SATBIR SINGH & ANOTHER

v.

STATE OF HARYANA

(Criminal Appeal Nos. 1735-1736 of 2010)

MAY 28, 2021

[N. V. RAMANA, CJI, AND ANIRUDDHA BOSE, JJ.]

Penal Code, 1860: s. 304B – Dowry death – Conviction under – Prosecution case that the victim committed suicide by setting herself ablaze just after one year of her marriage and that soon before her death, she was subjected to cruelty and harassment for bringing less dowry by the accused – Conviction of the accused for the offences u/s. 304B and 306 with 7 years and 5 years rigorous imprisonment respectively – High Court upheld the order of the trial court – On appeal, held: Prosecution was able to successfully prove that the death of the victim due to burn injuries took place within one year of her marriage – It has been proved that soon before her death she was subjected to harassment and cruelty pursuant to demands of dowry – Chain of circumstances proves that there existed a live and proximate link between the instances of demand of dowry and the death of the victim – Statements of the witnesses were corroborative, consistent and reliable – However, presumption in s. 113B not rebutted by the accused – Thus, the High Court and trial court rightly convicted the accused u/s. 304-B – As regards offence u/s. 306, the prosecution failed to establish that the death occurred due to suicide, thus, the conviction and sentence u/s. 306 is set aside – Evidence Act, 1872 – s. 113B, 113A.

s. 304B – Phrase 'soon before' – Interpretation of – Held: Phrase 'soon before' in s. 304B cannot be construed to mean immediately before – Strict interpretation would defeat the very object of enactment – No straitjacket formulae can be laid down by this Court to define what exacts the phrase soon before entails – Thus, the Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term soon before – Establishment of a proximate and live link between the cruelty and the consequential death of the victim, is pivotal to the said determination.

A *s. 304B – Dowry death – Categorization death, as homicidal or suicidal or accidental – Pigeonhole approach – Held: s.304 B does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental – Reason for such non-categorization is due to the fact that death occurring otherwise than under normal circumstances can, in cases, be homicidal or* B *suicidal or accidental.*

s. 304B – Inclusion of, in the Code – Legislative history – Explained.

Evidence Act, 1872: s. 113-B – Presumption as to dowry death C *– Rebuttal of – Held: When the prosecution shows that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, a presumption of causation arises against the accused u/s. 113B – Thereafter, the accused has to rebut this statutory presumption –* D *Usage of rebuttable presumption of causality, u/s. 113B creates a greater responsibility on Judges, defense and prosecution – They need to be extra careful during conducting criminal trials relating to s. 304-B.*

Code of Criminal Procedure, 1973: ss. 233, 232 – Entering upon defence – Right to accused u/s. 233 – Held: Under s. *232 if, after* E *taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal – Once the trial court decides that the accused is not eligible to be acquitted as* F *per the provisions of s. 232, it must move on and fix hearings specifically for defence evidence, calling upon the accused to present his defense as per the procedure provided u/s. 233, which is also an invaluable right provided to the accused – Existence of such procedural right cohesively sits with the rebuttable presumption as provided u/s. 113B, Evidence Act.*

G

Judicial guidelines: Dowry death cases – Trial of – Held: Guidelines have been laid down for the trial of dowry death cases.

Allowing the appeals, the Court

HELD: 1.1 Considering the significance of s. 304-B IPC, a H **strict interpretation would defeat the very object for which it was**

enacted. Therefore, it is safe to deduce that when the legislature used the words, 'soon before' they did not mean immediately before. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase soon before entails. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term soon before. What is pivotal to the above determination, is the establishment of a proximate and live link between the cruelty and the consequential death of the victim. [Paras 14, 15][282-C-E; 283-A-B]

Major Singh v. State of Punjab **(2015) 5 SCC 201 : [2015] 5 SCR 777;** *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company* **(2018) 9 SCC 1 : [2018] 7 SCR 1191;** [*State of Gujarat v. Mansukhbhai Kanjibhai Shah* **2020 SCC OnLine SC 412];** *Kans Raj v. State of Punjab* **(2000) 5 SCC 207 : [2000] 3 SCR 662;** *Rajinder Singh v. State of Punjab* **(2015) 6 SCC 477 : [2015] 2 SCR 835 – Referred to**

1.2 When the prosecution shows that "soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry", a presumption of causation arises against the accused under Section 113B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. The usage of rebuttable presumption of causality, under Section 113B, Evidence Act, creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to Section 304B, IPC. In order to address this precarious situation, procedural law has some safeguards. [Paras 16, 19][283-B-C; 284-A-C]

Bansi Lal v. *State of Haryana* **(2011) 11 SCC 359 : [2011] 1 SCR 724 – referred to**

1.3 It is a matter of grave concern that, often, Trial Courts record the statement of an accused under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. The examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision incorporates the valuable principle of natural justice" "*audi alteram partem*", as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense, since the inception of the trial, with due caution, keeping in consideration the peculiarities of Section 304B, IPC read with Section 113B, Evidence Act. [Para 20] [284-C-F]

1.4 Section 232, CrPC assumes importance, which reads as, "if, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal". Once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232 it must move on and fix hearings specifically for defence evidence, calling upon the accused to present his defense as per the procedure provided u/s. 233 which is also an invaluable right provided to the accused. Existence of such procedural right cohesively sits with the rebuttable presumption as provided under Section 113B Evidence Act. [Para 21][284-E-H]

1.5 The second contentious part relating to Section 304B, IPC is that it does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental, as was done earlier. The reason for such non categorization is due to the fact that death occurring "*otherwise than under normal circumstances*" can, in cases, be homicidal or suicidal or accidental. However, Section 304B endeavors to also address those situations wherein murders or suicide are masqueraded as accidents. Thus, if all

the other ingredients of Section 304B IPC are fulfilled, any death whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "*dowry death*" and the woman's husband or his relative "*shall be deemed to have caused her death*" unless proved otherwise. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. [Paras 22, 23][284-H; 285-A-D]

Maya Devi v. State of Haryana **(2015) 17 SCC 405:[2015] 11 SCR 903;** *Shanti v. State of Haryana* **(1991) 1 SCC 371: [1990] 2 Suppl. SCR 675 – referred to.**

1.6 In the instant case, the deceased victim succumbed to burns. As the death was relatable to burn injuries within seven years of marriage, it clearly satisfies the first two ingredients of the offence. [Para 25][285-E-F]

1.7 The chain of circumstances proves that there existed a live and proximate link between the instances of demand of dowry and the death of the deceased. The trial court, and the High Court, upon a close appreciation of the said witnesses came to the conclusion that the statements were corroborative and consistent. They found the witnesses to be reliable and on the basis of the same held that the deceased was subjected to cruelty soon before her death as she failed to bring sufficient dowry. The said finding of the trial court and the High Court is accepted. [Para 27] [286-B-D]

1.8 It is clear that the prosecution was able to successfully prove that the death of the deceased due to burn injuries took place within approximately one year of her marriage. It has further been proved that soon before her death she was subjected to harassment and cruelty pursuant to demands of dowry. Since the ingredients of Section 304B, IPC stand satisfied, the presumption under section 113B, Evidence Act operates against the appellants, who are deemed to have caused the offence specified under Section 304B IPC. [Para 28][286-D-F]

1.9 The burden therefore shifts on the accused to rebut the presumption u/s. 113-B. However, the accused persons failed

to place any evidence on record to prove that the death was accidental or unconnected with the accused persons. It ought to be noted that, according to the evidence of the doctor, the entire body of the deceased was doused with kerosene oil. Therefore, the possibility of an accident can be safely ruled out. Therefore, the presumption adumbrated in Section 113B, Evidence Act takes full effect in this particular case, which has not been rebutted by the accused-appellants. The appellants have failed to make out a case for this Court to interfere in the concurrent opinions of the Courts below, convicting the accused-appellants under Section 304B, IPC. [Paras 29-31][286-F-H; 287-B-C]

1.10 For the offence under Section 306, IPC the prosecution needs to first establish that a suicide has been committed. Secondly, the prosecution must also prove that the person who is said to have abetted the commission of suicide, has played an active role in the same. With respect to this latter requirement, Section 113A, Evidence Act creates a presumption against the husband and/or his relative with respect to the abetment of suicide of a married woman, under certain conditions. A perusal of the provision indicates that such presumption shall be attracted only if the factum of suicide has been established by the prosecution first. [Para 33][287-E-G]

Wazir Chand v. State of Haryana **(1989) 1 SCC 244 – Referred to**

1.11 In the instant case, the Trial Court and the High Court have concluded that the deceased committed suicide. However, the conclusion reached by the Courts below is based on assumptions, as there is no evidence on record to support the same. There was insufficient evidence to prove the factum of suicide beyond reasonable doubt, the presumption u/s 113-A, Evidence Act, is not of much help for the prosecution. The essential ingredient of deceased committing suicide has not been proved by the prosecution by adducing sufficient evidence. Thus, the prosecution has failed to establish that the death occurred due to suicide. [Paras 34, 35][288-B-C, D-F]

1.12 The law under Section 304B, IPC read with Section 113B, Evidence Act can be summarized below:

i. Section 304B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113B, Evidence Act operates against the accused.

iii. The phrase "*soon before*" as appearing in Section 304"B, IPC cannot be construed to mean immediately before. The prosecution must establish existence of "*proximate and live link*" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

iv. Section 304B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring "*otherwise than under normal circumstances*" can, in cases, be homicidal or suicidal or accidental.

v. Due to the precarious nature of Section 304B, IPC read with 113B, Evidence Act, judges, prosecution and defence should be careful during conduct of trial.

vi. It is a matter of grave concern that, often, trial courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. The said provision incorporates the valuable principle of natural justice "*audi alteram partem*" as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

vii. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the trial with due caution, keeping in consideration the

peculiarities of Section 304B, IPC read with Section 113B, Evidence Act.

viii. Section 232, CrPC provides that, "*if, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal*". Such discretion must be utilized by the trial courts as an obligation of best efforts.

ix. Once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on and fix hearings specifically for defence evidence, calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.

x. In the same breath, trial courts need to balance other important considerations such as the right to a speedy trial. In this regard, the provisions should not be allowed to be misused as delay tactics.

xi. The presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.

xii. Undoubtedly, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court need to be cautious in its approach. [Para 36][288-F-H; 289-A-H; 290-A-E]

1.13 After perusing the relevant material and the evidence available, it is found that the High Court and trial court have not committed any error in convicting the appellants under Section 304B, IPC as the appellants failed to discharge the burden under Section 113B, Evidence Act. However, upon appreciation of facts and circumstances the offence under Section 306, IPC is not made out. Therefore, the conviction and sentence under Section 306, IPC is set aside. [Para 37][290-E-G]

Global study on Homicide: Gender-related killing of women and girls, **published by the United Nations Office on Drugs and Crime – referred to.**

Case Law Reference

[2015] 5 SCR 777	**Referred to**	**Para 8**
[2018] 7 SCR 1191	**Referred to**	**Para 9**
[2000] 3 SCR 662	**Referred to**	**Para 14**
[2015] 2 SCR 835	**Referred to**	**Para 14**
[2011] 1 SCR 724	**Referred to**	**Para 17**
[2015] 11 SCR 903	**Referred to**	**Para 23**
[1990] 2 Suppl. SCR 675	**Referred to**	**Para 23**
[1989] 1 SCC 244	**Referred to**	**Para 33**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1735-1736 of 2010

From the Judgment and Order dated 06.11.2008 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 3-SB and 16-SB1998 in FIR No. Dated 31.07.1995 u/s 304B/306/34.

Divyadeep Chaturvedi, Naveen Sharma, Advs. for the Appellants.

Raj Singh Rana, AAG., Pankaj Kumar Singh, Sanjay Kumar Visen, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, CJI

1. The present appeals arise out of the impugned judgment dated 06.11.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 3-SB of 1998 and 16-SB of 1998, whereby the High Court dismissed the appeals preferred by the appellants and upheld the order of conviction and sentence passed by the Trial Court on 11.12.1997.

2. The case of the prosecution is that the deceased and accused-appellant no.1 were married on 01.07.1994. On 31.7.1995, at about 4 or 4.30 P.M, some persons informed the complainant that his daughter was

A ailing and admitted in the hospital. On this information he, along with his wife and son, reached the hospital and found that the deceased passed away due to burn injuries.The prosecution's case was that the deceased committed suicide by setting herself ablaze just after one year of her marriage and that soon before her death she was subjected to cruelty and harassment on account of bringing less dowry by both the accused.

B

3. The appellants were convicted by the Trial Court vide order dated 11.12.1997 for the offences under Sections 304-B and 306, IPC and were sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 304-B, IPC and to undergo rigorous imprisonment for five years for the offence punishable under Section 306, IPC.

C

4. Aggrieved thereby, the appellants approached the High Court to set aside the order of conviction and sentence passed by the Trial Court. The High Court vide impugned judgment dated 06.11.2008, upheld the order of the Trial Court and dismissed the appeal filed by the appellants. The appellants have filed the present appeals by way of Special Leave, challenging the concurrent findings of the Courts below.

D

5. The learned counsel appearing on behalf of the appellants submitted that the possibility of accidental fire has not been ruled out in the present case. Moreover, most importantly, the prosecution failed to prove that there was a demand for dowry. Lastly, the prosecution has failed to prove that the demand, assuming there was one, was made proximate to the death of the deceased-victim.

E

6. On the other hand, the learned counsel for the respondent-State submitted that the appellants had not been able to show any material which would merit the interference of this Court in the concurrent findings of the Courts below. The counsel especially emphasized upon the fact that the suspicious death of the deceased victim occurred within almost 1 year of marriage. Moreover, the witnesses have stated the specific instances of demand for dowry with consistency.

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7. Having heard counsel appearing on either side and perusing the material on record, this Court needs to answer following questions:

I. Whether the Trial Court, and the High Court, was correct in convicting the accused on the charge under Section 304B, IPC?

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II. Whether the Trial Court, and the High Court, was correct in convicting the accused on the charge under Section 306, IPC?

ISSUE I

8. At the outset, it is pertinent to analyze the law on dowry death. Section 304-B IPC, which defines, and provides the punishment for dowry demand, reads as under:

> **"304-B. Dowry death. —**(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.
>
> Explanation. —For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Section 304B (1) defines 'dowry death' of a woman. It provides that 'dowry death' is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of marriage, andit is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Sub-clause (2) provides for punishment for those who cause dowry death. Accordingly, in **Major Singh v. State of Punjab,** (2015) 5 SCC 201, a three-Judge Bench of this Court held as follows:

> "10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:
>
> (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';

A (ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

B (iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death."

C 9. The first contentious part that exists in the interpretation of Section 304-B, IPC relates to the phrase "soon before" used in the Section. Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities. [refer **Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company**, (2018) 9 SCC 1, **State of Gujarat v. Mansukhbhai Kanjibhai Shah,** 2020 SCC OnLine SC 412]. At this juncture, it is therefore necessary to undertake a study of the legislative history of this Section, in order to determine the intention of the legislature behind the inclusion of Section 304-B, IPC.

E 10. Section 304-B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a long-standing social evil. The pestiferous nature of dowry harassment, wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unnoticed. The Parliament enacted the F Dowry Prohibition Act, 1961 as a first step to eradicate this social evil. Further, as the measures were found to be insufficient, the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) was passed wherein Chapter XX-A was introduced in the IPC, containing Section 498-A.

G 11. However, despite the above measures, the issue of dowry harassment was still prevalent. Additionally, there was a growing trend of deaths of young brides in suspicious circumstances following demands of dowry. The need for a stringent law to curb dowry deaths was suo motu taken up by the Law Commission in its 91st Law Commission Report. The Law Commission recognized that the IPC, as it existed at H

that relevant time, was insufficient to tackle the issue of dowry deaths due to the nature and modus of the crime. They observed as under:

> "1.3 If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. IN practice, however, two main impediments arise-
>
> (i) either the facts do not fully fit into the pigeon-hole of any known offence; or
>
> (ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult."
>
> (emphasis supplied)

12. Taking into consideration the aforesaid Law Commission Report, and the continuing issues relating to dowry related offences, the Parliament introduced amendments to the Dowry Prohibition Act, as well as the IPC by enacting Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). By way of this amendment, Section 304-B, IPC was specifically introduced in the IPC, as a stringent provision to curb the menace of dowry death in India. Shrimati Margaret Alva, who presented the Amendment Bill before Rajya Sabha observed as follows:

> "This is a social evil and social legislation, as I said cannot correct every thing. We are trying to see how and where we can make it a little more difficult and therefore we have increased the punishment. We have also provided for certain presumptions because upto now one of our main problem has been the question of evidence. Because the bride is generally burnt or the wife is burnt behind closed doors in her in-law's home. **You have never really heard of a girl being burnt while cooking in her mother's house or her husband's house. It is always in the mother-in-law's house that she catches fire and is burnt in the kitchen. Therefore, getting evidence immediately becomes a great bit problem. Therefore, we have brought in a couple of amendments which give certain presumptions where the burden of proof shifts to the husband and to his people to show that it was not a dowry death or that it was not deliberately done."**
>
> **(emphasis supplied)**

A 13. There is no denying that such social evil is persisting even today. A study titled "Global study on Homicide: Gender-related killing of women and girls", published by the United Nations Office on Drugs and Crime, highlighted that in 2018female dowry deaths account for 40 to 50 percent of all female homicides recorded annually in India.The dismal truth is that from the period 1999 to 2016, these figures have remained constant. In fact, the latest data furnished by the National Crime Records Bureau indicates that in 2019 itself, 7115 cases were registered under Section 304-B, IPC alone.

14. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase"soon before" entails. The aforesaid position was emphasized by this Court, in the case of **Kans Raj v. State of Punjab,** (2000) 5 SCC 207, wherein the three-Judge Bench held that:

> "15. … "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. **…In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time….. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."**
>
> ***(emphasis supplied)***

A similar view was taken by this Court in ***Rajinder Singh v. State of Punjab***, (2015) 6 SCC 477.

15. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term "soon before". What is pivotal to the above determination, is the establishment of a"proximate and live link" between the cruelty and the consequential death of the victim.

16. When the prosecution shows that 'soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry', a presumption of causation arises against the accused under Section 113-B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. Section 113B, Evidence Act reads as under:

> **"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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.
>
> Explanation. - For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)"

17. This Court, in the case of **Bansi Lal v. State of Haryana,** (2011) 11 SCC 359, emphasizedthe mandatory application of the presumptionunder Section 113-B of the Evidence Act once the ingredients of Section 304-B of IPC stood proved:

> **"19.** It may be mentioned herein thatthe l**egislature in its wisdom has used the word 'shall' thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry.…**Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. …
>
> **20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death."**
>
> **(emphasis supplied)**

A 18. Therefore, once all the essential ingredients are established by the prosecution, the presumption under Section 113-B, Evidence Act mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.

19. The usage of rebuttable presumption of causality, under Section
B 113-B, Evidence Act,creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to Section 304-B, IPC. In order to address this precarious situation, procedural law has some safeguards, which merits mentioning herein.

20. It is a matter of grave concern that, often, Trial Courts record
C the statement of an accused under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision
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E the accused to prepare his defense, since the inception of the trial,with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.

21. Section 232, CrPC assumes importance, which readsas, "If, after taking the evidence for the prosecution, examining the accused
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G specifically for 'defence evidence', calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused. Existence of such procedural right cohesively sits with the rebuttable presumption as provided under Section 113-B, Evidence Act.

22. The second contentious part relating to Section 304-B, IPC is
H that it does not take a pigeonhole approach in categorizing death as

homicidal or suicidal or accidental, as was done earlier. The reason for such non categorization is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental. However, the Section 304-B, IPC endeavors to also address those situations wherein murders or suicide are masqueraded as accidents.

23. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "dowry death" and the woman's husband or his relative "shall be deemed to have caused her death" unless proved otherwise. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. [refer **Maya Devi v. State of Haryana,** (2015) 17 SCC 405, **Shanti v. State of Haryana,** (1991) 1 SCC 371]

24. After having observed the law on Section 304-B, IPC, we may now turn to the merits of this case. It is clear that the submissions of the counsel for the appellants must be rejected. It is an admitted fact that the deceased and accused were married on 01.07.1994, and the death of the lady occurred on 31.07.1995.

25. With respect to the cause of death, the doctor (P.W.3) found the smell of kerosene oil on the body of the deceased who had suffered 85% burn injuries. Therefore, in the present case, the deceased victim succumbed to burns. As the death was relatable to burn injuries within seven years of marriage, it clearly satisfies the first two ingredients of the offence.

26. Coming to the issue of dowry demand, the evidence on record indicates that when the brother of the deceased (P.W.7) visited her in the matrimonial house after one month of marriage on the occasion of Raksha Bandhan, the deceased had disclosed that the accused, husband and mother-in-law, used to physically harass her on the account of bringing insufficient dowry. Furthermore, the accused persons had made a specific demand of a scooter. Pursuant to this disclosure, she was brought back to her paternal house where this fact was disclosed to father of the deceased (P.W.6). It is pertinent to note that, only a month prior to her death, the deceased had returned to her matrimonial house.However, the accused still used to harass the deceased for dowry.The aforesaid

A fact was revealed by the deceased to her father, when she had come to visit him.

27. It must be emphasized herein that, just a week before the death, on the occasion of Teej festival, another brother of the deceased (P.W.10) had visited her while she was in her matrimonial home. The B deceased had reiterated her plight to her brother. Thereafter, on 31.07.1995, the father of the deceased was informed by some villagers that his daughter has been admitted in the hospital. Upon reaching, the father discovered that the deceased succumbed to burn injuries.The aforesaid chain of circumstances proves that there existed a live and proximate link between the instances of demand of dowry and the death C of the deceased. The Trial Court, and the High Court, upon a close appreciation of the aforesaid witnesses came to the conclusion that the statements were corroborative and consistent.They found the witnesses to be reliable and on the basis of the same held that the deceased was subjected to cruelty soon before her death as she failed to bring sufficient D dowry. We are in complete agreement with the aforesaid finding of the Trial Court and the High Court.

28. From the above analysis, it is clear that the prosecution was able to successfully prove that the death of the deceased due to burn injuries took place within approximately one year of her marriage. It has E further been proved that soon before her death she was subjected to harassment and cruelty pursuant to demands of dowry. Since the ingredients of Section 304-B, IPC stand satisfied, the presumption under 113-B, Evidence Act operates against the appellants, who are deemed to have caused the offence specified under Section 304-B of IPC.

F 29. The burden therefore shifts on the accused to rebut the aforesaid presumption. The counsel for the appellants has canvassed before us that it was a case of accidental death, and hence no liability can be fixed upon them. However, in the present case, the accused persons failed to place any evidence on record to prove that the death was accidental or unconnected with the accused persons.

G 30. Here, it ought to be noted that, according to the evidence of the doctor, the entire body of the deceased was doused with kerosene oil. Therefore, the possibility of an accident can be safely ruled out. As the Trial Court concluded:

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"All these circumstances go to prove that either deceased committed suicide by sprinkling kerosene oil on her body or she was burnt by sprinkling kerosene on her body either by the accused or by somebody else and the plea of accident tried to be made out by the learned counsel for the accused, is not at all proved."

31. Therefore, the presumption adumbrated in Section 113-B, Evidence Act takes full effect in this particular case, which has not been rebutted by the accused-appellants herein. The appellantshave failed to make out a case for us to interfere in the concurrent opinions of the Courts below, convicting the accused-appellants under Section 304-B, IPC.

ISSUE II

32. Apart from their conviction under Section 304-B, IPC, the appellantshavealso additionally challenged their conviction under Section 306, IPC. Section 306, IPC relates to the abetment of suicide and is extracted below:

"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."

33. A bare reading of the provision indicates that for the offence under Section 306, IPC the prosecution needs to first establish that a suicide has been committed. Secondly, the prosecution must also prove that the person who is said to have abetted the commission of suicide, has played an active role in the same. With respect to this latter requirement, Section 113-A, Evidence Act creates a presumption against the husband and/or his relative with respect to the abetment of suicide of a married woman, under certain conditions. Not going into the other conditions, a perusal of the provision indicates that such presumption shall be attracted only if the factum of suicide has been established by the prosecution first. The necessary ingredients to constitute an offence under Section 306, I.P.C. were considered by this court in **Wazir Chand v. State of Haryana, (1989) 1 SCC 244,** wherein this Court held that:

"5. …Reading Sections 306 and 307 (sic 107) together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under

A Section 306 of the Penal Code, 1860 for abetting the commission of suicide. **A plain reading of this provision shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide."**

B ***(emphasis supplied)***

34. In the present case, the Trial Court and the High Court have concluded that the deceased committed suicide. However, we are of the considered opinion that the conclusion reached by the Courts below is based on assumptions, as there is no evidence on record to support the C same. The reasoning of the Trial Court in this regard is as follows:

> "Further, there is no direct evidence having been adduced by the prosecution the (sic) any of the accused caused death by sprinkling kerosene on the body of the deceased, the only possibility is that Meena Kumari put an end to her life by sprinkling kerosene on D her body."

35. In light of the fact that there was insufficient evidence to prove the factum of suicide beyond reasonable doubt, the presumption under Section 113-A, Evidence Act, is not of much help for the prosecution.The essential ingredient of deceased committing suicide has E not been proved by the prosecution by adducing sufficient evidence. In the present case, the prosecution has failed to establish that the death occurred due to suicide. Therefore, we are of the opinion that the finding of the Courts below convicting the appellants under Section 306, IPC merits interference by this Court.

F **CONCLUSIONS**

36. At the cost of repetition, the law under Section 304-B, IPC read with Section 113-B, Evidence Act can be summarized below:

i. Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and G dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC.Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section H 113-B, Evidence Act operates against the accused.

iii. The phrase "soon before" as appearing in Section 304-B, IPC cannot be construed to mean 'immediately before'. The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

iv. Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental.

v. Due to the precarious nature of Section 304-B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

vi. It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice "audi alteram partem" as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

vii. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.

viii. Section 232, CrPC provides that, "If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of

A acquittal". Such discretion must be utilized by the Trial Courts as an obligation of best efforts.

ix. Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of Section 232,CrPC, it must move on and fix hearings specifically for 'defence
B evidence', calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.

x. In the same breath, Trial Courts need to balance other important considerations such as the right to a speedy trial.
C In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.

xi. Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.

D xii. Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court
E need to be cautious in its approach.

37. In light of the above findings, after perusing the relevant material and the evidence available, we find that the High Court and Trial Court have not committed any error in convicting the appellants under Section 304-B, IPC as the appellantsfailed to discharge the burden under Section
F 113-B, Evidence Act. However, upon appreciation of facts and circumstances we are of the opinion that the offence under Section 306, IPC is not made out. We therefore set aside the conviction and sentence under Section 306, IPC.

38. Appeals allowed to the above extent. Pending applications, if
G any, stand disposed of.

Nidhi Jain Appeals allowed.