

HIGH COURT OF CALCUTTA**Bench : The Hon'ble Justice Ananya Bandyopadhyay****Date of Decision:10 May 2024**

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

C.R.A. 505 of 2009

Goutam DeyAppellant**-Vs-****The State of West Bengal**Respondents**Legislation:**

Sections 498(A), 304(B), 306 of the Indian Penal Code, 1860

Section 161 of the Criminal Procedure Code, 1973

Section 113A of the Evidence Act

Subject: Criminal appeal challenging conviction under sections relating to dowry death, cruelty, and abetment of suicide, where the prosecution's allegations of continuous cruelty could not be substantiated.

Headnotes:

Criminal Law – Appeal against conviction in dowry death case – Challenge to the sufficiency of evidence regarding cruelty and dowry demands leading to the wife's suicide – Key witnesses, including family members and neighbors, provide conflicting testimonies about the nature of the relationship and alleged cruelty – Prosecution fails to establish a direct connection between cruelty by the appellant and the suicide of the deceased [Paras 1-11].

Evidence Evaluation – Inadequacy of Evidence to Prove Dowry Death or Suicide Abetment – The appellate court highlighted significant gaps in the prosecution's case, particularly the lack of direct evidence linking the accused to the victim's suicide and the failure to prove ongoing cruelty or specific demands for dowry proximate to the time of death. Key witnesses either did

not support the prosecution or were declared hostile, undermining the credibility of the allegations [Paras 4-11, 18-20].

Legal Principles – Application of Section 113-A of the Evidence Act in Dowry Death Cases – The court discussed precedents and the application of legal principles concerning the presumption of abetment of suicide in dowry deaths. It emphasized the need for clear evidence of cruelty linked directly to the victim's death to uphold such convictions. The decision referenced several Supreme Court judgments that set the standards for interpreting these legal provisions [Paras 12-17].

Decision – Conviction under Sections 498(A), 304(B), and 306 IPC set aside due to insufficient evidence of cruelty or harassment connected to the demand for dowry and direct abetment of suicide – Appeal allowed [Paras 21-22].

Referred Cases:

- Kahkashan Kausar v. State of Bihar [2023 SCC OnLine SC 1622]
- Mahalakshmi v. State of Karnataka [2023 SCC OnLine SC]
- Heera Lal v. State of Rajasthan [2018 SCC 323]
- Naresh Kumar v. State of Haryana [SCC]
- Ude Singh v. State of Haryana [SCC]
- Representing Advocates:

For the Appellant: Mr. Prabir Kumar Mitra, Mr. S. Nanda

For the Respondent: Mr. Anand Keshari

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 26.03.2009 and order of sentence dated 27.03.2009 passed by the Learned Additional Sessions Judge, Fast Track (1st Court) Paschim Medinipur in Sessions Trial Case No. 59/July/2008 arising out of Kotwali Police Station Case No. 238/07 dated 06.10.2007 whereby convicting the appellant for the offences punishable under Section 498(A)/304(B)/306 of the Indian Penal Code and thereby sentencing the appellant to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 1000/- in default to suffer simple imprisonment for 60

days for the offence punishable under Section 498(A) of the Indian Penal Code, 1860 and further sentencing the appellant to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2000/- in default to suffer simple imprisonment for 90 days for the offence punishable under Section 304(B) of the Indian Penal Code and also sentencing the appellant to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 2000/- in default to suffer simple imprisonment for 90 days for the offence punishable under Section 306 of the Indian Penal Code and the sentences of imprisonment shall run concurrently.

2. The prosecution precisely stated that a complaint to have been filed by the mother of the deceased victim, inter alia, stating that her daughter was married to the appellant on 08.08.2001 satisfying the demand of dowry including a sum of Rs.40,000/- in cash, gold ornament, brass utensils, bedding, cot etc. After a year of the aforesaid marriage the victim gave birth to a girl child. The victim was unnecessarily coerced to obtain money from the de-facto complainant. During the lifetime of her husband she ably provided the same however failed to meet such demands after the demise of her husband which resulted into physical and mental torture to be inflicted upon victim by her husband, father-in-law and mother-in-law which aggravated gradually and negotiation on her part failed due to their poverty. On 03.140.2007 she was informed that her daughter was admitted at Medinpur Medical College in serious condition. The de-facto complainant accompanied by her son learnt that the victim was admitted at the aforesaid hospital in dead condition. It further revealed that the victim committed suicide by hanging early in the morning on 03.10.2007 owing to the torture by her husband, father-in-law and mother-in-law. The de-facto complainant learnt from a reliable source that her daughter had written a suicidal note which was concealed from them. The son of the defacto complainant went to the matrimonial house of the victim to withdraw the girl child. The defacto complainant suspected that the victim was murdered and thereafter hanged by the accused persons.
3. Based on the aforesaid complaint Kotwali P.S case no.238 of 2007 dated 06.10.2007 under Sections 498/306 IPC was instituted. On completion of the investigation, charge-sheet was submitted. Subsequently charges were framed to which the accused persons pleaded not guilty and claimed to be tried.
4. The prosecution cited 12 witnesses and exhibited certain documents.

5. Learned Advocate for the appellant submitted that –
 - i. By dint of the cross examination the entire prosecution case was refuted which caused serious prejudice to the appellant as the same were not considered.
 - ii. PW-1, the mother of the victim deposed before the Court that till date did not know as to why her daughter committed suicide.
 - iii. From the evidence of the PW-1 was clear that the purported torture allegedly inflicted upon the victim was not culpably so vigorous in nature that in ordinary circumstances could lead a person to commit suicide.
 - iv. The evidence of PW-4, the maternal aunt stated that the matrimonial life of the victim had been good and she bore a female child. She had no knowledge if it had deteriorated in the later part.
 - v. The evidence of the partisan witnesses are absolutely equal to any other witnesses but will have to be adjudged with great care.
 - vi. From the evidence of the PW-11, it transpired that no specific role of torture upon of the appellant and his family members were attributed save and except stereotype physical and mental torture which were a part of any family life and did not constitute the offence 306 of the Indian Penal Code, 1860.
 - vii. The main crux of the allegation that the victim committed suicide because of the torture perpetrated upon her and curiously the said allegation was not spelt out before the investigation officer which were not recorded the statement under Section 161 of the Criminal Procedure Code, 1973.
 - viii. From the evidence of the PW-5 and PW-7 had deposed in consonance with PW-4 but the prosecution did not declare her hostile which established the fact of the truth, that the allegation of any perpetrated torture was never inflicted upon the victim.
 - ix. The question put to the hostile witness by the prosecution during the time of cross-examination was not confronted by the investigation officer.
 - x. From the evidence of been sentimental being gifted to her with one saree during Durga Puja show that it was greed and desperation of the victim gripped with her frustration to display her wealth impulsively driven her to commit suicide and the appeal shall be allowed.
6. Learned Advocate for the State submitted that the prosecution had been able to prove the following:-
 - a) The marriage between the appellant and the deceased was solemnized on 08th August, 2001.
 - b) The victim/wife was found dead in her matrimonial house.

- c) The death of the victim occurred on 3rd October, 2007 which was well within 7 years of marriage.
 - d) The death of the victim was an unnatural death caused due to the effects of hanging.
7. The evidence of the mother of the victim has deposed that the appellant was responsible for perpetrating a continuous mental and physical torture upon the victim on demand of dowry. She has also stated that the victim used to tell her about the torture.
 8. Although the other neighbours and witnesses have not supported the prosecution case, but it was trite law that the court should always consider the quality of the evidence adduced the prosecution and not the quantity thereof.
 9. The defence has not been able to demolish the evidence of the mother in spite of cross-examination and hence the prosecution has been able to proof the case beyond reasonable doubts.
 10. The presumption under Section 113A of the Evidence Act stated that if the prosecution was able to proof beyond reasonable doubt that the victim committed suicide at the matrimonial house within 7 years of marriage due to the cruelty meted out to her by the appellant herein and hence, the conviction passed by the Learned Trial Court should be upheld.
 11. A circumspection of the prosecution witnesses revealed that:-
 - i. PW-1 to be the mother of the deceased victim who reiterated the statements of the complaint impressing upon the demand of dowry and the torture being inflicted by the husband, parents in law of the victim. She further deposed that she did not know the reason as to why her daughter committed suicide or whether she was hanged by the accused persons. During her cross-examination PW-1 stated that the accused persons demanded money after one year of marriage which was not possible for her to disclose day to day affair of the victim at her matrimonial house. She did not inform the incident of torture upon her daughter to any relevant authority. She further deposed “My daughter brought upon with special care and she was very sentimental. My daughter also feel the poor condition of my son in law. My daughter died before Durgapuja.”
 - ii. PW-2 and PW-4 declared hostile by the prosecution.
 - iii. PW-3 conquered deposed of PW-1 further supplementing “After death of my father, we did not provide further demand of further dowry. Due to non-payment of further dowry, my sister was subjected to physical and mental torture which was reported to my mother. ... Thereafter I rushed to the house

of accused persons and went to know happening but the husband of my sister refused to disclose anything but I was driven out from his house. Thereafter we have no connection with them. PW-3 identified his signature on the inquest report marked as exhibit 2/1.” He further stated “Regarding torture upon my sister I heard it from my mother.” During his cross examination PW-3 stated that “I cannot remember the date of visit of my sister to our house when my sister reported the story of torture to my mother.” iv. PW-5 submitted the he did not know the reason of suicide. However, he was not declared hostile by the prosecution.

- v. PW-6 was the seizure list and the witness who identified his signature on the list marked as exhibit 4/1.
- vi. PW-7 submitted to be the next door neighbor to the victim and deposed that the victim and her husband had a good relationship.
- vii. PW-8 denied of any personal knowledge regarding the incident and identified his signature on the inquest report marked exhibit 5/1. viii. PW-9 Doctor who conducted the post mortem examination found the following wounds: one oblique continuous ligature mark 13” x 2” encircling high up in the neck, being placed 4” above the supasternal notch in front, 2” below the external occipital prominence in back, 0.25” below the tip of right mastoid and 1.5” below the tip of left mastoid. Another oblique non continuous ligature mark measuring 11” x 2” placed high up around the neck with a gap of 3.5” between the tip or left mastoid process and the external occipital prominence was present. The ligature mark started at a point from the external occipital prominence mover forward and downward and merged with the previous continuous ligature mark 0.25” below the tip of right mastoid. After traversing in front of the neck with the previous mark it then left the continuous mark at a point 2” below the left angle or mandible and finally terminated at the tip of left mastoid. Death was due to effect of hanging s noted above, ante mortem in nature. His signature on the P.M report marked as exhibit the ligature marked on the neck only. PW-9 did not find any other injury on the person of the deceased.
- ix. PW-10 the Executive Magistrate identified his signature on the inquest report prepared by him marked as exhibit 5/2. He further deposed that he could not find any external injury and none of the witnesses disclosed anything regarding the cause of death.
- x. PW-11 the uncle of the deceased deposed his ignorance about the actual relationship between the victim and her husband. PW-11 was not declared hostile by the prosecution.

xi. PW-12 the Investigation Officer identified formal FIR which was marked exhibit 7. The signature of the endorsing officer marked exhibit 7/1. He conducted the investigation and thereafter submitted the charge-sheet. He further submitted that “Usha Dutta (PW-1) did not state that at the time of recorded for statement under Section 161 Cr.P.C., that the accused persons after being brutally assault my daughter hanged here. PW-3 did not state to me at the time of recording statement under Section 161 Cr.P.C., that as per demand of accused persons they gave dowry. PW-3 did not state to me at the time of recording statement that after 3 months after the marriage of his sister she was subjected to mentally and physically torture by her husband and other members. PW-3 did not state to me that he learnt the incident of torture upon her sister from his mother. PW-3 did not state to me after death of his sister he went to the house of Goutom Dey and asked him the reason of death of her sister but he did not disclosed any reason and drove out from his house. PW-3 stated to me that due sudden death of his sister they lodged complain against the accused on the basis of suspicion.”

12. In *Kahkashan Kausar v. State of Bihar*¹, the Hon’ble Supreme Court held the following:-

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused

¹ (2022) 6 SCC 599

in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

13. Furthermore in Mahalakshmi v. State of Karnataka², The Hon’ble Supreme Court held the following:-

“12. Having considered the charge sheet filed, we are of the view that the assertions made therein are very vague and general.⁴ One instance unless portentous, in the absence of any material evidence of interference and involvement in the marital life of the complainant, may not be sufficient to implicate the person as having committed cruelty under section 498A of the IPC. ...”

14. The Hon’ble Supreme Court held the following in Heera Lal v. State of Rajasthan³:-

“7. This Court in an illuminating judgment in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has stated the law as follows: (SCC pp. 626-27, para 12)

“12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women

22023 SCC OnLine SC 1622

³(2018) 11 SCC 323

were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of

her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression “may presume” suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression — “the other circumstances of the case” used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase “may presume” used in Section 113-A is defined in Section 4 of the Evidence Act, which says — ‘Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.’ ”

(emphasis in original)

8. We find that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under Section 498-A, the third ingredient for application of Section 113-A is missing, namely, that the relatives i.e. the mother-in-law and father-in-law who are charged under Section 306 had subjected the victim to cruelty. No doubt, in the facts of this case, it has been concurrently found that the in-laws did harass her, but harassment is something of a lesser degree than cruelty. Also, we find on the facts, taken as a whole, that assuming the presumption under Section 113-A of the Evidence Act would apply, it has been fully rebutted, for the reason that there is no link or intention on the part of the in-laws to assist the victim to commit suicide.”

15. In *Naresh Kumar v. State of Haryana*², the Hon’ble Supreme Court held

² (2024) 3 SCC 573

the following:-

“23. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he : (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a “subjective” test).

...

25. It is now well settled that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

...

27. Section 113-A of the Evidence Act reads thus:

“113-A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband 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 Penal Code (45 of 1860).”

28. This Section was introduced by Criminal Law (Second Amendment) Act 46 of 1983. The Penal Code, the Code of Criminal Procedure, 1973 and the Evidence Act were amended keeping in view the dowry death problems in India.

29. Section 113-A of the Evidence Act requires proof : (1) that her husband or relatives subjected her to cruelty, and (2) that the married woman committed suicide within a period of seven years from the date of her marriage.

...

33. The court should be extremely careful in assessing evidence under Section 113-A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.

...

35. This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words “may presume”. It must take into account all the circumstances of the case which is an additional safeguard.

36. In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306IPC by raising presumption under Section 113-A.”

16. Furthermore, in *Ude Singh v. State of Haryana*³, the Hon’ble Supreme Court held the following:-

“15. Thus, “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:

- (i) he instigates any person to do that thing; or
- (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or
- (iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

These are essential to complete the abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere

³ (2019) 17 SCC 301

allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.”

17. In *Paranagouda and Another Vs. State of Karnataka and Another*⁶, the Hon'ble Supreme Court held the following:-

“20. The incidental question that would also arise for our consideration is : whether the conviction of the accused under Section 304B would be sustainable? The ingredients to be satisfied for convicting an accused for the offence punishable under Section 304B are:

“(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

2023 SCC OnLine SC 1369

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

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

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

21. This Court in the case of *Bansilal v. State of Haryana*, (2011) 11 SCC 359 has held that, to attract the provision of Section 304B of the IPC, one of the main ingredients of the offence which is required to be established is that “soon before her death”, she was subjected to cruelty and harassment “in connection with the demand of dowry”. It has been further held:

“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. It may also be pertinent to mention herein that the expression “soon before her death” has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim

and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. (Vide T. Aruntperunjothi v. State; Devi Lal v. State of Rajasthan; State of Rajasthan v. Jaggu Ram; Anand Kumar v. State of M.P. and Undavalli Narayana Rao v. State of A.P.”

22. In Sher Singh Alias Partapa v. State of Haryana, (2015) 3 SCC 724 : (2015) 1 SCR 29 it has been held:

“16. As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word “deemed” in Section 304-B to distinguish this provision from the others. In actuality, however, it is wellnigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word “shown” is used as synonymous to “prove” and the word “presume” as freely interchangeable with the word “deemed”. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word “deem” to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [(1953) 1 SCC 826 : AIR 1953 SC 333] and State of T.N. v. Arooran Sugars Ltd. [(1997) 1 SCC 326], requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word “deemed” so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word “shown” in Section 304-B IPC as to, in fact, connote “prove”. In other words, it is for the prosecution to prove that a “dowry death” has occurred, namely,

- (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,
- (ii) within seven years of her marriage,
- (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) in connection with any demand for dowry, and

- (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

We are aware that the word “soon” finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word “deemed” was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word “shown” has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.”

18. In *Durga Prasad and Another vs. State of Madhya Pradesh*⁴, the Hon’ble Supreme Court held the following:-

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

⁴ (2010) 9 Supreme Court Cases 73

“dowry death” and such husband or relative shall be deemed to have caused the death of the woman.”

19. False implications of persons under Section 498A of the Indian Penal Code by way of general omnibus allegations made in the course of matrimonial disputes, if left unfettered, would result in misuse of the process of law. Misuse of Section 498-A of Indian Penal Code and the increasing tendency of implicating husband’s relatives in matrimonial disputes have become rampant. Mere fact of commission of suicide itself without corroborative and specific evidence is not sufficient to raise presumption under Section 113A of the Evidence Act. Moreover, in order to constitute an offence under Section 306 of the Indian Penal Code, there had to be a proximate and imminent act of instigation or incitement to attract the offence of Section 306 of the Indian Penal Code. In the instant case apart from suspicion, the overt act of the appellant to have tortured the victim on demand of dowry could not be established. The evidence of the mother and the brother of the victim was not corroborated by other witnesses who knew the appellant and the victim as a married couple and witnessed their regular activities. None of them narrated any adverse incident of prolonged torture for demand of money. The mother and brother of the victim stated the demand to have been initiated after one year of the marriage without substantial evidence to that effect.
There can be several reasons and impulses to drive a person to commit suicide. Societal pressure, sensitiveness, intolerance, impatience, lack of logical reasoning and understanding momentary, anger, avarice, jealousy, ego, pride etc with predominate the normal reasoning of human being to fall prey to such vulnerability to recourse to extremities in life being inscrutable and ineffable. Such intangible emotions are enigmatic and uncontrollable.
20. The course of evidence of the prosecution witnesses did not reveal the circumstances coercing the victim to commit suicide being compelled by any imminent, proximate reason of dowry demand for which the victim had no other option but to self immolate. The general and casual remarks of the mother and the brother that the victim was subjected to torture for demand of money cannot be acceptable devoid of specific and deliberate act on the part of the appellant to assault the victim for demand of money either to a continuous or an immediate period to have instigated or abetted the victim to commit suicide.
21. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

22. The judgment and order of conviction dated 26.03.2009 and order of sentence dated 27.03.2009 passed by the Learned Additional Sessions Judge, Fast Track (1st Court) Paschim Medinipur in Sessions Trial Case No. 59/July/2008 arising out of Kotwali Police Station Case No. 238/07 dated 06.10.2007 whereby convicting the appellant for the offences punishable under Section 498(A)/304(B)/306 of the Indian Penal Code is set aside.
23. Accordingly, the instant criminal appeal stands disposed of.
24. There is no order as to costs.
25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
26. Photostat certified copy of this order,
27. applied for, be given to the parties on priority basis on compliance of all formalities.

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