



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

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Judgment Reserved on: 02.02.2026
Judgment pronounced on: 06.02.2026

+ **CRL.A. 416/2016**

JAIDEB DUTTA

.....Appellant

Through: Mr. Manoj K. Srivastwa, Mr. F.I.
Choudhury and Mr. David
Choudhury, Advocates.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the
State along with W/SI Inghumnaro,
P.S. New Ashok Nagar.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.PC.), the sole accused, in Sessions Case No. 88/2011 (New SC No. 551/2016) on the file of the Additional Sessions Judge (FTC), E-Court, Shahdara, Karkardooma Court, Delhi assails the judgment dated 10.02.2016 and order on sentence dated 12.02.2016 as per which he has been



convicted and sentenced for the offences punishable under Section 498A and 304B of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case, in brief, is that Soma Dutta, the daughter of PW5 and PW6 was married to the accused on 01.05.2006 as per the rites and customs of the community to which they belong. Pursuant to the marriage, Soma Dutta and the accused were residing together in the latter's house. However, 1 ½ years after the marriage and till her death on 23.06.2011, the accused subjected his wife to continuous physical and mental harassment by demanding more dowry. Due to the constant mental and physical harassment, Soma Dutta committed suicide by hanging herself to death on 23.06.2011. Hence, as per the final report/charge-sheet, the accused is alleged to have committed the offences punishable under Sections 498A, 302 and 304B IPC.

3. On the basis of Ext. PW3/D FIS of PW5, mother of the deceased, given on 24.06.2011, Crime No. 190/2011, New Ashok Nagar Police Station, i.e., Ex. PW1/A, FIR was registered by



PW12, SHO. PW12 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report dated 24.06.2011 alleging commission of the offences punishable under the aforementioned sections.

4. On appearance of the accused before the jurisdictional magistrate pursuant to receipt of summons, copies of all the prosecution reports were furnished to him as contemplated under Section 207 Cr.PC. Thereafter, in compliance of Section 209 Cr.PC, the case was committed to the Court of Session concerned.

5. When the accused appeared before the trial court, as per order dated 20.10.2011, a Charge under Sections 498A, 304B and 302 IPC was framed, read over and explained to the accused, to which he pleaded not guilty.

6. On behalf of the prosecution, PWs.1 to 12 were examined and Ext.s PW1/A-B, PW1/D, PW3/A-E, PW4/A, PW5/A1 to A6, PW5/B, PW5/DA-DB, PW5/DY, PW-6/A, PW7/A, PW8/A-C, Mark PW9/DA, PW10/A1 to A7, PW10/A8 to A14, PW12/A to C,



PW12/D1 to D5, PW12/X1 to X11, Mark 12/X12, Mark PW18/X18 to X23, Mark PW11/A and Mark PW6/A, Mark PW5/DX were marked in support of the case.

7. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.PC with regard to the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he has been falsely implicated in the case and denied demanding dowry.

8. After questioning the accused under Section 313(1)(b) Cr.PC., compliance of Section 232 Cr.PC. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.PC. is seen done by the trial court. However, non-compliance of the said provision does not *ipso facto* vitiate the proceedings unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. versus State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine**



Ker 2888). In the case on hand, the accused has no case that non-compliance of Section 232 Cr.PC. has caused any prejudice to him.

9. On behalf of the accused, DW1 to DW5 were examined and Exts. DW2/A, DW3/A, DW3/B, DW5/A1 to A16, DW5/B, DW5/D and Mark A were marked. The accused offered himself as a witness and hence, was examined as DW5.

10. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment and order on sentence, found the accused guilty of the offences punishable under Section 498A and 304B IPC and accordingly, sentenced him to undergo rigorous imprisonment for a period of 7 years and fine of ₹20,000/- for the offence punishable under Section 304B IPC, and in default of payment of fine, to undergo rigorous imprisonment for six months and to rigorous imprisonment for a period of 3 years and fine of ₹10,000/- and in default of payment of fine, to rigorous imprisonment of 3



months for the offence punishable under Section 498A IPC. He has been acquitted of the offence punishable under section 302IPC. The sentences have been directed to run concurrently. Benefit under Section 428 Cr.PC has also been granted. Aggrieved, the accused has come up in appeal.

11. It was submitted by the learned counsel for the appellant that the prosecution has failed to establish the essential ingredients of Sections 304B and 498A IPC. It is an admitted position that there was no demand for money or dowry at the time of marriage or immediately before her death. The learned counsel drew the attention of this Court to Exts. DW5/A1 to A16 to canvass the point that the appellant was in fact regularly sending money to the parents of the deceased and therefore it was improbable for the appellant to have harassed the deceased demanding more dowry. It was submitted that there was no complaint given against the appellant by the deceased during the entire duration of their marriage. The essential ingredient in Section 304 IPC, that it has to



be shown that “soon before” her death the deceased was subjected to cruelty, has not been proved. In fact, shortly before her death, the deceased had invited her mother to attend her son’s birthday. He further pointed out that the post-mortem report also states that there was no injury on the deceased. It was also submitted that under Section 498A IPC, the nature of harassment must be such as to drive a woman to commit suicide, however, the allegations of harassment against the appellant are vague, omnibus and general in nature. Even assuming that the allegations are true, it was only normal wear and tear of married life and not serious enough to drive a woman to commit suicide, and so Section 498A IPC is not made out. He further submitted that PW6, father of the deceased, has not fully supported the prosecution case and the testimony of PW5, the mother of the deceased, is an improved version of her earlier statements.

12. *Per contra*, it was submitted by the learned Additional Public Prosecution that the cause of death stands proved, that is, by



hanging and the death occurred within seven years of marriage. The testimony of PW5, corroborated by the testimony of PW6 and PW9, establish that there was a demand of dowry and that the appellant was harassing the deceased for the same. The allegation made is only *qua* the husband and not against any other member(s) of his family, therefore, the testimony cannot and need not be doubted. It was also contended that the expression “soon before” does not mean immediately before her death but is a relative term and is to be understood in the facts and circumstances of each case. Reference was made to Section 106 of the Evidence Act to state that since the death occurred inside the matrimonial home, the special knowledge of the circumstances lies with the appellant and denial simpliciter is not sufficient and that the appellant is required to explain how and under what circumstances the deceased committed suicide, which he has failed to do. Therefore, there is no infirmity in the impugned judgement calling for an interference by this court, argued the prosecutor.



13. Heard both sides.

14. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellant/accused by the trial court are sustainable or not.

15. I will briefly refer to the oral and documentary evidence led on by the prosecution in support of the case. PW5, the mother of the deceased, gave Ext. PW3/D FIS on the basis of which Ext. PW1/A FIR was registered. The gist of the statement of PW5 in Ext. PW3/D reads – “We gave dowry during the marriage out of our own will. About one and a half years after the marriage, my son-in-law started troubling my daughter. He used to beat my daughter and used to say, “Go to your maternal home and bring money”. My son-in-law has an illicit relationship with his Bhabhi. My daughter told me these things. When my daughter used to object to these things, my son-in-law used to say to her to leave her maternal family members. For the last three years, they have been living in Delhi. My daughter also has a son. He used to harass my



daughter over every small issue. On 23.06.2011 at 9:00 AM, my son-in-law called me and told me that my daughter had died.....”

15.1. PW5 when examined before the trial court, deposed that the marriage of her daughter to the accused was solemnised in a simple manner and that they had given dowry as per their own accord. However, the accused was not satisfied with the dowry articles given. When her daughter was 04 months pregnant, the accused left the deceased at her residence. The accused used to tell her daughter that her parents had given less dowry and he used to keep asking her to bring cash from her parents. Her daughter had told her about this demand made by the accused. After her daughter delivered a baby boy, the former continued to reside in her house till the boy was 09 months old. All the expenses for her daughter's delivery was borne by the parents. Thereafter, the accused took her daughter and grandson to his residence at New Ashok Nagar, Delhi at which time she also accompanied them.



The accused then demanded ₹ 5 lakhs for buying house and other goods. According to PW5, she assured him that she would try to arrange the money and then return to her house. However, she was unable to arrange the money and therefore could not meet the demand of the accused. After about 04 months, the accused again left her daughter and her grandson at her house in West Bengal. Her daughter complained that the accused was not giving her food to eat but still insisted that she should live with the accused in Delhi. Therefore, she took her daughter to the house of the accused in Delhi. PW5 further deposed that she had taken her daughter from Delhi to West Bengal on 6.12.2010 for a ceremony at her home. When her daughter returned to her matrimonial house, the latter was beaten up by the accused and his family, as her daughter was unable to meet the demand for money made by the accused. Pursuant to the same, her daughter returned with her son to her house. The accused then invited her daughter back in connection with Kali Puja to his house at Howrah. PW5 deposed that pursuant



to that she along with her husband, daughter and her younger daughter's son-in-law went to the house of the accused at Howrah on 05.04.2011. Her daughter Soma remained at the house of the accused at Howrah when she and her family returned home. On 6.04.2011, the accused again left Soma at their house. The accused and Soma did have a return ticket to Delhi on 07.04.2011 but the accused refused to take Soma along with him. Therefore, they took their daughter Soma to the railway station, at which place the accused asked Soma whether she had brought the money as demanded by him from her parents. Soma replied that she had not asked her parents for the money. Hearing this reply, the accused told Soma that he would deal with it after they reached Delhi. This fact was told by Soma to her younger sister who thereafter informed her. While at Delhi, her daughter used to telephone her and complain that she and her son were not being provided food by the accused and that the accused was beating her up. On 21.06.2011, she spoke to her daughter for the last time on the



telephone on which day Soma invited her to the birthday of her son. On 23.06.2011 at about 8.30 A.M., she received a telephone call from the hospital that her daughter Soma is dead. They immediately rushed to the LBS hospital in Delhi. Her statement, that is, Ext. PW3/D was recorded by the SDM. At this juncture, the prosecutor is seen to have sought the permission of the court to ‘cross examine’ the witness on the ground that ‘her testimony is not in complete consonance.’ This request was allowed by the trial court.

15.2 The further examination by the learned Additional Public Prosecutor reads thus:-

“.....It is correct that my daughter informed me that accused was having illicit relations with his sister in law It is correct that my statement was also recorded by the police. It is correct that we tried to 'make the accused understand that we were poor people and not in a position to make his demand of Rs.5 lacs but he did not agree and continued beating my daughter. It is correct that whenever Soma used to complaint us, we used to advise her to complain the police but she used to say that she did not want to spoil her family and also used to



say that accused may improve after his son grows up. It is correct that accused had demanded Rs.5 lacs again in April 2011 when my daughter came at my house. It is correct that at the railway station also I and my husband had tried to counsel the accused but he told that he would think only after getting Rs.5 lacs. It is correct that on 21.06.11 my daughter had also informed me on telephone that accused was harassing her and demanding Rs.5 lacs and she told me "jeena mushkil ho raha hai" It is correct that when I asked her to complain the police but she refused saying that it would spoil her family life. When we reached Delhi, at that time accused was in police custody. The cremation ceremony of my daughter was performed by my husband and the uncle of Soma I had sent 11 photographs Mark PW5/A (collectively) by post to the police.....”

15.3. PW5 in her cross examination denied the suggestion that there was never any demand for dowry made by the accused and his family. She admitted her statement in Ext. PW3/D that they had given dowry articles at the time at the time of the marriage as per their own wish. She admitted that she had not stated to the SDM that the accused was not happy with the dowry articles given by them at the time of the marriage. According to



PW5 she was not in a fit state of mind to give such details. PW5 further admitted that she had visited her daughter in Faridabad only once and that too about one year after her daughter started residing there. She stayed with her daughter in Faridabad for about a week at which time her daughter was living happily with the accused. PW5 further deposed that her daughter had told her about the illicit relation of the accused with his bhabhi. PW5 further reitreated that the accused had demanded ₹ 5 lakhs for buying a house and other goods. PW5 further deposed that she had in fact stated to the police that her daughter used to inform her over the phone that the latter was not being provided food and that the accused used to beat her up. PW5 denied the defence case that she and her husband used to pressurise the accused to give money to them for buying a new house and that the accused on several occasions had transferred an amount of about ₹ 1.5 lakhs to the account of her husband. She also denied the defence case that when the accused came to their home on 31.03.2011 and



01.04.2011 they had beaten up the accused or that the police had lodged a Kalandra under Section 107 and 151 CrPC.

15.4 PW5 is seen to have been recalled on 16.09.2014 and examined further. On the said day, she brought the original pages of a diary alleged to have been written by her daughter on 25.03.2010. They were stated to be the originals of Ext. PW12/X12 to Ext. PW12/X17. The original produced by PW5 on 16.09.2014 were marked as Exts. PW5/A1 to PW5/A6. According to PW5, the handwriting and the notings in the diary are that of her daughter Soma Dutta. In the cross-examination, PW5 deposed that she does not remember the date on which she had sent the copies of the diary to the investigating officer. She had stated to the police that she was in possession of the diary writings of her daughter. However, she had not stated the said fact to the SDM, when she gave Ext. PW3/D. PW5, when shown Ext. PW5/DB, a copy of the complaint given by the accused under Sections 107 & 150 CrPC to SDM, Barsad, District North-24 Pargana, deposed that she is



unaware of the same. She also feigned ignorance, when she was asked whether the accused had deposited money during the period 2008-2009 in her account which she held jointly with the husband. PW5 denied the defence version that the accused had refused to deposit further amounts into their account, and that her daughter had called her many times with the request not to trouble the accused, as he had only limited income and that he was unable to give any further amount(s) as demanded by them. PW5 also denied the suggestion that her daughter had committed suicide due to the illegal demands for money made from their side to the accused.

16. PW6, the father of the deceased, when examined deposed that he had given dowry at the time of marriage of his daughter as per his capacity. PW6 deposed that he came to know that the accused had long standing illicit relations with his sister-in-law, that is, from his days in the college. His daughter had informed him over telephone that the accused was demanding ₹ 5 lakhs. His daughter did not initially tell him about the demand, as she was



conscious of the fact that he would be unable to meet the demand of the accused. At this juncture, it is seen that the prosecutor sought the permission of the court to ‘cross examine’ the witness on the ground that ‘he is resiling from his previous statements.’ This request was allowed and the further examination by the prosecutor reads thus:-

“.....It is correct that police recorded my statement. It is correct that accused and his family members were not satisfied with the dowry articles given in marriage. It is correct that after one and half years of the marriage accused started harassing my daughter. It is incorrect to suggest that as and when my daughter came to meet me, she used to tell that accused used harass and beat her on every issue, confronted with portion A to A of statement Mark PW6/A wherein it is not so recorded. It is correct that when my daughter asked the accused to stop his illicit relation with his sister in law accused used to threaten to leave her. I do not know that accused had demanded Rs. 5 lacs for buying the house and other goods or that I stated so to the police in my statement Vol. only accused knows for what purpose he had demanded Rs.5 lacs. It is correct that my daughter had told me once that accused demanded Rs.5 lacs for purchasing the house. It is correct that whenever we asked our daughter to make complaint to the



police, she refused stating that it would spoil her family. It is correct that I had counseled the accused many times that we are poor people and were not able to meet his demand but he did not agree. It is correct that in April 2011 when my daughter came at our house even then she had told me that accused was harassing her. 'It is correct that I had also tried to counsel the accused at railway station by telling him that I cannot afford to pay him money but accused did not agree. It is correct that my daughter had telephone us 3/4 days before her murder and at that time she was under distress. It is correct that my daughter started crying on telephone and I also became worried. It is correct that my daughter told me that accused had made her life hell and was demanding Rs.5 lacs. It is correct that the information about the death of my daughter was received in the month of June. It is correct that I have forgotten to tell these facts.....”

16.1 In the cross examination PW6 admitted thus:-“.....It is correct that at the time of marriage, we gave dowry as per our own wish, and no demand was made by the accused and his family.....”. He had been informed by his wife after the birth of his grandson, that the accused had illicit relations with his sister-in-law. PW6 further deposed that he does not remember the date, month or year, when Soma Dutta returned to her marital home, after delivery, PW6



admitted that till then, the accused had not made any direct demand to him for money. He denied the defence version that on different occasions the accused had deposited a total amount of ₹ 1.5 lakhs during the period 2009-2010 in his account. He also denied the defence case, that he had pressurised the accused, to meet the marriage expenses of his younger daughter and for buying a new house.

17. PW9, the uncle of the deceased, does not have any direct knowledge about the demand for money. On the other hand, he deposed that he was told by PW5 and PW6 about the demand.

18. On behalf of the accused, DW1 to DW4 were examined. The accused offered himself as a witness and so he was examined as DW5. DW1, a neighbour, deposed that the accused and his wife were living happily and that he had never seen any quarrel between them. DW1 in the cross-examination admitted that he had no knowledge whether the accused had demanded dowry from the relatives of Soma Dutta. He further deposed that he had never



heard or seen the accused beating Soma Dutta during day time, at which period he would be away at his workplace.

18.1 DW2, yet another neighbour, deposed that he had visited the house of the accused one or two times; that the accused had told him that the former's mother-in-law used to demand money from time to time and due to the said reason the wife of the accused was quite disturbed. DW2 deposed that he had never heard about any misunderstanding between the accused and his wife. DW1 in his cross-examination admitted that he had never stated to the police that the mother-in-law of the accused used to demand money from the latter. He also deposed that he has no knowledge of what was given in dowry at the time of the marriage.

18.2 DW3, Chief Manager, SBI, Khardah, Kolkata, West Bengal was examined to prove Ext. DW-3/A bank account statement.

18.3 DW4, the landlord of the accused, deposed that the accused and his wife were having cordial relations and during



weekends they used to go for outings. The accused, according to DW4, is 'a peace loving person' and had good relations with him and with the other persons of the locality. He had never heard any quarrel between the accused and his wife. In the cross-examination, DW4 deposed that he had no knowledge of what was given as dowry at the time of marriage. He admitted that he had stated to the police that there had been minor quarrels between the accused and his wife. DW4 added that such minor quarrels do happen in every family.

18.4 Finally, the accused, when examined as DW5 denied the prosecution case and deposed that it was PW5 and PW6, the parents of his wife who used to pressurise him to give money to them for buying a new house. He also deposed that he had given money for meeting the marriage expenses of his wife's sister and it was he who had met all the expenses related to the delivery of his wife.

19. Now the question is whether the aforesaid evidence is



sufficient to find the accused guilty of the offences punishable under Section 498A and 304B. In order to seek a conviction of a person for the offence of dowry death under Section 304B IPC, the prosecution is obliged to prove that – (a) the death of the woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within 7 years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment, the deceased should have been subjected to soon before her death.

20. The fact that the death of Soma Dutta took place within 07 years of her marriage to the accused is not disputed. The fact that Soma Dutta had committed suicide by hanging herself to death is also not disputed. What is disputed is the reason(s) which prompted her to commit suicide. For a dowry death, as defined in



Section 304B IPC, the death should have been in connection with any demand of dowry as defined in the Dowry Prohibition Act, 1986. If the death occurred independent of any demand for dowry, that death can under no circumstances be termed a dowry death (**State of Kerala versus Josh @ SAJU, 1994 KHC 268**). Prosecution in a case of offence under Section 304B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused ‘soon before death’. The word dowry in Section 304B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1986 which reads thus –

“.....

2. Definition of “dowry”— In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

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

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection



with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. Explanation II.—The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).....”

20.1 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 said 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. 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 of her death is the pivot indicated by the 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 that demand for dowry 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’ (See **Satvir Singh v. State of Punjab** 2001 KHC 934 : 2001 8 SCC 633).

20.2 The punishment for the offence of dowry death under Section 304 B is imprisonment of not less than 7 years, which may extend to imprisonment for life. Normally, in a criminal case the accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, which may be direct or circumstantial or both. But in the case of an offence under Section 304B IPC an exception is made by deeming provision as to nature of death as ‘dowry death’ and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects, but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment



prescribed for the said offence, in scrutinising the evidence and in arriving at a conclusion as to whether all the above said ingredients of the offence under Section 304B IPC are proved by the prosecution. (See **Sunil Bajaj v. State of Madhya Pradesh, 2001 KHC 941 : 2001 9 SSC 417**)

20.3 Further, in cases under Section 304B IPC, Section 113B of the Evidence Act is also relevant. Both Section 304B IPC and Section 113B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B deals with presumption as to dowry death. It says that 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. The Explanation to the Section says that for the purposes of this section ‘dowry death’



shall have the same meaning as in Section 304B IPC. As per the definition of dowry death in Section 304B IPC and the wording in the presumptive Section 113B 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 113B is a presumption of law. On proof of the essentials mentioned in Section 304B IPC, 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 essential ingredients of Section 304B IPC. The expression ‘soon before’ is very relevant where Section 113B of the Evidence Act and Section 304B 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 the presumption operates. Evidence in that regard has to be led by prosecution. Again ‘soon



before' is a relative term and it will depend upon the circumstances of each case and no straight jacket formula can be laid down as to what would constitute a period of 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 113B of the Evidence Act. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression soon before noted, may would normally imply that the interval should not be much between the cruelty concern or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death. 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. (See **Hira lal v. State of Government of NCT Delhi 2003 KHC 1584 : 2003 8 SCC 80**).

21. Coming back to the case on hand, it has come out through the testimony of PW5 and PW6, who are none other than the parents of the deceased, that no demand for dowry had been made at the time of the marriage. The demand is alleged to have been made subsequently made, that is, about one and a half years after the marriage. The testimony of PW5 and PW6 on whose testimony alone the prosecution relies to prove the case, will have to be considered and analysed in the background of Ext. PW5/DB Kalandara also which reads thus:-

*“DISTRICT: NORTH 24 PARGANAS
In the court of Ld. S.D.E.M. at Barasat.*

MP - 985/2011

First party

Sree Jaydev Dutta,

S/o. Sree Panitosh Dutta.

of vill- Janaphul, Sanpukur.

v/s

Second Party

Smt Mita Das

w/o. Sree Sudhir Das

of 11 No- Boga Para



2026:DHC:958



*P.O. - Janaphul.
PS - Habra.
Dist - North 24 Parganas.*

*S. K. Banerjee Road,
Tejpata Gali,
P.O. - Khanda, P.S. -
Khanda, Dist - North
24 parganas.*

petition u/s 107 Cr.P.C.

MOST Respectfully Showeth:-

- 1. That the first party is a peace loving and Law abiding Indian citizen.*
- 2. On the other hand second party is a dangerous, quarrelsome, ferocious lady. She has no faith in law.*
- 3. That the marriage of the second party's elder daughter namely Soma with the Second party was held on 01/5/06 according to Hindu rites and customs. After marriage the daughter of the Second party was leading conjugal life peacefully with the First party. But the daughter of Second party threatened the first party & his family members to File False case against them only for greediness and conspiracy by her mother i.e. 2nd party. But the First party is very peaceful and gentle. He wants to lead peaceful life so, he is always ignoring the torture and threat of 2nd party and her daughter.*
- 4. That on 01/4/11 at 11 am the second party telephoned by bearing No 9735081747 & 9143734827 to the First party in his phone bearing No - 9818408752, she abused the First party & threatened to Kill him.*

When the First party asking her what is reason for threatening then she said, "you will send Rs. 5000/- pm to me and cut up all connection with your



parents.” Second party said, “if you neglect me, I shall engaged anti social elements for kidnap your elder brother’s daughter for purpose of outrage her modesty.” Then the First party lodged a G.D.E at Habra P.S. bearing G.D.E No. 57 dt - 01/4/11.

5. That - in First week of April of 2009 the First party went to his in-law’s house ___ returned back in his home. On that time the above named second party confined the first party in room and she snatched Rs. 8000/ 9000/- from the pocket of First party. Also she forcefully signed on a non judicial stamp paper value of Rs. 10/- by the first party. But the First party does not disclose the matter to any where for peace life. But on 01.4.11 First party lodged a G.D.E for afraid of his life and kidnap of elder brother's daughter at Habra P.S. vide G.D.E No. 572 dt- 01/4/11.

6. That First party and his family members at any time may be killed or kidnapped by the 2nd party and her associates.

Hence it is prayed that Your Honour would graciously be pleased to pass necessary order u/s 107 Cr.P.C. direct the O.P. to keep peace & maintain tranquility and Filing show-cause and call for report in the mean time from Habra P.S.....”

22. Soma Dutta committed suicide on 23.06.2011. In Ext. PW5/DB, the incident of intimidation etc. is alleged to have happened on 01.04.2011, about 2 ½ months before the incident. This document shows that PW5 and PW6 and the accused were



not in cordial terms at all.

23. In Ext. PW3/D FIS, the allegation regarding the harassment and dowry claim are not quite specific and they seem quite vague. It is true that the said statement was given by PW5 the day immediately after her daughter had committed suicide. Therefore, as a mother PW5 would certainly have been in a disturbed state of mind. Paragraph 12 of the impugned judgement reads:-,

“ 12. The learned defence counsel has assailed the testimony of PW-5 Meeta Dass mainly on the ground that same contains material improvements. It has been stated that there is no mention of demand of Rs. 5 lacs in the first statement made by this witness before SDM. It is argued that the statement Exbt. PW-1/B is vague and does not give the specific dates on which such demand was made. It is thus argued that the testimony of PW-5 cannot be relied upon in evidence. On the other hand, the learned Additional PP has argued that the same day on which PW-1 was examined by the SDM, she gave yet another statement under Section 161 Cr. PC before the IO in which she had specified that the demand was for Rs. 5 lacs was from the accused for buying a house on account of which,



he used to harass the daughter of PW-1. It is argued that there is no material improvement in the statement made by PW-5 before the court, which also finds corroboration from the testimonies of PW-6 Sudhir Dass, PW-9 Bappi Dass and PW-11 Ashish Ghosh and therefore her testimony cannot be disbelieved”

(Emphasis Supplied)

The trial court appears to have accepted this argument advanced by the prosecution and concluded that in the light of the specific statement of PW5, PW6 and PW9 regarding harassment of the deceased on account of the demand of ₹ 5 lakhs as dowry, the prosecution has succeeded in proving the case. The statements made under Section 161 are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to the Section. Under the proviso to Section 162(1) Cr.P.C., such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145 of the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking



corroboration or assurance for the testimony of the witness in Court. (See **Tahsildar Singh v. State of U.P.**, AIR 1959 SC 1012; **Satpal v. Delhi Administration**, 1976 (1) SCC 727 and **Delhi Administration. v. Lakshman Kumar** 1985 KHC 741: (1985) 4 SCC 476).

24. Therefore, the argument that the Section 161 statement of the witness corroborates the testimony of PW1 cannot be countenanced for a moment.

25. It is true that the FIS/FIR is not an encyclopaedia containing all the detailed facts of the incident. However, the broad facts of the commission of a cognisable offence must be contained therein. The trial court was not inclined to rely on the testimony of the defence witnesses on the ground that the neighbours may not know what was happening inside the matrimonial home. Going by the testimony of DW1 and DW2, there was no disharmony between the couple. It is true that they are neighbours and therefore, they need not always know of all events that happen



within the family. DW4, the landlord also says that there was no disharmony or quarrels between the accused and his wife. However, DW4 admitted that a minor quarrel did take place between the accused and his wife. One quarrel alone cannot be treated as sufficient to attract the ingredients of the offence under Section 304 B IPC. Exhibit PW 5/A Kalandara, clearly shows that the relations between the parties was quite strained. This aspect has to be kept in mind when the testimony of the parents is considered.

26. PW5, the mother, has produced Ext. PW5/A1 to Ext. PW5/A6 (collectively), which are alleged to be the diary notings of the deceased. However, she admits that the originals were never produced or handed over to the Investigative Officer. It is also admitted that the Investigative Officer never took any steps to compare the handwriting seen in exhibits PW5/A1 to PW5/A6 with the admitted handwriting of the deceased. That being so, the trial court was right in rejecting the said documents and not relying



on the same.

27. PW5 and PW6 have also a case that that their daughter had told them that the accused was having illicit relation with his sister-in-law. Such an allegation finds a place in exhibit PW3/D FIS also. In fact, PW6 in his chief examination itself says that when his daughter used to ask the accused to put an end to the illicit relationship, the latter used to threaten that he would desert her. This allegation was of course denied by the accused. This allegation made in the FIS read along with Ext. PW5/DB Kalandra raise doubts relating to the prosecution case of harassment of the deceased claiming more dowry. Doubts arise whether it was due to some other marital issue(s) between the couple, the deceased committed suicide.

28. Further, the testimony of PW5 and PW6 is also quite unsatisfactory. I have already referred to their testimony in detail. It is seen that during their examination, the prosecutor sought permission to cross examine the witnesses on the ground the



witnesses (who are none other than the parents) were resiling from their earlier statements. The permission sought for is seen granted by the trial court without considering whether the said witnesses were actually “*hostile*” to the prosecution case. The Evidence Act does not contain the terms “*hostile*” witness “*adverse*” witness, or “*unfavourable*” witness. But as held by the Apex Court in **Tamil Maran K.P v. State by Deputy Superintendent of Police, 2025 KHC 6400: 2025 SCC Online SC958**, - “*the phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future.*” But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase ‘hostile witness’ has come to be used for a witness who gives a



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statement contrary to the story of the side for which he / she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'.

28.1. In **Sat Paul v. Delhi Administration, 1976 KHC 675: (1976) 1 SCC 727**, it has been held that the grant of permission to cross examine his own witness by a party is not conditional on the witness being declared "*adverse*" or "*hostile*". Whether it be the grant of permission under S.142 to put leading question, or the leave under S.154 to ask questions which might be put in cross examination by the adverse party, the Evidence Act leaves the matter entirely to the discretion of the court. The discretion conferred by S.154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witness's, demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or



otherwise, think that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to adjudication by the court as to the veracity of the witness.

28.2. Further, whatever be the form and nature of the questions put to the witness, examination of a witness by the person who calls him is 'examination-in-chief' if it is before the examination of that witness by the adversary, and re-examination' if the same is after the adversary examines him. 'Cross-examination' means examination of the witness by the adverse party (See Sections 137 and 138 of the Evidence Act). To say that one may cross-examine his own witness is, in the face of the definition of the word 'cross-examination' as aforesaid, a contradiction in terms. S.142 of the Evidence Act bars leading questions or questions suggestive of answers in examination-in-chief and re-examination. Under S.154 Evidence Act, however, the court may allow a person to put to his own witness such questions



as might be put in cross-examination by the adverse party. With permission granted under S.154, such questions, that is, leading questions can be put in examination-in-chief also. On grant of such request, the party who sought the permission would still continue to conduct examination-in-chief of the witness with liberty to put questions as put in cross-examination, namely, leading questions. The said examination is not cross-examination. The cross examination of the witness will only be by the adverse party and not by the party who calls the witness. The only object of putting in examination-in-chief with the permission of the court questions of the kind allowed only in cross-examination, is not to discredit the witness but to bring out evidence which would advance the case of the cross-examiner or the person calling the witness, as the case may be.

29. Therefore, the permission under Section 154 of the Evidence Act is not granted on the mere asking. It is only when it appears to the court from the demeanour, temper, attitude, bearing



or the tenor and tendency of his answers or from a perusal of his previous inconsistent statements, or otherwise, it is expedient to extract the truth and do justice, the permission is granted. The permission then granted under Section 154 is to put questions as put in cross examination, that is, leading questions. Section 142 of the Evidence Act does not permit putting leading questions in the examination-in-chief or in a re-examination, except with the permission of the court.

30. Here, on going through the testimony of PW5 and PW6 such a situation does not seem to have arisen to declare them “hostile” and to put questions as put in the cross-examination. It can be seen that after such permission was given by the trial court, all leading questions were put to the witnesses on the crucial aspects of the prosecution case and favourable answers obtained. Such answers obtained by putting leading questions have to be considered with utmost circumspection, lest it causes prejudice to the accused.



31. The accused has been convicted by the trial court for the offence under Section 498A IPC also. As per explanation (a) to the Section, any wilful conduct which was 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, is cruelty. The evidence on record does not satisfy this test. The trial court went wrong in relying on the testimony of PW5 and PW6, which I find not quite satisfactory for the aforesaid reasons to find the accused guilty beyond reasonable doubt. Moral conviction or conviction based on suspicion is not possible. Suspicion, however strong it may be, cannot take the place of proof. Conviction can only be made on the basis of cogent evidence and materials brought on record by the prosecution. The argument advanced by the learned prosecutor that as death took place inside the marital home, it is for the accused to explain the circumstances in which the deceased had committed suicide can also not be accepted in the light of evidence on record to which I



have referred to in detail. In these circumstances, I find that the accused is entitled to the benefit of doubt.

32. In the result, the appeal is allowed, and the impugned judgment convicting and sentencing the appellant/accused by the trial court is set aside. The accused is acquitted under Section 235(1) Cr.P.C of all the offences charged against him. He is set at liberty and his bail bond shall stand cancelled.

33. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 06, 2026
RS/ER