 304B IPC or section 113B of the Indian Evidence Act. Even the ingredients of Section 498A IPC are not made out for the same reason as there is no evidence of cruelty and harassment to the deceased soon before her death.”

(Emphasis supplied)

23. While cruelty and harassment on account of demand of dowry ‘soon before’ the unnatural death of the deceased has not been established, from the prosecution evidence as led, the demand of a car per se stands established beyond any reasonable doubt whatsoever. Merely because the accused had purchased a second hand car does not falsify the said allegation.

24. In view of the aforementioned discussion, while it is hard to sustain the conviction under Section 304B IPC, there is sufficient material on record to convict the accused/appellant under Section 306 IPC along with Section 498A IPC.

25. Resultantly, the present appeal is dismissed. However, the conviction of the accused/appellant is altered from 304B IPC to Section 306 read with Section 498A IPC and the sentences are modified as under:-

Sr. No.	Offence under Section	Imprisonment	Fine enhanced to
1.	Section 306 IPC	RI for 04 years	--
2.	Section 498A IPC	RI for 02 years	--

Both the sentences shall run concurrently.

25. **CRR-2294-2008**

As regards the revision petition preferred against the acquittal of respondents Nos.2 to 5, a perusal of the impugned judgment would reveal that the family members of respondent No.1 were residing separately.



Further, the car demanded by respondent No.1 would have been for his own benefit and not for the benefit of the extended family (acquitted accused). Therefore, the findings of the Trial Court cannot be faulted.

26. Hence, the present revision petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

17.07.2025
Jitesh

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>