

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 2ND DAY OF AUGUST 2022 / 11TH SRAVANA, 1944

CRL.A NO. 500 OF 2007

AGAINST THE JUDGMENT AND SENTENCE DATED 12.03.2007 IN
S.C.NO.1317/2003 OF II ADDITIONAL SESSIONS JUDGE, KOLLAM

APPELLANTS/ACCUSED 1 & 2:

- 1 AJAYAKUMAR, S/O. BALAKRISHNA PILLAI,
BALAKRISHNA VILASAM, UMMANNOOR VILLAGE,
KOTTARAKKARA.
- 2 SARASWATHY AMMA,
D/O LAKSHMI AMMA, BALAKRISHNA VILASAM,
UMMANNOOR VILLAGE, KOTTARAKKARA.
BY ADVS.
SASTHAMANGALAM S. AJITHKUMAR
PRABHU VIJAYAKUMAR
RENJITH B.MARAR

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV PUBLIC PROSECUTOR SMT. MAYA.M.N.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12.07.2022, THE COURT ON 02.08.2022 DELIVERED THE FOLLOWING:

“C.R”

A.BADHARUDEEN, JJ.

=====
Crl.Appeal No.500 of 2007
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Dated this the 2nd day of August, 2022

J U D G M E N T

This is an appeal filed under Section 374(2) of the Code of Criminal Procedure by accused Nos.1 and 2 in S.C.No.1317/2003 on the file of the IInd Additional Sessions Court, Kollam, assailing conviction and sentence imposed against them as per judgment dated 12.03.2007. State of Kerala represented by the Public Prosecutor is the respondent.

2. Heard the learned counsel for the appellants as well as the learned Public Prosecutor in detail.

3. The prosecution case runs as under:

It is alleged by the prosecution that the 1st accused had

married one Suja, the cousin sister of the defacto complainant, in accordance with the religious rites and customs prevalent in their community, on 6.2.1999. At the time of marriage, 35 sovereigns of gold ornaments had been given to Suja and a sum of Rs.2,50,000/- was promised to be paid as dowry within 2 years from the date of marriage. Subsequent to the marriage, the above Suja as well as the 1st accused were lived together as husband and wife in Balakrishna Vilasom Veedu, Veliyannoor Muri, Ummannoor Village, which is the family house of the 1st accused as well as the 2nd accused, who is the mother of the 1st accused. It is alleged further that during the stay, the accused had subjected Suja to cruelty and harassed her demanding the promised dowry which had not been paid even after one year of the marriage. The 1st accused had demanded Suja to go to her house and bring dowry and the 2nd accused had asked her to commit suicide if she could not pay dowry. So the consistent nagging and demand for dowry had driven Suja to suicide, some time between 9.30 p.m on 13.03.2000

and 4 o' clock in the morning on the next day, by hanging on a fan hook at the bed room of the residential house of the accused, Balakrishnavilasom veedu bearig Door No.250 of Ward No.II of Ummannoor Panchayat. Thus the accused alleged to have committed the offences punishable under Sections 304(B), 306 r/w 34 of I.P.C.

4. On the above facts, Kottarakkara police registered crime No.186/2000 and on investigation charge was laid against the accused under Section 304(B), 306 r/w 34 of I.P.C.

5. The case was committed to the Sessions Court, Kollam and in turn made over to the IInd Additional Sessions Court, Kollam and the said Court tried the case after framing charge.

6. During trial, the prosecution adduced evidence by examining PWs 1 to 11 and marked Exts.P1 to P15. During cross examination of the prosecution witnesses, Exts.D1 and D2 contradictions were marked on the side of the defence.

7. Though after questioning the accused under Section 313

of Cr.P.C, opportunity was given to adduce evidence, no defence evidence adduced.

8. On analysing the evidence after hearing both sides, the trial court found that accused 1 and 2 committed offences under Section 304(B) and 306 r/w 34 of I.P.C and accordingly they were sentenced to undergo R.I for a period of 7 years for the offence under Section 304(B) r/w 34 of I.P.C and to undergo R.I for a period of 3 years under Section 306 r/w 34 of I.P.C.

9. It is argued by the learned counsel for the appellants that the trial court convicted the appellants without support of sufficient evidence and remote evidence given by PW2 and PW3 was given emphasis to find the commission of the above offences by the appellants. He also pointed out that Ext.P4 diary, alleged to be written by the deceased when forwarded to FSL, Ext.P12 report was given by the expert suggesting that there is probability to write the diary by the deceased.

10. Repelling this argument, the learned Public Prosecutor

vehemently supported the conviction and sentence and he pressed for upholding the conviction and sentence, since the prosecution successfully established commission of offences under Section 304B and 306 of I.P.C.

11. In view of the rival arguments, it is necessary in the interest of justice to appreciate the evidence in this case.

12. PW1 examined in this case is the cousin brother of Suja. He deposed about the marriage between the 1st accused and Suja held on 06.02.1999 at Anupama Auditorium, Chadayamangalam and the joint residence of the 1st accused and Suja at the matrimonial home in Odanavattom. His evidence further is that on 14.03.2000 morning Suja died and there were problems in the marital life. 1st and 2nd accused created problems demanding more dowry and the 1st accused used to make scenes demanding dowry under the influence of alcohol. His evidence further is that Suja committed suicide due to cruelty, demanding more dowry. Ext.P1 marked through PW1 is the F.I statement. PW1 given evidence

further that at the time of marriage 35 sovereigns of gold ornaments were given to Suja and it was agreed to give Rs.2.5 lakh more within 2 years as dowry. He deposed further that his statement in Ext.P1 to the effect that Suja would not commit suicide on the ground of dowry for the reason that there was 2 years' time for paying the same is not correct and this portion of his previous statement was marked as Ext.D1 on the side of the defence.

13. PW2 examined in this case is the mother of Suja. She deposed before the court that Suja is her daughter and the accused are the husband and mother in law of Suja. She also deposed about the marriage between the 1st accused and Suja held on 06.02.1999 and their joint residence at the matrimonial home thereafter. According to PW2, the marital life of Suja and the 1st accused was not satisfactory and the 1st accused used to create problems demanding dowry after consuming alcohol. According to PW2, at the time of marriage, 35 sovereigns of gold ornaments were given and it was agreed to give Rs.2.5 lakh more within 2 years. But the

accused demanded the said amount before 2 years. Though her daughter demanded the same, money was not given. She deposed about the cruelty on the part of the accused which led to suicide of Suja. She deposed about abortion of Suja after 2 to 3 months of the marriage. She deposed further that gold chain with thali, one ring, a pair of earrings and an anklet were the items available at the time of death and the other items of gold ornaments were in the custody of the accused. When PW2 was confronted about the handwriting in Ext.P4, a diary alleged to be written by Suja before suicide, she emphatically denied the same as the hand writing of Suja. Her evidence further is that the 1st accused maintained relationship with another lady, by name Elisa, even before the marriage. During cross examination, PW2 admitted that the 1st accused and Suja used to visit her house and they used to stay there for 2 days and PW2 also used to visit the matrimonial home occasionally. PW3 examined in this case is the younger sister of Suja. She also deposed supporting the evidence of PW2 in the matter of marriage

and its aftermath. According to her, a few days after the marriage, Suja informed her that there was cruelty on the part of the accused demanding dowry. She also deposed that the 1st accused was of drinking habit and he used to manhandle Suja after consuming alcohol. PW3 given evidence further that Suja committed suicide due to harassment of the accused demanding dowry. Further when Suja became pregnant, the 1st accused pulled her down from the cot and thereby she had abortion. Suja was hospitalised in this connection in Kottarakkara. PW3 also given evidence stating that the husband of PW2 and her father died 17 years prior to the date of occurrence and the 2 daughters including Suja were looked after by PW2 by utilising her income as a Peon in Public Works Department. She also given evidence that PW2 given education to the daughters and both daughters are graduates. While admitting the signature of Suja in Ext.P2 series letters, PW3 denied the handwriting in Ext.P4 diary. She also given evidence supporting the evidence of PW2 to the effect that the 1st accused maintained

relationship with another lady by name Elisa and the relationship was in existence even prior to the marriage of the 1st accused and Suja.

14. PW4 examined in this case is the Grama Panchayat President, Ummannoor. According to him, the accused were his neighbours and he had put signature in Ext.P3 inquest report prepared after the death of Suja. He also given evidence that the autopsy examination of Suja was at MCH, Thiruvananthapuram and the body was brought to the house of the 1st accused and later buried in Chadayamangalam, the house of Suja. He also given evidence that he participated in the funeral where he could not find the 1st accused and the other accused.

15. PW5 examined in this case is none other than the husband of the sister of the 1st accused and the daughter of the 2nd accused. He had given evidence denying production of Ext.P4 diary alleged to be written by Suja before death. According to PW5, Ext.P4 diary was taken by the police from the place of

occurrence on the date of occurrence itself. The prosecution case is that it was PW5, who produced Ext.P4 before the police after a week from the date of occurrence. In fact, PW5 turned hostile to the prosecution. PW6 examined in this case was the police constable at Thenmala police station as on 15.09.2000 and he had given evidence that he had put signature in Ext.P5 mahazar prepared for taking custody of Ext.P4 diary when it was produced by PW5. He also admitted during cross examination that Ext.P5 mahazar is in his own handwriting.

16. PW8 in this case prepared Ext.P3 inquest report while working as Tahsildar and Executive Magistrate at Kottarakkara during March, 2000. PW9 examined in this case is Dr.Reman, Assistant Professor and Deputy Police Surgeon, MCH, Thiruvananthapuram during March, 2000 and she had given evidence supporting Ext.P7 postmortem certificate. As per Ext.P7 and as per evidence of PW9, opinion as to cause of death is stated as “postmortem appearances are consistent with death due to

hanging”. PW10, the then A.S.I of Police Kottarakkara, deposed about the recording of Ext.P1 statement of PW1 and registration of crime No.156/2000 under Section 174 Cr.P.C and Ext.P1(a) marked through him is copy of FIR. He had arrested the 1st accused on 2.6.2000. Ext.D1 contradiction stands proved through PW10. PW11 is the Investigating Officer. He generally supported the investigation. It seems that the learned Sessions Judge given much emphasis to the evidence of PW2 and PW3 to find that the accused herein committed offences under Section 304B, 306 r/w 34 of I.P.C.

17. Before addressing the question as to whether the findings entered into by the trial court is justifiable, it is worthwhile to discuss the essentials required to constitute offences under Section 304B as well as 306 of I.P.C. Section 304 of I.P.C deals with dowry death. Section 304B of I.P.C is extracted hereunder:

“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 purposes 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."

18. Thus the ingredients to constitute an offence under Section 304B are:

- (a) There was an unnatural death of a woman;
- (b) that woman had been married within 7 years preceding her aforesaid unnatural death, and
- (c) soon before her death she was subjected to cruelty or harassment.

Again

- (i) such cruelty or harassment had been caused to her by her husband or husband's other relative;
- (ii) that such cruelty or harassment was for or in connection with any demand for dowry.

In all dowry death cases the standard of appreciation of evidence has to be in the light of the provisions contained in Section 113A of the Evidence Act.

19. It is relevant to note that when an offence under Section 304B of I.P.C is alleged, the same has a proximate nexus with Section 113B of the Evidence Act, 1872 which reads as follows:

“Section 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).”

20. Section 113B of the Evidence Act in the later part mandates drawing of presumptions that the husband or relative of the husband of the victim girl have caused her death and this presumption of dowry death corresponds to presumption as to dowry death envisaged in Section 113B of the Evidence Act, 1872. Section 304B(1) of the I.P.C, 1860 has 2 limbs. First limb defines

dowry death and the second limb deals with the legal consequence of occurrence of dowry death namely, that the husband or such other relative of the husband who soon before the death of the lady was found to have subjected the lady to cruelty or harassment shall conclusively be held to be guilty of the offence of dowry death. In the decision reported in [2015 (8) Scale 270 : AIR 2015 SC 3043 : 2015 CrI.J 4021 (SC)], *V.K.Mishra v. State of Uttarakhand*, a 3 Judge Bench of the Apex Court while dealing with Section 304B of IPC and 113B of the Evidence Act, inter alia, held, after referring another decision reported in [AIR 2015 SC 980], *Shersing alias Partapa v. State of Haryana* that the word 'shown' instead of 'proved' in Section 304B of I.P.C indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, 'shown' would have to be read upon to mean 'proved', but only to the extent of preponderance of probability. It was held further that in a case of demand for dowry, independent and direct evidence with regard to

the occurrence is ordinarily not available. That is why the legislature had introduced Section 113A and 113B in the Evidence Act by permitting presumptions to be raised in certain circumstances.

21. In another decision of the Apex Court reported in [AIR 2016 SC 5313 : 2016 KHC 6768] ***Baijnath & Ors. v. State of Madhya Pradesh***, the Apex Court considered the legislative mandate to invoke the presumption under Section 113B of the Evidence Act and held as under:

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

34. The legislative premature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person

charged, cannot be overreached to gloss – over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

35. *This Court while often dwelling on the scope and purport of S.304B of the Code and S.113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of S.304B as in Shindo Alias Sawinder Kaur and another Vs. State of Punjab – 2011 (11) SCC 517 and echoed in Rajeev Kumar Vs. State of Haryana – 2013 (16) SCC 640. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under S.304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under S.113B of the Act. It referred to with approval, the earlier decision of this Court in K.Prema S.Rao v. Yadla Srinivasa Rao – 2003 (1) SCC 217 to the effect that to attract the provision of S.304B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.*

22. Similarly, in another decision reported in [AIR 2014 SC 227 : 2013 (13) Scale 410], **Rajeev Kumar v. State of Haryana**, the Hon'ble Supreme Court referred another decision reported in [AIR 2003 SC 11], **K.Prema S.Rao & anr. v. Yadla Srinivasa Rao & ors.** and held as under:

“One of the main ingredients of the offence of dowry death under

section 304-B of the Indian Penal Code, 1860 which is required to be established is that “soon before the death” the accused must have subjected a woman to cruelty in connection with demand of dowry.”

23. In the decision reported in [2015 SC 1359], ***Rajinder Singh v. State of Punjab***, the Apex Court held that “soon before” in Section 304B, is not synonymous with “immediately before”. The same proposition is laid by the Apex Court in another decision reported in [AIR 2021 SC 2627 : 2021 KHC 6284], ***Satbir Singh & anr. v. State of Haryana***.

24. In the decision reported in [AIR 2004 SC 1714], ***Baljeet Singh v. State of Haryana*** the Apex Court set out the condition precedent for establishing offence under Section 304B of I.P.C as under:

- a) That a married woman had died otherwise than under normal circumstances;
- b) such death was within 7 years of her marriage; and
- c) the prosecution has established that there was cruelty and harassment in connection with the demand for dowry soon

before her death.

25. In another decision reported in [AIR 2009 SC 913], ***Baldev Singh v. State of Punjab*** the expression “soon before her death” used in the substantive section of 304B of I.P.C and Section 113B 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 expression “soon before” in Section 114 illustration (a) of the Evidence Act is relevant. It lays down that a man who is in the possession of goods “soon after theft” is either the thief or has received the goods knowing the same to be stolen, unless he can account for his possession. The determination of the period which can come with 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 concerned cruelty or harassment and the death in question.

26. In the same decision, in para.17 it was observed as under:

“The law on Section 304-B IPC and Section 113-B of the Evidence Act has been pithily summarised as follows:

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

(2) 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 casualty, provided under Section 113B of the Evidence Act operates against the accused.

(3) The phrase “soon before” as appearing in Section 304B 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.

(4) Section 304B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the

fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.”

27. In the said judgment while confirming the conviction imposed by the trial court and the High Court under Section 304B and under Section 498A of I.P.C, the Apex Court also upheld acquittal found by the High Court under Section 306 of I.P.C.

28. In another decision reported in [2022 Cri.LJ 2545 : AIR OnLine 2022 SC 577], ***Devender Singh and Ors. v. State of Uttarakhand***, another 3 Bench decision, the Apex Court considered the ingredients of Section 304B of I.P.C within the ambit of Section 113B of the Evidence Act and finally confirmed conviction imposed against the husband under Section 304B of I.P.C while acquitting appellants 2 and 3 on the finding that there is no specific role with regard to the demand of dowry and nor any specific instances of cruelty and harassment been ascribed to the appellants 2 and 3 except for the general assertion against appellants 2 and 3.

29. In a latest decision of the Apex Court reported in

[(2022) 5 SCC 401], *State of Madhya Pradesh v. Jogendra & anr.*, 3 Bench of the Apex Court considered the menace of dowry death while dealing with a case alleging commission of offences under Section 304B, 498A and Section 306 of I.P.C. In the said case also the Apex Court in para.9 set forth the following as the most fundamental constituent for attracting the provisions of Section 304B of I.P.C.

(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;

(ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

30. Thus when the four essentials required to prove offence under Section 304B, viz; (i) death of a woman should have

occurred otherwise than under normal circumstances (ii) within 7 years of her marriage; (iii) soon before her death she should have been subjected to cruelty or harassment by the accused, and (iv) in connection with any demand for dowry to presume that the accused has committed dowry death.

31. Once the prosecution succeeded in establishing that the death of the lady was the outcome of cruelty or harassment by her husband or any relative of her husband soon before her death within a period of 7 years of her marriage, if the accused wants protection from the said catch, the burden is on him to disprove and if he fails to rebut the presumption under Section 113B of the Evidence Act, the court is bound to act on it. To put it differently, Section 113B of the Evidence Act, casts a reverse burden on the accused to disprove the prosecution case. Then the question is; what is the standard of proof in cases involving reverse burden? The Apex Court considered the same in the decision reported in [(2008) 16 SCC 417 : 2008 KHC 5054], *Noor Aga v. State of*

Punjab & anr., while interpreting the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein also a reverse burden is cast upon the accused. In this judgment, the Apex Court considered the draconian provisions in the NDPS Act and it was held that though the Act contains draconian provisions, it must, however be borne in mind that the Act was enacted having regard to the mandate contained in international conventions on narcotic drugs and psychotropic substances. Only because the burden of proof under certain circumstances is placed on the accused, the same, by itself, would not render the impugned provisions unconstitutional. It was concluded in the said judgment that Sections 35 and 54 are not ultra-vires the Constitution of India and ultimately it has been held that the constitutionality of a penal provision placing burden of proof on the accused must be tested on the anvil of the State's responsibility to protect innocent citizens. Even then, an initial burden exists upon the prosecution and only when it stands satisfied, the reverse burden would arise and the

standard of proof required to prove the guilt of the accused on the prosecution is 'beyond all reasonable doubt'. But it is 'preponderance of probabilities' on the accused. Thus the law is clear on the point that proof of reverse burden shall be discharged on the basis of 'preponderance of probabilities'.

32. In the decision reported in [AIR 2001 SCC 2828], *Satwir Singh v. State of Punjab*, the Apex Court considered the meaning of dowry and it was held that some customary payment in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence, the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.

33. Coming to Section 306 of I.P.C, the ingredients to constitute an offence under Section 306 may be useful. Section 306 provides as under:

"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.

Classification of Offence:-- The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session.

34. In the decision reported in [AIR 1989 SC 378 : (1989) 1 SCC 244 : 1989 SCC (Cri.) 105 : 1989 CriLJ 809], ***Wazir Chand & anr. v. State of Haryana***, the Apex Court held that in order to convict any person for instigating any person to commit suicide, it has to be established that the victim committed suicide.

35. In the decision reported in [(2001) 9 SCC 618 : 2002 SCC (Crl) 1088], ***Ramesh Kumar v. State of Chattisgarh***, the Apex Court held that Sections 498A and 306, I.P.C are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section

498A, I.P.C, it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned.

36. Coming to Section 306, wherein also presumption of abetment is embodied under Section 113A of the Evidence Act, 1872. Section 113A of the Evidence Act, 1872 is extracted hereunder:

“Section 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 498A, Indian Penal Code, 1860.”

37. In the decision reported in [2014 CrLJ 2425 : AIR 2014 SC 1782], ***Mangat Ram v. State of Haryana***, the Apex Court held that a woman may attempt to commit suicide due to various reasons, such as depression, financial difficulties, disappointment

in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment.

38. In this case, Ext.P4 diary has been given emphasis by the accused to rebut the presumption under Section 113B of the Evidence Act. In Ext.P4, alleged to be written by Suja just before her death, there is recital to the effect that the husband or his men had no role in the death and the death was the like of Suja. According to the accused, the entry in Ext.P4 was written by Suja just before her death and the same would go to show that the accused are innocent. The prosecution forwarded the entries in Ext.P4 with the admitted hand writings of Suja, marked as Ext.P2 series, for comparison to ensure as to whether the text in Ext.P4 was written by Suja before her death. Ext.P12 is the report. As per Ext.P12 it was reported as under:

“The questioned documents in this case were carefully and thoroughly examined and compared with standard documents in all aspects of handwriting identification and detection of forgery with scientific aids in the State Laboratory at Thiruvananthapuram. The results of examination are the following.

2. *The person who wrote the red enclosed standard*

writings stamped and marked A3 to A10 probably also wrote the red enclosed questioned writings similarly stamped and marked Q1 and Q2.

3. *It has not been possible to arrive at any conclusion regarding the authorship of the red enclosed questioned signature stamped and marked Q1(a) in comparison with the red enclosed standard writings similarly stamped and marked A3 to A10.”*

Thus the evidence as per Ext.P12 does not suggest that the entries in Ext.P4 are actually written by Suja. The trial court considered the authenticity of the handwriting in Ext.P4 diary. It has been observed that evidence of PW5 that the police recovered Ext.P4 on the date of occurrence from the place of occurrence could not be believed as it has been established in evidence that PW5 produced the same before the Investigating Officer and it was taken into custody as per Ext.P5 mahazar, as categorically deposed by PW6, who witnessed Ext.P5 recovery mahazar. It has been observed further that if the deceased had any intention to reveal the cause which led to her suicide, there was no possibility of the suicide note being concealed in the almirah which might not come to the

immediate notice of any person entering the room, where Ext.P4 was kept. It has been observed further that the only one writing in the diary is this suicide note and no other entries could be found in the diary are reasons to disbelieve Ext.P4. Similarly, the trial court observed that there was nothing in Ext.P4 to indicate that it was being used by Suja prior to her death regularly. In fact, in Ext.P4 the only one entry is the disputed text to the effect that Suja committed suicide on her volition. That apart, Ext.P4 also did not suggest that Ext.P4 was written by Suja.

39. In fact, the reasons stated by the learned Sessions Judge to disbelieve Ext.P4 is justifiable and I do agree with the said finding.

40. In this matter, the case advanced in defence right from the very beginning is that the accused have no responsibility in the suicide of Suja and Suja had committed suicide out of depression as she felt that the marriage of her sister PW3, would not take place as arranged since her relative, who had promised some amount to

the marriage, had failed to give the amount.

41. In this regard, during cross examination of PW2 and PW3 it had come in evidence that PWs 1 to 3 had visited the residence of a relative one Prasad in Adoor to invite him for marriage of PW3. Further, evidence of PWs 1 to 3 would suggest that they had reached the house of the relative Prasad in Adoor for collecting the amount offered by him, but the amount was not paid. However, even on searching cross examination, PWs 1 to 3 emphatically denied the suggestion that Suja committed suicide arising out of the said depression. It is relevant to note that during cross examination, PW3 categorically stated that though the money was not given by Prasad as expected on the date, Prasad agreed to give the money.

42. The crucial question to be decided is whether Suja was subjected to cruelty by demanding the offered dowry soon before the occurrence. Reading the evidence of PW2 and PW3, demand for the offered dowry soon after the marriage and harassment at the

hands of the 1st accused/1st appellant, repeatedly stated by them could be gathered. It is pertinent to note that Suja committed suicide just after one year of the marriage on 14.03.2000, after the marriage which took place on 06.02.1999. PW2 and PW3 given evidence that PW2 was employed as Peon in Public Works Department, Government of Kerala and she had a chitty with Kerala State Financial Enterprises to conduct the marriage of PW3 and ultimately PW2 stated that the marriage of PW3 was solemnised on the date earlier fixed. Thus the prosecution evidence established that Suja committed suicide just after one year of marriage and soon before her death she was subjected to cruelty and harassment by the 1st appellant/1st accused and she committed suicide in consequence thereof. The evidence available does not suggest cruelty and harassment on the part of the 2nd appellant/2nd accused in a satisfactory manner.

43. Coming to the facts of this case, as I have already pointed out, PW2 and PW3 specifically deposed about the demand

for dowry by the 1st accused and cruelty and harassment demanding the offered dowry soon after the marriage and continuance of the same thereafter. While so, just after completion of one year of married life, Suja committed suicide. There is no reason to disbelieve the categorical evidence given by PW2 and PW3. To be more explicit, the evidence of PW2 and PW3 along with the other evidence discussed in detail herein above, categorically established the four essentials to constitute an offence under Section 304B of IPC committed by the 1st accused. Similar is the position of the 1st accused as far as offence under Section 306 of IPC is concerned. However, the allegation of cruelty and harassment on the part of the 2nd accused not fully established in this case. That is to say, the prosecution not succeeded in establishing that the 2nd accused committed the offences under Section 304B and 306 of IPC by convincing evidence. Therefore, I hold that the conviction imposed on the 1st accused under Section 304B and 306 of IPC would sustain. As far as the 2nd accused is concerned, the conviction and

sentence imposed under the above Sections found to be not sustainable.

44. Though it is the bounden duty of the accused to disprove the presumption under Section 113B of the Evidence Act, no convincing evidence forthcoming to rebut the presumption. Therefore, I am of the view that the trial court convicted the 1st appellant/1st accused under Section 304B and 306 of I.P.C, in accordance with law. However, the conviction and sentence imposed against the 2nd accused is not with the support of convincing evidence and, therefore, the said conviction and sentence are liable to be set aside.

45. Coming to the sentence imposed against the 1st appellant/1st accused, Section 304B of I.P.C mandates that whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years, but which may extend to imprisonment for life. Since the court below imposed the statutory minimum sentence, the sentence imposed by the Sessions Court for

the offence under Section 304B of I.P.C is not liable to be interfered and as such the same is confirmed. Similarly, for the offence under Section 306 of I.P.C, if any person commits suicide, whoever abets the commission of suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. The Sessions Court imposed rigorous imprisonment for a period of 3 years for the offence under Section 306 of I.P.C, without imposing any fine. The said procedure adopted by the learned Sessions Judge is illegal. It is to be borne in mind that when the statute imposes imprisonment and fine, the same shall be read in 'conjunctive' and not 'disjunctive'. Therefore, both forms of punishment shall be imposed. Since there is no statutory minimum sentence for the offence under Section 306 of I.P.C, I am inclined to reduce the said sentence for a period of 2 years and impose a fine of Rs.20,000/- (Rupees Twenty thousand only). In default of payment of fine, the 1st accused shall undergo default rigorous imprisonment for a

period of one month.

46. In the result, this appeal is allowed in part. The conviction and sentence imposed against the 2nd accused stand set aside and the 2nd accused is acquitted for the offences under Section 304B and 306 r/w 34 of I.P.C. The bail bond executed by the 2nd appellant/2nd accused shall stand cancelled and she is set at liberty forthwith.

47. The conviction imposed against the 1st appellant/1st accused for the offences under Section 304B and 306 r/w 34 of I.P.C is confirmed while modifying the sentence as under:

i) The 1st appellant/1st accused shall undergo rigorous imprisonment for a period of 7 years for the offence punishable under Section 304B of I.P.C.

ii) The 1st appellant/1st accused shall undergo rigorous imprisonment for a period of one year and to pay fine of Rs.20,000/- (Rupees Twenty thousand only) for the offence punishable under Section 306 of I.P.C. In default of payment of

fine, he shall undergo rigorous imprisonment for a period of one month. Set off is allowed for the period the 1st appellant/1st accused had been in custody in connection with this crime.

Regarding destruction of M.Os 1 to 4, the order passed by the Sessions Judge is confirmed.

Bail bond executed by the 1st appellant stands cancelled and the 1st accused/1st appellant is directed to surrender before the trial court within 10 days from today to undergo the sentence.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/