REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1592 OF 2011

SHER SINGH @ PARTAPA **…..APPELLANT**

Versus

STATE OF HARYANA **…..RESPONDENT**

J U D G M E N T

VIKRAMAJIT SEN, J.

1 This Appeal has been filed against the Judgment dated 16.12.2010 passed by the learned Single Judge of the High Court of Punjab and Haryana dismissing the appeal and affirming the conviction and sentence passed against the Appellant by the Trial Court under Sections 304B and 498A of the Indian Penal Code. The marriage between the deceased, Harjinder Kaur and the accused-Appellant took place on 22.2.1997. The case of the prosecution is that two months prior to her death on one of her visits to her parental home, the deceased informed her two brothers of cruelty connected

with dowry demands meted out to her by her husband and his family members. They, thereafter, conveyed this information to their uncle-Complainant, Angrej Singh viz. that the accused and his family have been harassing her with a demand for a motorcycle and a fridge. The Complainant advised her to return to her matrimonial house with the assurance that a motorcycle and a fridge would be arranged upon the marriage of her brothers. On 7.2.1998, one Rajwant Singh informed the Complainant that the deceased had committed suicide by consuming some poisonous substance at her matrimonial house in village Danoli. The Complainant, along with the brothers of the deceased and other members of the village, rushed to the matrimonial house of the deceased and after confirming her death, lodged an FIR on the next day i.e., on 8.2.1998.

2 In all, four accused persons, namely, Appellant/Sher Singh (husband), Devinder Singh (brother-in-law), Jarnail Singh (father-in-law), and Sukhvinder Kaur (mother-in-law) were tried by the learned Sessions Judge, Karnal under Sections 304B and 498A IPC. After considering the material on record the learned Sessions Judge had convicted all the accused and sentenced them to undergo rigorous imprisonment for seven years under Section 304B; and to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- and, in default of payment of such fine, to further

undergo rigorous imprisonment for a period of six months under Section 498A.

3 Two separate appeals were filed before the High Court of Punjab and Haryana at Chandigarh, one by Devinder Singh (brother-in-law) along with Jarnail Singh (father-in-law) and another by the Appellant herein. The High Court allowed the appeal filed by Devinder Singh and Jarnail Singh and acquitted them with an observation that the prosecution has failed to prove any torture committed by them and, therefore, Sections 304B and 498A IPC were not attracted. Quite palpably, unlike the Trial Court, the High Court construed even Section 304B requires the prosecution to 'prove' beyond reasonable doubt in contradistinction to 'show' the participative role of the husband's relatives as a prelude to the deemed guilt kicking in. It was also observed by the High Court that in such cases there is a tendency of roping in all the family members disregarding the fact that they resided separately. However, the Appeal filed by the Appellant was dismissed holding that it was for the accused/Appellant to explain that the unnatural death of his wife Harjinder Kaur was not due to cruelty meted out to her in the matrimonial home and that he has failed in doing so.

4 Learned Counsel appearing on behalf of the Appellant has submitted that the conviction of the Appellant is liable to be set aside as there is a specific finding of the learned Sessions Court that there is no positive evidence on record to the effect that the accused persons ever raised a demand for a motorcycle and a fridge and that both the Courts below have failed to fully appreciate the inconsistencies in the depositions of PWs 4 and 7, which could not be relied upon as both were interested witnesses. It is further submitted that the High Court, on same set of pleadings and evidence, was not justified in acquitting the other accused persons, namely, Devinder Singh (brother-in-law) and Jarnail Singh (father-in-law), while convicting the Appellant. In support of this argument, learned Counsel for the Appellant has relied on the decision of this Court in Narayanamurthy v. State of Karnataka (2008) 16 SCC 512. It is also contended that the prosecution has not established that soon before her death, the deceased had been subjected to any cruelty or harassment in connection with any demand for dowry. Support has been drawn from Durga Prasad v. State of Madhya Pradesh (2010) 9 SCC 73.

5 Out the outset we shall briefly analyse the cauldron of legislation passed by Parliament on the subject which we are presently engaged with. Confronted with the pestilential proliferation of incidents of married women

being put to death because of avaricious and insatiable dowry demands, and/ or of brides being driven to take their own lives because of cruelty meted out to them by their husband and his family also because of dowry expectations, Parliament enacted the Dowry Prohibition Act, 1961 (for short 'the Dowry Act') in an endeavour to eradicate the social evil of giving and taking of dowry. Section 2 thereof defines 'dowry' as including any property or valuable security given or agreed to be given by one party to the other party around the time of marriage. Section 3 makes it punishable to give or take or abet the giving or taking of dowry; the punishment for the offence being not less than five years, and with a fine of Rs.15,000/- or the amount of the value of such dowry, whichever is more. Sub-section (2) thereof understandably makes an exclusion in respect of presents given at the time of marriage provided they are of a customary nature and the value thereof is not excessive having regard to the financial status of the concerned parties. This Section also mandates the drawing up of a list of presents received in contemplation of marriage. Section 4 makes it punishable even to demand dowry and if any agreement is entered into for the giving or taking of dowry, Section 5 makes it void. Section 6 clarifies that where any dowry is received by any person other than the woman in connection with whose marriage it is given, it must be transferred to her within three months of

marriage or receipt of the dowry. The passing of this statute, however, did not eradicate the scourge of dowry demands, resulting in Parliament devoting its attention yet again to what was required to free society of this pernicious practice.

6 As is evident from a perusal of the Statement of Objects and Reasons to the Criminal Law (Second Amendment) Act, 1983 [Act 46 of 1983], Parliament continued to be concerned with the increasing number of dowry deaths. By this legislation Chapter XX A was introduced into the Indian Penal Code (IPC) containing the solitary Section 498A, in order to "deal effectively not only with cases of dowry deaths, but also cases of cruelty to married women by their in-laws." Conspicuously, this Section does not employ the word 'dowry' at all. In essence, the amendment makes matrimonial cruelty to the wife punishable with imprisonment for a term which may extend to three years together with fine. The Explanation to Section 498A defines 'cruelty' in Clause (a) to the Explanation to first mean wilful conduct as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life. Since there is no allusion to dowry it converts cruelty, which would ordinarily entitle the wife to seek a dissolution of her marriage, into a criminal act. Parliament rightly restricted the subject offence to only cruelty perpetuated on women since their

emancipation, in meaningful terms, largely remains a mirage. One can only optimistically hope that the increasing literacy amongst females, as also amendments in Hindu Law granting a daughter a share in her father's estate, will sooner than later put an end to this malaise. As we are not concerned in this Appeal with events falling within the ambit of Clause (a) of the Explanation, we shall desist from recording any further reflection on the sweep and intent and possible incongruities contained therein as such an exercise on our part would avoidably add to the bludgeoning burden of *obiter dicta*, which invariably causes confusion. Secondly, broadly stated, Clause (b) to the Explanation of Section 498A IPC, postulates harassment meted out to the woman with a view to coercing her or her relatives to meet any unlawful demand for any property or valuable security. Although this Clause does not employ the word 'dowry', it is apparent that its object is to combat this odious societal excrescence. Act 46 of 1983 simultaneously incorporated changes in Section 174(3) of the Cr.P.C. pertaining to the suicide or death of a woman within seven years of her marriage; it mandated the examination by the nearest Civil Surgeon of the body of the unfortunate woman. In addition thereto, Section 113A was introduced into the Indian Evidence Act, 1872. [Although not relevant to the present context, it is poignant that even though Section 113 was under its active scrutiny,

Parliament did not think it necessary to excise the existing and entirely irrelevant Section 113 which speaks of the cession of 'British' territory to any 'Native State']. Section 113A, introduced into the Evidence Act by Clause 7 of Act 46 of 1983, specifies that when the question is whether the commission of suicide by a woman had been abetted by her husband or his relative and it is shown that she has 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 relatives of her husband.

7 Within the short span of three years Parliament realized the necessity to make the law more stringent and effective by introducing amendments to the Dowry Act, as well as the IPC by enacting Act 43 of 1986. These amendments, *inter alia*, made the offences dealt with in the Dowry Act cognizable for certain purposes and also made them non-bailable as well as non-compoundable. By the introduction of Section 8A of the Dowry Act the burden of proof was reversed in respect of prosecutions for taking or abetting the taking or demanding of any dowry by making the concerned person responsible for proving that he had not committed any such offence. Contemporaneously Section 304B was inserted into the IPC. The newly

added Section stipulates that 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. Sub-section (2) makes this offence punishable with imprisonment for a term which shall not be less than seven years and which may extend to imprisonment for life. Section 113B was further incorporated into the Evidence Act; [yet again ignoring the futility, if not ignominy, of retaining the withered appendage in the form of the existing Section 113, and further perpetuating an anachronism.] Be that as may be, the newly introduced Section 113B states that when the question is whether a person has committed the death of a married woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment or in connection with any demand for dowry, the Court shall presume that such person has caused dowry death. The Explanation harks back to the simultaneously added Section 304B of the IPC for the definition of dowry death, clarifying thereby that the person alluded to in this Section is her husband or any relative of her husband. It is

noteworthy that whilst Section 113A of the Evidence Act reposes discretion in the Court to draw a presumption so far as the husband's abetment in his wife's suicide, Parliament has mandated the Court to draw at least an adverse inference under Section 113B in the event of a dowry death. It seems to us that where a wife is driven to the extreme step of suicide it would be reasonable to assume an active role of her husband, rather than leaving it to the discretion of the Court.

8 The legal regime pertaining to the death of a woman within seven years of her marriage thus has numerous features, *inter alia*:

(i) the meaning of "dowry" is as placed in Section 2 of the Dowry Prohibition Act.

(ii) dowry death stands defined for all purposes in Section 304B of the IPC. It does exclude death in normal circumstances.

(iii) If death is a result of burns or bodily injury, or otherwise than under normal circumstances, and it occurs within seven years of the marriage and, it is 'shown' in contradistinction to 'proved' that soon before her death she was subjected to cruelty or harassment by her husband or his relatives, and the cruelty or harassment is connected with a demand of dowry, it shall be a

dowry death, and the husband or relative shall be deemed to have caused her death.

(iv) To borrow from Preventive Detention jurisprudence – there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words "soon before her death", to bring Section 304B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time; the query of this Court in the context of condonation of delay in filing an appeal – why not minutes and second – remains apposite.

(v) the deceased woman's body has to be forwarded for examination by the nearest Civil Surgeon.

(vi) once the elements itemised in (iii) above are shown to exist the husband or relative shall be deemed to have caused her death.

(vii) the consequences and ramifications of this 'deeming' will be that the prosecution does not have to prove anything more, and it is on the husband or his concerned relative that the burden of proof shifts as adumbrated in Section 113B, which finds place

in Chapter VII of the Evidence Act. This Chapter first covers 'burden of proof' and then "presumption", both being constant bed-fellows. In the present context the deeming or presumption of responsibility of death are synonymous.

9 Death can be accidental, suicidal or homicidal. The first type is a tragedy and no criminal complexion is conjured up, unless statutorily so devised, as in Section 304A; but even there the culpable act is that of the person actually causing the death. It seems to us that Section 304B of the IPC, inasmuch as it also takes within its contemplation "the death of a woman ….. otherwise than under normal circumstances", endeavours to cover murders masquerading as accidents. Justifiably, the suicidal death of a married woman who was meted out with cruelty by her husband, where her demise occurred within seven years of marriage in connection with a dowry demand should lead to prosecution and punishment under Sections 304B and/or 306 of the IPC. However, if the perfidious harassment and cruelty by the husband is conclusively proved by him to have had no causal connection with his cruel behaviour based on a dowry demand, these provisions are not attracted as held in Bhagwan Das v. Kartar Singh (2007) 11 SCC 205, although some reservation may remain regarding the reach of Section 306.

10 It is already empirically evident that the prosecution, ubiquitously and in dereliction of duty, in the case of an abnormal death if a young bride confines its charges to Section 304B because the obligation to provide proof becomes least burdensome for it; this is the significance that attaches to a deeming provision. But, in any death other than in normal circumstances, we see no justification for not citing either Section 302 or Section 306, as the circumstances of the case call for. Otherwise, the death would logically fall in the category of an accidental one. It is not sufficient to include only Section 498A as the punishment is relatively light. Homicidal death is chargeable and punishable under Sections 302 and 304B if circumstances prevail triggering these provisions. This Court has repeatedly reiterated this position, including in State of Punjab v. Iqbal Singh, 1991 (3) SCC 1 and quite recently in Jasvinder Saini v. State (Govt. of NCT of Delhi) 2013 (7) SCC 256.

11 Some doubts remain on the aspect of presumption of innocence, deemed culpability and burden of proof. One of our Learned Brothers has in **Pathan Hussain Basha** v. State of Andhra Pradesh (2012) 8 SCC 594, after extensively extracting from the previous judgment authored by him (but without indicating so) expressed two opinions – (a) that Article 20 of the

Constitution of India contains a presumption of innocence in favour of a suspect and, (b) that the concept of deeming fiction is hardly applicable to criminal jurisprudence. The logical consequence of both these conclusions would lead to the striking down of Section 8A of the Dowry Act, Section 113B of the Evidence Act, and possibly Section 304B of the IPC, but neither decision does so. So far as the first conclusion is concerned, suffice it to reproduce Article 20 of the Constitution:

> **20**. **Protection in respect of conviction for offences**.-(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
> (2) No person shall be prosecuted and punished for the same offence more than once.
> (3) No person accused of any offence shall be compelled to be a witness against himself.

Even though there may not be any Constitutional protection to the concept of presumption of innocence, this is so deeply ingrained in all Common Law legal systems so as to render it ineradicable even in India, such that the departure or deviation from this presumption demands statutory sanction. This is what the trilogy of dowry legislation has endeavoured to ordain.

12 In our opinion, it is beyond cavil that where the same word is used in a section and/or in sundry segments of a statute, it should be attributed the same meaning, unless there are compelling reasons to do otherwise. The obverse is where different words are employed in close proximity, or in the same section, or in the same enactment, the assumption must be that the legislature intended them to depict disparate situations, and delineate dissimilar and diverse ramifications. Ergo, ordinarily Parliament could not have proposed to ordain that the prosecution should "prove" the existence of a vital sequence of facts, despite having employed the word "shown" in Section 304B. The question is whether these two words can be construed as synonymous. It seems to us that if the prosecution is required to prove, which always means beyond reasonable doubt, that a dowry death has been committed, there is a risk that the purpose postulated in the provision may be reduced to a cipher. This method of statutory interpretation has consistently been disapproved and deprecated except in exceptional instances where the syntax permits reading down or reading up of some words of the subject provisions.

13 In Section 113A of the Evidence Act Parliament has, in the case of a wife's suicide, "presumed" the guilt of the husband and the members of his family. Significantly, in Section 113B which pointedly refers to dowry

deaths, Parliament has again employed the word "presume". However, in substantially similar circumstances, in the event of a wife's unnatural death, Parliament has in Section 304B "deemed" the guilt of the husband and the members of his family. The Concise Oxford Dictionary defines the word "presume" as: supposed to be true, take for granted; whereas "deem" as: regard, consider; and whereas "show" as: point out and prove. The Black's Law Dictionary (5th Edition) defines the word "show" as- to make apparent or clear by the evidence, to prove; "deemed" as- to hold, consider, adjudge, believe, condemn, determine, construed as if true; "presume" as- to believe or accept on probable evidence; and "Presumption", in Black's, "is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted." The Concise Dictionary of Law, Oxford Paperbacks has this comprehensive yet succinct definition of burden of proof which is worthy of reproduction:

> "**Burden of Proof:** The duty of a party to litigation to prove a fact or facts in issue. Generally the burden of proof falls upon the party who substantially asserts the truth of a particular fact (the prosecution or the plaintiff). A distinction is drawn between the *persuasive* (or *legal) burden*, which is carried by the party who as a matter of law will lose the case if he fails to prove the fact in issue; and the *evidential burden (burden of adducing evidence* or *burden of going forward)*, which is the duty of showing that there is sufficient evidence to raise an

issue fit for the consideration of the trier of fact as to the existence or non-existence of a fact in issue.

The normal rule is that a defendant is presumed to be innocent until he is proved guilty; it is therefore the duty of the prosecution to prove its case by establishing both the *actus reus* of the crime and the *mens rea*. It must first satisfy the evidential burden to show that its allegations have something to support them. If it cannot satisfy this burden, the defence may submit or the judge may direct that there is no case to answer, and the judge must direct the jury to acquit. The prosecution may sometimes rely on presumptions of fact to satisfy the evidential burden of proof (e.g. the fact that a woman was subjected to violence during sexual intercourse will normally raise a presumption to support a charge of rape and prove that she did not consent). If, however, the prosecution has established a basis for its case, it must then continue to satisfy the persuasive burden by proving its case beyond reasonable doubt (*see* proof beyond reasonable doubt). It is the duty of the judge to tell the jury clearly that the prosecution must prove its case and that it must prove it beyond reasonable doubt; if he does not give this clear direction, the defendant is entitled to be acquitted.

There are some exceptions to the normal rule that the burden of proof is upon the prosecution. The main exceptions are as follows. (1) When the defendant admits the elements of the crime (the *actus reus* and *mens rea)* but pleads a special defence, the evidential burden is upon him to prove his defence. This may occur, the example, in a prosecution for murder in which the defendant raises a defence of self-defence. (2) When the defendant pleads automatism, the evidential burden is upon him. (3) When the defendant pleads insanity, both the evidential and persuasive burden rest upon him. In this case, however, it is sufficient if he proves his case on a balance of probabilities (i.e. he must persuade the jury that it is more likely that he is telling the truth than not). (4) In some cases statute expressly places a persuasive burden on the defendant; for example, a person who carries an offensive weapon in public is guilty of an offence unless he proves that he had lawful authority or a reasonable excuse for carrying it".

14 As is already noted above, Section 113B of the Evidence Act and Section 304B of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word 'deemed' in Section 304B to distinguish this provision from the others. In actuality, however, it is well nigh 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 AIR 1953 SC 333 and State of Tamil Nadu v. Arooran Sugars Limited (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 304B of the 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 a 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 304B; 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 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are 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 113B of the Evidence Act and Section 304B of the 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 the Cr.P.C.

15 The width and amplitude of a provision deeming the guilt of a person in a legal system founded on a Constitution needs to be briefly reflected on. The Constitution is the *grundnorm* on which the legal framework has to be erected and its plinth cannot be weakened for fear of the entire structure falling to the ground. If the Constitution expressly affirms or prohibits

particular state of affairs, all statutory provisions which are incongruent thereto must be held as *ultra vires* and, therefore, must not be adhered to. We have already noted that Article 20 of our Constitution while not affirming the presumption of innocence does not prohibit it, thereby, leaving it to Parliament to ignore it whenever found by it to be necessary or expedient. A percutaneous scrutiny reveals that some legal principles such as presumption of innocence can be found across a much wider legal system, ubiquitously in the Common Law system, and restrictively in the Civil Law system. It seems to us that the presumption of innocence is one such legal principle which strides the legal framework of several countries owing allegiance to the Common Law; even International Law bestows its imprimatur thereto. Article 11.1 of the Universal Declaration of Human Rights, 1948 states – "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." Article 14(3)(g) of the International Covenant on Civil and Political Rights, 1966, assures as a minimum guarantee that everyone has a right not to be compelled to testify against himself or to confess guilt. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, firstly, promises the right to a fair trial and secondly, assures that

anyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. We may immediately emphasise that the tenet of presumed innocence will always give way to explicit legislation to the contrary. The presumption of innocence has also been recognised in certain circumstances to constitute a basic human right. Parliament, however, has been tasked with the responsibility of locating myriad competing, if not conflicting, societal interests. It is quite apparent that troubled by the exponential increase in the incidents of bride burning, Parliament thought it prudent, expedient and imperative to shift the burden of proof in contradistinction to the onus of proof on to the husband and his relatives in the cases where it has been shown that a dowry death has occurred. The inroad into or dilution of the presumption of innocence of an accused has, even *de hors* statutory sanction, been recognised by Courts in those cases where death occurs in a home where only the other spouse is present; as also where an individual is last seen with the deceased. The deeming provision in Section 304B is, therefore, neither a novelty in nor an anathema to our criminal law jurisprudence.[See Mir Mohammad Omar and Subramaniam v. State of Tamil Nadu (2009) 14 SCC 415.

16 It has already been pointed out that both in **Pathan Hussain Basha** as well as in Ashok Kumar v. State of Haryana 2010 (12) SCC 350, authored

by our same learned Brother, the use of word "shown" in Section 304B has palpably not been given due weightage inasmuch as it has been freely substituted by the word "proved". To the contrary in Nallam Veera Stayanandam v. Public Prosecutor 2004 (10) SCC 769, it has been opined that "it is for the defence in this case to satisfy the Court that irrespective of the prosecution case in regard to dowry demand and harassment, the death of the deceased has not occurred because of that and that the same resulted from a cause totally alien to such dowry demand or harassment."

17 Keeping in perspective that Parliament has employed the amorphous pronoun/noun "it" (which we think should be construed as an allusion to the prosecution), followed by the word "shown" in Section 304B, the proper manner of interpreting the Section is that "shown" has to be read up to mean "prove" and the word "deemed" has to be read down to mean "presumed". Neither life nor liberty can be emasculated without providing the individual an opportunity to disclose extenuating or exonerating circumstances. It was for this reason that this Court struck down the mandatory death sentence in Section 303 IPC in its stellar decision in Mithu vs. State of Punjab, AIR 1983 SC 473. Therefore, the burden of proof weighs on the husband to prove his innocence by dislodging his deemed culpability, and that this has to be preceded only by the prosecution proving the presence of three factors,

viz. (i) the death of a woman in abnormal circumstances (ii) within seven years of her marriage, and (iii) and that the death had a live link with cruelty connected with any demand of dowry. The other facet is that the husband has indeed a heavy burden cast on his shoulders in that his deemed culpability would have to be displaced and overturned beyond reasonable doubt. This emerges clearly as the manner in which Parliament sought to combat the scourge and evil of rampant bride burning or dowry deaths, to which manner we unreservedly subscribe. In order to avoid prolixity we shall record that our understanding of the law finds support in an extremely extensive and erudite judgment of this Court in P.N. Krishna Lal v. Government of Kerala, 1995 Supp (2) SCC 187, in which decisions spanning the globe have been mentioned and discussed. It is also important to highlight that Section 304B does not require the accused to give evidence against himself but casts the onerous burden to dislodge his deemed guilt beyond reasonable doubt. In our opinion, it would not be appropriate to lessen the husband's onus to that of preponderance of probability as that would annihilate the deemed guilt expressed in Section 304B, and such a curial interpretation would defeat and neutralise the intentions and purposes of Parliament. A scenario which readily comes to mind is where dowry demands have indubitably been made by the accused husband, where in an

agitated state of mind, the wife had decided to leave her matrimonial home, and where while travelling by bus to her parents' home she sustained fatal burn injuries in an accident/collision which that bus encountered. Surely, if the husband proved that he played no role whatsoever in the accident, he could not be deemed to have caused his wife's death. It needs to be immediately clarified that if the wife had taken her life by jumping in front of a bus or before a train, the husband would have no defence. Examples can be legion, and hence we shall abjure from going any further. All that needs to be said is that if the husband proves facts which portray, beyond reasonable doubt, that he could not have caused the death of his wife by burns or bodily injury or not involved in any manner in her death in abnormal circumstances, he would not be culpable under Section 304B.

18 Now, to the case in hand. It has been contended before us, as was also unsuccessfully argued before both the Courts below that there was a 'delay' in lodging the FIR. There is no perversity in the concurrent views that its lodgement after ten hours on the day next after the tragedy, i.e. 8/02/98 did not constitute inordinate delay such as would justifiably categorising the FIR as an after-thought or as contrived. The Complainant along with family and friends had to travel to another village; he would have had to first come to terms with the tragedy, make enquiries and consider the circumstances,

before recording the FIR. Equally preposterous is the argument that once the High Court had seen fit to acquit the other accused, namely, Davinder Singh (brother-in-law) and Jarnail Singh (father-in-law) the husband/Appellant should have been similarly acquitted. It cannot be ignored that the accused was not living with his parents and brother, and it is justified nay necessary to require stronger proof to implicate the family members of the husband. It has been essayed by the learned counsel for the Appellant to impress upon us that the cruelty postulated in this provision has not been shown to have occurred "soon before her death". This argument, assumes on a demurrer, that statutory cruelty had, in fact, been committed. The deceased and the Appellant were married in February, 1997 and the former committed suicide within one year; to even conjecture that it was not soon before death, has only to be stated to be stoutly shot down.

19 We must consider, lastly, whether the prosecution has successfully 'shown' that the deceased was subjected to cruelty which was connected with dowry demands. We may usefully reiterate here that keeping in perspective the use of "shown" instead of "proved" the onus would stand satisfied on the anvil of preponderance of evidence.

20 The two prosecution witnesses, on whom the entire episode is predicated, are PW4 and PW7. The Complainant/PW4-Angrez Singh appears to be the eldest in the family as he has stated that his brother, i.e. the father of the deceased, had already died. He has stated that sufficient *kanyadan* was given at the time of marriage; that two months prior to her death the deceased had, on one of her visits to their home, conveyed to her brothers that her husband and his family were harassing her for dowry, especially a motorcycle and fridge. On learning of these demands PW4 had told her that these goods would be provided at the time of the marriage of her brothers. PW4 was told by Rajwant Singh that his niece had committed suicide. The Complainant has admitted that there were no demands for dowry either at the betrothal or at the time of marriage. Her maternal uncle Gurdip Singh avowedly fixed/mediated/arranged the unfortunate marriage, yet he was not apprised of the dowry demands by Angrez Singh. He has also denied that any panchayat was convened regarding these dowry demands, whereas Sukhwant Singh PW7, the real brother of the deceased, has categorically stated in cross-examination that a panchayat comprising both Angrez Singh and Gurdip Singh and several others had held deliberations.

21 In cross-examination, the complainant has admitted that the deceased never spoke to him about her domestic problems or regarding demand of dowry by the accused except once, on the last occasion of her visit. He has further admitted that even her brothers had not conveyed any information to him in this regard. On the fateful day PW4 stated that he reached the village where the deceased resided and where she had committed suicide at about 7.00 pm on 7.2.1998 and that he immediately left for that place along with several others after ascertaining facts; the following morning he lodged the report at P.S. Assandh. What is important from his deposition is that he has deposed of only one alleged demand of dowry.

22 Sukhwant Singh, the real brother of the deceased has been examined as PW7 and he has deposed that the deceased visited their house two months prior to her death and narrated that the Appellant, his younger brother, their father and mother used to harass and torture her and demand dowry in the form of motorcycle and fridge and that he had told these facts to their uncle, Angrez Singh, as well as to his elder brother Jaswant Singh. He has further stated that he made the deceased understand about their financial difficulties and promised to give motorcycle and fridge after his marriage and that of her brother. He was informed of the death of the deceased on 7.2.98 by Angrez

Singh/PW4. In cross-examination even this witness has admitted that no dowry demands were made prior to or at the time of marriage. He has also deposed about a panchayat which included Gurdeep Singh (maternal uncle) as well as Angrez Singh/PW4 who, as has already been noted, has categorically stated that no such Panchayat took place. The version of the Appellant was put to him and denied, namely, that the deceased was hot tempered, wanted him to shave his hair, forced him to live separately from his parents, wanted him to shift to Karnal and start a business, all of which were against his wishes. The fundamental and vital question that the Court has to ask itself and find a solid answer to, is whether this evidence even preponderantly proves that the Appellant had treated the deceased with cruelty connected with dowry demands. It is only if the answer is in the affirmative will the Court have to weigh the evidence produced by the Appellant to discharge beyond reasonable doubt, the assumption of his deemed guilt. We have not lost sight of the fact that the deceased was pregnant at the time of her suicide and that only extraordinary and overwhelming factors would have driven her to take her life along with that of her unborn child. The fact remains that she did so. What motivated or compelled her to take this extreme and horrific step will remain a mystery, as we are not satisfied that the prosecution has proved or even shown that

she was treated with such cruelty, connected with dowry demands, as led her to commit suicide. In the normal course dowry demands are articulated when the marriage is agreed upon and is certainly reiterated at the time when it is performed and such demands continue into a couple of years of matrimony. In normal course, if a woman is being tortured and harassed, she would not remain reticent of this state of affairs and would certainly repeatedly inform her family. This is specially so before she takes the extreme step of taking her own life. Added to this are the inconsistencies and contradictions between the statements of PW4 and PW7 with regard to the panchayat and the presence of and knowledge of Gurdip Singh. It is for these reasons that we are of the opinion that the prosecution has not shown/presented and or proved even by preponderance of probabilities that the deceased had been treated with cruelty emanating from or founded on dowry demands. It is in the realm of a possibility that the ingestion of aluminium phosphate may have been accidental.

23 We may only observe that in his examination under Section 313 Cr.P.C. the accused has proffered details of his defence. This is not a case where he has merely denied all the questions put by the Court to him. As already stated above, because of the insufficiency or the unsatisfactory

nature of the facts or circumstances shown by the prosecution, the burden of proving his innocence has not shifted to the Appellant, in the present case.

24 In this analysis, the Appeal is allowed and the impugned Judgment convicting and punishing the Appellant is set aside.

.....J.
[VIKRAMAJIT SEN]

.....J.
[KURIAN JOSEPH]

New Delhi;
January 09, 2015.