

Sudhakar Singh Vs. State

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Court : Delhi

Decided On : Jul-18-2014

Judge : Sanjiv Khanna

Appellant : Sudhakar Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.240/1998 Reserved on :

16. h May, 2014 Date of decision:

18. h July, 2014 SUDHAKAR SINGH Appellant Through Mr. K. K. Sud, Senior Advocate with Mr. Chirag Khurana, Mr. Vishal Dabas & Ms. Banita Singh, Advocates. Versus STATE Respondent Through Ms. Rajdipa Behura, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL SANJIV KHANNA, J.: Appellant No.2 Shyama Devi, mother of appellant No.1 Sudhakar Singh died on 8th May, 2011 and the appeal filed by her stands abated. Appeal filed by Sudhakar Singh, appellant No.1 challenging his conviction under Section 304B and 498A of the Indian Penal Code, 1860 (IPC, for short) read with Section 34 remains on board and is being decided by this judgment. The appellant-Sudhakar Singh married the deceased-Sundari Devi on 17th November, 1986. Sundari committed suicide on 19th December,

1989 in her matrimonial home at A-111, Moti Bagh-I, New Delhi. At that time, no other person/family member was at home. Sundari Devi had committed suicide by hanging herself from the ceiling fan, which is apparent from the photographs Exhibits PW-12/A, B and C, which were proved by Sunil Kumar Sharma (PW-12). In fact, the said information was conveyed to the Police Station R.K. Puram and recorded in DD entry No.38B Exhibit PW-18/A, which was handed over to SI Jagjit Singh and it was found that the house was bolted from inside. From the window they (i.e., Head Constable Ramji Lal (PW-18) and SI Jagjit Singh) noticed that a person was hanging from the ceiling fan. They broke the glass of the main door and entered the house and found that the deceased had committed suicide. The deceased had kept a stool on the bed to end her life.

2. The post-mortem report of the deceased, Exhibit PW-6/A, was proved by Dr. G.K. Chaubey (PW-6). He has referred to the ligature mark encircling front of the neck and going obliquely upwards/backwards to the nap of the neck and fading on the back of the neck. Cause of death, as opined by PW-6, was asphyxia as a result of hanging. Thus, it has been proved beyond doubt and debate that the deceased-Sundari Devi had died an unnatural death within seven years of marriage (in fact within about three years after marriage) in her matrimonial home.

3. The next and the primary question which arises for consideration is whether the suicide was as a result of the required actus reus, i.e., cruelty as defined in Section 498A IPC or the actus reus in the form of demand of dowry soon before the death, which is mandated by Section 304B IPC.

4. Before we dwell into the factual aspects, it would be relevant to reproduce Section 498A and Section 304B IPC. 498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.- For the purpose of this Section, cruelty means(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) Harassment of the woman where such harassment

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

5. Under Section 498A IPC, cruelty can be of two types. Firstly, wilful conduct of a nature which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Wilful conduct can be both mental and physical but it must relate to a woman. Secondly, cruelty can also mean harassment with a view to coercing her or any person related to her to meet unlawful demand of any property or valuable security or on account of her failure or of any person related to her to meet such demand. The second aspect is relatable to property, and should be with a view to coerce her or any other person related to her to meet any unlawful demand of property or valuable security. Further, the harassment should be on account of her failure or failure of any other person related to her to meet the said demand.

6. Section 304B has the following requirements: (i) The woman should have died because of burns, bodily injury, poison or otherwise than under normal circumstances within seven years of marriage; (ii) It should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or relative of her husband for or in connection with any demand of dowry; and (iii) The term dowry shall have the same meaning as defined in Section 2 of the Dowry Prohibition Act, 1961.

7. When we examine whether or not the offences under Section 304B and Section 306 IPC are made out, we have to apply the standard of proof and weigh the evidence/material keeping in mind the statutory mandates of Sections 113B and 113A of the Indian Evidence Act, 1872. We shall be referring to the said sections subsequently after examining the ocular evidence on record.

8. On the question of date of marriage, Davki (mother of Sundari) (PW-3) has deposed that the appellant-Sudhakar had got married to Sundari on 17th November, 1986. This part of her testimony remains uncontroverted. The appellant in his statement under Section 313 Cr.P.C. has accepted the date of marriage as 17th November, 1986. This brings us to the evidence on the question of cruelty and demand of dowry. Davkimother (PW-3) has deposed that after six months or one year of marriage, the appellant-Sudhakar and his mother started demanding dowry in form of fridge, scooter and cash. The demand was raised to her daughter. She was harassed for not bringing the said items and the appellant and his deceased mother used to fight with her daughter for the said reason. The deceased had visited her parental house 15 days prior to her death and complained about her mother-in-law and the appellant. In her cross-examination, PW-3 has stated that she had not lodged any police report and had not requested them to intervene in the matter. She has not gone to any institution or organisation seeking support. This, to our mind, does not affect PW-3s deposition because as a mother she was interested that her daughters marriage continues and going to a police station or taking help from a third party/organisation would have only been fatal and detrimental to their interest. In the cross-examination, PW-3 has deposed that in this situation appellant-Sudhakar had stopped the deceased from speaking and talking to her. They had spoken to Suman Singh about the behaviour of appellant-Sudhakar and his mother. However, at the time of marriage, there was no talk of dowry. PW-3 accepted that no direct demand was made to her, but the demand was communicated through her daughter. She could not tell the date, month or year when her daughter told her about the dowry demand.

9. Ganga Singh (PW-4) father of deceased Sundari has similarly deposed that after about 2 to 3 months of marriage, the appellant started demanding/claiming that costly items had not been given as dowry. These included fridge, TV, scooter

and his daughter had told him that her mother-in-law and husband wanted her to secure money from them, i.e., her parents for purchasing the said items. They wanted a scooter, television and fridge. Sundari was being pressed to bring the said items. In his cross-examination, PW-4 deposed that he was a hawker and one Suman Singh, his brother-in-law had acted as a middleman in the marriage as he was also related to appellant No.1. He had not gone to the house of Suman Singh requesting him to mediate or intervene. Deceased Sundari had informed him that she was being harassed by her mother-in-law, appellant No.1 and some other family members, but he had not made any complaint to the police or to the Womens Cell. Deceased had written one letter to her brother (PW5) but had not written any letter referring to demand of dowry or harassment on account of the same.

10. Om Prakash-brother of the deceased (PW-5) was the informant/complainant also. He has stated that after one year of marriage, mother-in-law of the deceased and the appellant-Sudhakar started harassing Sundari, his sister. The mother-in-law would not provide clothes, shoes etc. and she would not allow Sundari to come to her parental house. Sundari was described as unlucky person (manhus) and taunted that since she had come to their house, their savings had dropped. She had brought insufficient dowry, neither television nor fridge had been bought. In 1988, Sundari had visited their house and narrated the said facts. She had stayed with them for one month and then returned. Again in the year 1989, Sundari had come to their house and only a week back, she had returned to her matrimonial home. Earlier, PW-5 had gone to Sundari's matrimonial home to bring her to her parental home. PW-5 had then offered sweets to her mother-in-law and requested her to send Sundari for his marriage function in their house. She had thrown away the sweets and sharply criticised them. He had then brought his sister forcibly. After about one month, the appellant No.1 attended the marriage of PW-5 at the house of his (PW5s) in laws i.e. the bride's house but did not visit their house. Thereafter, appellant-Sudhakar had come to their house to take deceased Sundari Devi and at that time they had refused insisting that the appellant-Sudhakar should take some responsibility. Parents of PW-5 had called upon appellant No.1 not to harass his sister, whereupon he had promised and assured them that in future he would not do the same.

11. Apart from the testimony of the family members, we have statement by Raj (PW-2), a neighbour. She has deposed about marriage of deceased Sundari with the appellant-Sudhakar in the year 1987 and claimed that whenever deceased Sundari used to visit their house, she looked greatly frustrated. On being questioned, she used to tell them that her mother-in-law was tyrannical and harsh towards her and used to demand one thing or the other and used to criticise her for having brought insufficient dowry. Deceased used to be taunted for not being beautiful and the fact that she was not a mother. She had brought ill luck, and thus was called manhus by her mother-in-law. Deceased Sundari belonged to a middle class family which was not so rich to meet the demands. In the cross-examination, PW-2 has stated that appellant No.1 was working in CPWD and she has seen the appellant-Sudhakar at the time of his engagement ceremony. The deceased was not despondent as she was not a mother but she was unhappy because of the taunts given to her by appellant No.1 and his now deceased mother for not bearing a child. PW-2 had not given any attention to the dowry articles given at the time of marriage and was thus, not aware whether any report had been made to police or to the Crime against Women Cell. PW-2 had seen a beating mark upon deceased Sundari once, but she did not remember the date, month or year.

12. Before we elucidate on the testimonies, we would like to first refer to the dying declaration made by deceased Sundari. Appellant No.1 has challenged the dying declaration on various grounds, including its authenticity and whether the suicide note could be treated as a dying declaration. SI Devender Singh (PW-16), a member of the crime team had inspected the spot and had found Sundaris body hanging from the ceiling fan. He has stated that a suicide note was lying under the pillow. It was written on two pages torn from a diary. The note was written in red ink and a red refill was found lying inside the diary kept on the shelf. He had recorded the said facts in his report (Exhibit PW-16/A), which was signed by him at point A. In the cross-examination of PW-16, he was asked whether the scene of crime was tampered with or touched by anyone, to which PW-16 had responded that he could not state the same. He had checked the refill of the pen and found it to be red.

13. The aforesaid fact that the suicide note was found under the pillow should be accepted in view of the statement of PW-16, which is corroborated by the contemporaneous report (Exhibit PW-16/A). It is obvious that after the note was found, it had to be preserved. Reliance placed by the counsel for the appellant-Sudhakar on the testimony of PW18 Head Constable Ramji Lal does not propel us to accept the argument that the suicide note was possibly written much earlier in point of time or was found in the diary itself. PW-18 Head Constable Ramji Lal had reached the spot after receiving copy of DD No.38B (Exhibit PW-18/A) dated 19th December, 1989. Upon reaching the spot, PW-18 had noticed that a diary was lying on a table in the room. The Investigating Officer, i.e., PW-18 opened the diary and found suicide note written by hand available in the said diary. IO recorded statement of Om Prakash (PW-5), who had come on the spot. It is apparent that after the suicide note was recovered and the diary was noticed, the diary and suicide note were kept on the table. DD No.38B dated 19th December, 1989 was recorded at 3.47 P.M. whereas the crime team led with SI Devinder Singh (PW-16) had reached the spot earlier. Crime team report (Exhibit PW-16/A) mentions period of inspection as 4 to 5.15 P.M. and it is specifically recorded that the suicide note was lying beneath the pillow lying on the bed. It was in two pages and written in red ink and the diary from which the pages were torn was also found along with the pen refill used for writing the suicide note. It is, therefore, clear to us that the suicide note was written immediately before the death. The deceased had torn two pages from the diary and had written the said note in red ink, signifying blood and death. As noticed above, the deceased had died by hanging herself from a ceiling fan after standing on a stool, which was kept on the bed. It was a deliberate act. The suicide note, therefore, has been rightly treated and regarded as a dying declaration of the deceased. The handwriting of the deceased on the said note was identified by Om Prakash (PW-5), brother of the deceased.

14. In order to decide the controversy in question, i.e., whether the deceased was subjected to cruelty or harassment, we would like to reproduce the suicide note in verbatim. English translation of the note reads:

I am leaving this world forever. My husband and inhumane mother-in-law are responsible for ruining my life. I want to live , but I am unable to live. Regards for

maa, baba ji, brother and mami ji. Please forgive me, as your daughter-sundari cant live because I cannot fulfil desires of these people. They do not want me to attend my brothers marriage, but is it possible, no, never!

15. The aforesaid note speaks for itself about the agonising pain and the suffering of the deceased-Sundari Devi which compelled her to take her life, though she wanted to live. She had blamed both her mother-in-law, appellant No.2 (who has died) and her husband appellant No.1 Sudhakar Singh. We have also examined the said note in original. The said note is written on two pages marked Exhibits PW-5/D and 5/E. The last two sentences of the note are extremely important and refer to two aspects. Firstly, that she is unable to fulfil the desires of the appellant and his mother and secondly, that she was being prevented or prohibited from attending the marriage of her brother.

16. It has come on record that marriage of one brother of the deceased Sundari had taken place in February, 1989 and appellant-Sudhakar had not attended the ceremonies or visited the parental home of the deceased Sundari. Appellant No.1 Sudhakar instead had preferred to go to the house of the girl, i.e., the bride as he was also related to the said side. Thus, it would be reasonable to infer and accept that the appellant Sudhakar had serious grievance and dislike and, therefore, had not attended the ceremonies or functions at the residence of deceased Sundaris parents/brother. The said position is indicative of the resentment and grudge that the appellant No.1 had for the family of Sundari. The said antipathy and abhorrence had grown and intensified between February, 1989 and November, 1989 as deceased Sundari was not being allowed and was barred/prohibited from attending the marriage of her second brother. Deceased Sundari rightly felt that this was not possible and how could she not attend the wedding of her own brother and that too only because she was unable to fulfill certain demands.

17. Learned counsel for the appellant has drawn our attention to the letter Exhibit A-2, which was written by deceased Sundari to her brother in Hindi. The verbatim translation of the said letter reads as under:

Dear brother, accept regards from your sister. Seeking blessings of maa, baba ji, brother and mam ji. I am fine. (kushalpurvak). Further thing, brother as you had

asked for the address of your brother-in-laws (jija) office, that I didnt have. Even, you did not call your brother-in-law. I asked him day before yesterday and yesterday also. What is the reason?. I had made him to write his address and sent it to you. Rest everything is fine. I only pray this much that you may get a job.

18. The aforesaid letter when read between the lines reveals that the relationship between the two brother-in-laws was deficient and perfunctory and deceased Sundaris brother was reluctant to directly speak to Sudhakar Singh, the appellant herein, which is normal and natural in a cordial and close relationship. Even after 1 to 2 years of marriage, the two brothers-in-law could not comfortably interact and speak to each other on issues including the aspects referred to in the letter. Ganga Singh (PW4) in categorical terms has stated that the deceased had written one or two letters to her brother and last one was written about an year before her death. We would not like to read this letter in isolation and use it as a negative or incriminating fact against appellant No.1 as it is also capable of being interpreted as a letter written by the deceased showing/deposing confidence in the appellant No.1. However, the letter shows that in spite of appellant No.1 not visiting the parental home of the deceased on the occasion of the marriage of her first brother, the deceased had reconciled and had taken the said lapse and incident in her stride and moved on.

19. A reading of the suicide note itself would justify conviction of the appellant under Section 498A IPC. It will certainly qualify and meet the mandate of part one of the Explanation to Section 498A IPC, which not only includes physical cruelty but the mental cruelty. We, therefore, do not think that there can be any doubt or debate upon conviction of the appellant under the said section.

20. The second aspect relates to the conviction of the appellant under Section 304B wherein the requirement is different and relates to demand of dowry soon before death. It is here that Sections 113A and 113B of the Evidence Act are relevant and material.

21. Section 113A of the Evidence Act reads:

113A. Presumption as to abetment of suicide by a married women - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation For the purposes of this section, "cruelty" shall have the same meaning as in section 498 A of the Indian Panel Code (45 of 1860).

22. The said Section raises a presumption when a wife commits suicide within seven years from the date of her marriage and it is shown that the husband or his relatives had subjected her to cruelty as defined under Section 498A IPC,. The husband or relatives of the husband might have abetted the deceased to commit suicide and therefore, they have committed an offence under Section 306 IPC. The presumption which arises is rebuttable. On the said aspect, we have already recorded a finding that the charge of cruelty under Section 498A IPC stands proved against appellant No.1. However, the appellant-Sudhakar Singh has not been convicted under Section 306 IPC.

23. Section 113B of the Evidence Act reads:

113B. Presumption as to dowry death When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code(45 of 1860).].

24. The aforesaid presumption applies to prosecution under Section 304B IPC i.e. in cases of dowry death. The requirement before the presumption is invoked is that the prosecution should show that soon before her death, the wife had been subjected to cruelty or harassment for or in connection with any demand for dowry. The court in such cases should presume that the said person has caused dowry

death. The term dowry death has to be read and is given the same meaning as in Section 304B IPC. The Section negates and obliterates a necessity or requirement that the prosecution should establish actual participation of the husband or his relative in the commission of the offence. The reason for incorporating and enacting the presumption is obvious; normally dowry deaths take place within four corners of the matrimonial home and it is difficult, if not impractical, to expect relatives or the husband to come forward and depose as to how the husband or other relative had participated or were active participants in commission of the offence. CRL.A. No.240/1998 The aforesaid sections i.e. Page 17 of 34 Section 113A and 113B of the Evidence Act were inserted by Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) Dowry Prohibition (Amendment) Act (43 of 1986) respectively.

25. In Pawan Kumar v. State of Haryana, (1998) 3 SCC309 Section 304B IPC was interpreted and the following ingredients to prove the offence were highlighted:

6. Let us see Section 304-B IPC. The ingredients necessary for the application of Section 304-B are: (a) When the death of a woman is caused by any burns or bodily injury, or (b) occurs otherwise than under normal circumstances (c) and the aforesaid two facts spring within 7 years of girl's marriage (d) and soon before her death, she was subjected to cruelty or harassment by her husband or his relative, (e) this is in connection with the demand of dowry.

26. The aforesaid presumption under Section 113B of the Evidence Act takes care of the difficulty in proving requirement (e) i.e. the death was in connection with the dowry, once the other ingredients/requirements of Section 113B are established. In Pawan Kumars case (supra), Section 2 of the Dowry Prohibition Act, 1961 was interpreted and it was highlighted that the Dowry Prohibition Act, 1961 was enacted to provide effective check on the evil practice of dowry and its ill effect. Section 2 of the Dowry Prohibition Act reads:

2. Definition of "dowry". In this Act, "dowry" means any property or valuable security given or agreed to be given (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 a other person, to either party to the marriage or to any other person; at or before or

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

27. The definition of dowry was expanded and extended to include the period even after solemnisation of marriage by Act 43 of 1986. The Supreme Court elucidated that in criminal jurisprudence, principle of benefit of doubt extends to the accused and has an important role but the same prevails within the confines of the stringency of laws. In case of abnormal death such as dowry death, the deeming provisions in form of Sections 113A and 113B of the Evidence Act along with applicable provisions of Indian Penal Code have a great role to play and should not be taken lightly or ignored or otherwise, the very purpose of the amendment would be lost. Of course, the prosecution has to prove the essential ingredients beyond all reasonable doubts after raising and relying upon the initial presumption of deemed dowry death. Principle of mischief rule i.e. the construction which suppresses the mischief and advance the remedy is applicable.

28. The term soon before death which finds incorporation in Section 304B IPC and Section 113B of Evidence Act has been interpreted in several cases to connote and signify reference to course of conduct which may be spread over a period of time. It is a relative term and the time or period applicable would depend upon circumstances of each case and no strait jacket formula can be laid down as to what would construe a relevant/culpable period before the occurrence. The said period should not be unreasonably stretched or made abnormally narrow/small but a practical and pragmatic approach should be adopted. In *State of Punjab v. Iqbal Singh* : AIR (1991) SC1532 it was observed:

8. The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and

in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members Section 498A, Indian Penal Code would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to Section 304B, Indian Penal Code. be punished Under When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. of course if there is proof of the person having intentionally caused her death that would attract Section 302, Indian Penal Code. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, Indian Penal Code. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide.

29. In the case of *Kans Raj v. State of Punjab and Ors.* : (2000) 5 SCC207 it has been held that in cases of dowry death, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instances but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand of dowry is shown to have persisted, it shall be deemed to be "soon before death".

30. Elucidating the said principles in *Dhian Singh and Anr. v. State of Punjab*: (2004) 7 SCC759 the Supreme court observed that such cruelty on account of demand of dowry should be soon before death in the sense that there should be proximate connection between the alleged cruelty and death. In the said case, the Supreme Court upheld conviction under Section 304B IPC observing that only after mediation, the deceased had gone back to the accused's house and soon thereafter i.e. within two months, the death occurred. There was evidence to show that the accused had demanded dowry and had therefore sent his wife away from his house. Similarly in *Kailash v. State of Madhya Pradesh* (2006) 12 SCC667 it has been held:

No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression 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. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term "immediately before". This is because of what is stated in Section 114 Illustration (a) 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" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link.

31. Thus, the expression soon before is required to be considered and applied under specific circumstances of each case. The said term is not synonymous with the term immediately before and whether the period can be termed as soon before death is left to be determined by the court depending upon circumstances of each

case.

32. Similar elucidation can be found in *Kans Raj (supra)* and *Hira Lal v. State (Govt. of NCT), Delhi (2003) 8 SCC80*. In the last decision, reference has been made to illustration A to Section 114 of the Evidence Act where expression soon before is also used and it has been held that the term soon before is case specific and has to be determined by the courts depending upon facts and circumstances of each case. There should be existence of proximate and live link between the demand of dowry and the unnatural death.

33. In *Kashmir Kaur v. State of Punjab, (2012) 13 SCC627* it was held:

13. In *Kaliyaperumal [(2004) 9 SCC157:*

2004. SCC (Cri) 1417]. para 5 is relevant for our purpose which reads as under: (SCC pp. 162-63)

5. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the death occurring otherwise than in normal circumstances. The expression soon before is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. Soon before is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression soon before her death used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression soon before is not defined. A reference to the expression soon

before used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term soon before is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression soon before would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

xxxx xxxx 17. From the above decisions the following principles can be culled out:

17. 1. To attract the provisions of Section 304-B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry. 17.2. The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal. 17.3. Such death occurs within seven years from the date of her marriage. 17.4. That the victim was subjected to cruelty or harassment by her husband or any relative of her husband. 17.5. Such cruelty or harassment should be for or in connection with demand of dowry. 17.6. It should be established that such cruelty and harassment was made soon before her death. 17.7. The expression soon before is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. 17.8. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. 17.9. Therefore, the expression soon before would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate or live link between the effect of cruelty based on dowry demand and the death concerned. In other words, it should not be remote in

point of time and thereby make it a stale one. 17.10. However, the expression soon before should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results. 17.11. Section 304-B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304-B. 17.12. Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304-B were not satisfied. 17.13. The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients are satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.

18. Keeping the above principles in mind, when we examine the case on hand, we find the following uncontroverted facts: (i) The death of the deceased occurred 11 months after her marriage thereby the main condition prescribed under Section 304-B, namely, within seven years of the marriage was fulfilled. (ii) The death of the deceased was not normal as evidenced by the version of PW1 post-mortem doctor, the post-mortem certificate and also Ext. PG, the report of the chemical examiner. (iii) The evidence of PWs 2 and 3 read along with Exts. PH to PK disclose that there was a demand for payment of cash of Rs 30,000 apart from a stereo set and a scooter. (iv) According to PW2 father of the deceased, three to four days prior to the unfortunate death of the deceased his daughter came to his house and expressed her dire need for payment of Rs 30,000 as demanded by her in-laws and that she was being harassed on that score. (v) The evidence of PW3 was to the effect that on the date of the death of the deceased, namely, 3-11-1987 he happened to witness the torture meted out to the deceased at the hands of her in-laws. (vi) Though on behalf of the appellant and other accused certain witnesses were examined by way of defence, both the trial court as well as the

appellate court have noted that nothing concrete was brought out to show that the evidence led on the side by the prosecution through PWs 1 to 3 were in any way contradicted.

34. Recently, in *Surinder Singh v. State of Haryana*, (2014) 4 SCC129 it has been observed:

26. While we reiterate what this Court has said in *Appasaheb [Appasaheb v. State of Maharashtra, (2007) 9 SCC721: (2007) 3 SCC (Cri) 468]*. that a penal statute has to be construed strictly, in light of *Kisan Trimbak [Kisan Trimbak Kothula v. State of Maharashtra, (1977) 1 SCC300:*

1977. SCC (Cri) 97]. and *Natwarlal Damodardas [State of Maharashtra v. Natwarlal Damodardas Soni, (1980) 4 SCC669:*

1981. SCC (Cri) 98]., we are of the opinion that penal statute, even if it has to be strictly construed, must be so construed as not to defeat its purport. Harassment of a married woman in an Indian household is a peculiar phenomenon. In most cases it is seen that the husband or the members of his family are never satisfied with what they get as dowry. The wife's family is expected to keep fulfilling this insatiable demand in some form or the other for some period of time after marriage. Such demands are also fulfilled by parents of the wife for fear of their daughter being ill-treated. The courts of law cannot lose sight of these realities. The presumption under Section 113-B of the Evidence Act, 1872 and the presumption under Section 304-B IPC have a purpose. These are beneficent provisions aimed at giving relief to a woman subjected to cruelty routinely in an Indian household. The meaning to be applied to each word of these provisions has to be in accord with the legislative intent. Even while construing these provisions strictly care will have to be taken to see that their object is not frustrated.

27. As stated by this Court in *Appasaheb [Appasaheb v. State of Maharashtra, (2007) 9 SCC721: (2007) 3 SCC (Cri) 468]*. a demand for meeting financial stringency may not fall within the ambit of the term dowry as defined under the Dowry Prohibition Act. Similarly, a demand of money made six months after marriage for setting up computer business of the husband may not be covered by

the term dowry as stated in Vipin Jaiswal [Vipin Jaiswal v. State of A.P., (2013) 3 SCC 684: (2013) 2 SCC (Cri) 15]. . But, in this case, the demand is made to complete and fulfil the demand of dowry made prior to the marriage. The appellant's grievance was about the inferior and insufficient dowry given by the deceased's family and after marriage that was sought to be fulfilled by asking for Rs 60,000 for setting up the appellant's business or for getting him some job. Insufficient dowry given to the appellant was sought to be supplemented by the demand of Rs 60,000. The present case, therefore, stands on a different footing. Section 304-B IPC is clearly attracted to this case.

28. It was argued that the evidence of the doctors examined by the appellant show that the deceased's pregnancy was terminated, that she was told that she may not conceive a child again and that, thereafter, she was in depression. It is argued that, therefore, she committed suicide. It is not possible to accept this submission. Even if the pregnancy of the deceased was terminated, that would not necessarily lead to depression. In fact, DW3Dr C. Vijayendra, who terminated the pregnancy of the deceased stated that it is not necessary that a patient may suffer from depression after termination of pregnancy. Neither DW1Dr Mrs Iqbal Kaur or DW2Dr Mrs Ritu Mago stated that the deceased was in depression. They stated that there was no imminent danger to the life of the deceased. No medical record was produced to show that the deceased was in depression and she was taking medicine for the same. There is nothing on record to show that the deceased was told that she will never conceive a child. It is not, therefore, possible to say that the deceased committed suicide because she was in depression.

35. Two submissions have been raised before us. Firstly, deceased Sundari could not conceive and have a child within three years of marriage and this was the cause for the strained relationship and quarrels. Reliance is placed upon testimonies of Yograj Sharma (DW-1) and Ved Prakash Yadav (DW-2) and our attention is also drawn to the fact that Raj (PW-2) in the cross-examination was specifically asked whether the deceased was depressed as she could not conceive. Secondly, reliance is placed upon the FIR and the statement (Ex.PW5/A) of Om Prakash (PW5) which only had reference to demand of cash for purchasing a threewheeler scooter, whereas prosecution witnesses Davki (PW-

3), Ganga Singh (PW-4) and Om Prakash (PW-5) have referred to demand of television, fridge, scooter etc. It is submitted that the witnesses did not specify the date/time etc. and their statements are vague and lacking in particulars.

36. On the first aspect, it is noticed that Raj (PW-2) in the crossexamination was asked and replied that deceased Sundari was not unhappy for not bearing a child, but she was traumatised because of the taunts given to her for being able to conceive. Davki (PW-3), the mother was not cross-examined and no question was put to her on the said aspect. Ganga Singh (PW-4) again was not cross-examined and no suggestion was given to him that deceased Sundari was mentally disturbed because she could not conceive. On a suggestion being made during cross- examination, PW4 accepted that deceased Sundari was being treated in a hospital but he immediately asserted that his daughter and son in law were being treated in a hospital and papers relating to their ailment details must be with the appellant. No such details or papers have been placed on record. To Om Prakash (PW-5) in the cross-examination, it was specifically suggested that deceased Sundari had taken her life because he (PW5) was unemployed and due to economic condition of their father. He denied the suggestion and stated that he was working and this was not the reason. Om Prakash (PW5) had identified handwriting of his sister deceased Sundri on the suicide note Ex.PW5/D and 5/E.

37. Appellant No.1, Sudhakar in his statement under Section 313 Cr.P.C., had in response to question No.44 stated that he was innocent and was falsely implicated in this case. No dowry was ever demanded and deceased Sundari was disturbed on account of her fathers problems and her brothers unemployment. He has not stated or highlighted that deceased Sundari was mentally disturbed and perturbed because she could not conceive and therefore she had committed suicide. Similar stand was taken by now the dead accused No.2, Shyama Devi. In case and if the deceased was mentally disturbed as she could not conceive or have a child, the said factum would have been highlighted and would have been the cornerstone and the main fulcrum of the cross-examinations as well as including the statement of the accused under Section 313 Cr.P.C. This is not so.

38. Yograj Sharma (DW-1) in his examination-in-chief has himself accepted that the relations between the appellant Sudhakar and his mother on the one side and deceased on the other side remained well for about an year after marriage but thereafter they became strained and quarrels used to take place off and on in their house. The reason given was that deceased Sundari did not conceive. Thus, as per DW-1, quarrels had started one year after the marriage, which is too soon for quarrels to take place because deceased Sundari could not conceive. Further, DW-1 had deposed that he had not seen deceased Sundari for about 3-4 months prior to her death. Indeed, harassment and valedictory cursing does/will amount to mental cruelty under Section 498A IPC.

39. Ved Prakash (DW-2) was a neighbour and had claimed that every day he used to meet deceased Sundari and appellant Sudhakar, but deceased Sundari had never complained. DW-2s deposition that his wife told him that deceased Sundari used to remain disturbed as she could not conceive is a hearsay evidence and is not admissible. Vijay Nair (DW-3) was also a neighbour and has stated that he had never seen deceased Sundari and appellant Sudhakar quarrelling, which is something contrary to what has been testified by Yograj Sharma (DW-1). DW-3 accepted that he was aware that Sudhakar had been arrested by police, but he did not lodge any complaint and come forward to state that Sudhakar had been wrongly implicated.

40. In view of the aforesaid discussion, it is apparent to us that the defence version that deceased Sundari had taken her life as she was mentally disturbed and depressed because she could not become a mother, is an afterthought and a false plea. This is not the reason and the cause given in the suicide note, which specifically refers to inability to fulfil the desires of her mother in-law/husband. The desire in the said case would not have any reference to her (Sundari) becoming a mother, but would have reference to something else. Further, it is clear from the suicide note that failure to meet the desire or demand had propelled the appellant and his mother to issue an intimidating and audacious mandate that deceased Sundari would not attend her second brothers marriage fixed on 31st December, 1989. In case there was any medical problem, the appellant would have certainly taken deceased Sundari for medical examination and consultation. Possibly,

medical examination of the appellant was also required. PW4 Ganga Singh, father of the deceased on suggestion in the cross-examination had stated that deceased was being treated in a hospital but the appellant was also being treated and details, if any, were known to the appellant only. There is nothing in the post mortem report to indicate that the deceased was suffering from a serious or life threatening ailment. As noticed above, the suggestion i.e. mental/psychological depression due to inability to conceive has not been given to some of the witnesses and was not the plea or ground mentioned by appellant No.1 in his statement under Section 313 Cr.P.C. It is apparent that the desire or demand referred to in the suicide note was not the wish and desire that Sundari becomes a mother but was something different and related to monetary consideration. Normally a demand is made for monetary consideration or a material object.

41. Thus, the appellants alibi and plea that the demand/desire referred to in the suicide note Ex. PW5/E did not relate to a material object or a dowry demand, but deceased Sundaris own inability to conceive, has to be rejected.

42. Statement of Om Prakash (PW-5), Ex.PW5/A which resulted in registration of FIR, refers to demand of Rs.5,000/- for purchase of a threewheeler scooter. The statements made by Davki (PW-3), Ganga Singh (PW-4) and Om Prakash (PW-5) also referred to demand of scooter in addition to other items. Even if we disregard their testimonies referring to other items as exaggerations and improvements, no benefit would accrue and can be given to the appellant No.1 as the said witnesses are consistent and have uniformly deposed about demand of money for purchase of a scooter.

43. In view of the aforesaid discussion, we uphold the conviction of appellant No.1 under Sections 498A and 304B IPC. The next question relates to quantum of punishment. Offence under Section 498A IPC is punishable for a term which may extend to three years and the accused is also liable to pay fine. Offence under Section 304B IPC is punishable with imprisonment for a term which shall not be less than seven years but may extend to imprisonment for life. The aforesaid appeal was preferred in the year 1998 and deceased undari had committed suicide in December, 1989. A long time has elapsed since then. As per papers

available on record, appellant No.1 was released on suspension of sentence vide order dated 14th July, 1998. We have quoted the dying declaration marked Ex. PW16/A wherein the deceased Sundari had specifically used abusive word in respect of her mother in law Shyama Devi appellant No.2, who has expired, indicative that she (Sundari) had primary grievance and complaint against her.

44. Keeping in view the aforesaid facts, the sentence awarded to appellant No.1 under Section 304B is reduced from life imprisonment to seven years, which is the minimum sentence stipulated. The sentence of three years and fine of Rs.1,000/- awarded to the appellant No.1 for the offence under Section 498A IPC is maintained. In default of payment of fine, appellant No.1 will undergo rigorous imprisonment for three months. The sentences will run concurrently and benefit of Section 428 Cr.P.C. will be given.

45. Conviction of appellant No.1 Sudhakar Singh, under sections 498A and 304B IPC is upheld, but the sentence awarded under section 304B IPC is modified. The appellant is accordingly required to surrender and undergo the remaining sentence. In case the appellant does not surrender within a period of one month from the date of pronouncement of the judgment, the trial court will take appropriate steps in accordance with law. The appeal is disposed of accordingly.-
.sd- (SANJIV KHANNA) JUDGE -sd- (G.P. MITTAL) JUDGE JULY18 2014
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