
(2012) 06 SHI CK 0016

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 205 of 2005

State of Himachal
Pradesh

APPELLANT

Vs

Smt. Manju Rani and
Others

RESPONDENT

Date of Decision: June 21, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 161
- Evidence Act, 1872 - Section 113B, 114, 4
- Penal Code, 1860 (IPC) - Section 304B, 34, 498A

Citation: (2013) CriLJ 101 : (2013) 1 DMC 642 : (2012) 3 ShimLC 1370

Hon'ble Judges: R.B. Misra, J; Dev Darshan Sood, J

Bench: Division Bench

Advocate: R.K. Sharma, A.A.G. with Mr. J.S. Guleria, Assistant A.G, for the Appellant; Manoj Thakur, for the Respondent

Final Decision: Dismissed

Judgement

Dev Darshan Sud, J.

The State has challenged the judgment of learned Sessions Judge, acquitting the respondents for offences u/s 304-B and 498-A read with Section 34 of the Indian Penal Code. The brief facts necessary for consideration in this appeal are that the deceased Alka alias Ashu was the daughter of Roop Lal and was married to respondent No. 3 Sheetal Kumar son of Sh. Devinder Dutt. Their marriage was performed despite opposition from the parents of the deceased. The undisputed fact is that it was a love marriage. On 13.9.2000, the marriage was solemnized at Rajgarh. The case of the prosecution is that they resided as husband and wife happily for some time but later on she was harassed for dowry which ultimately compelled her to end her life.

2. Ext. PA is statement of Bachani Devi (PW1). She states that her husband is employed in the Forest Department. They have two sons and two daughters. Alka alias Ashu is the eldest daughter, who has qualified degree of B.Sc. and B.Ed. She had married to Sheetal Kumar respondent on 13th September, 2002 according to "Arya Samaj" rites which factum of marriage was later on accepted by her family after initial resistance. On 7th October, 2002, a get together/feast was held by them to celebrate the marriage. After about 1 1/2 months of the marriage, the mother-in-law of the deceased Smt. Manju Rani accused respondent started maltreating the deceased. She used to abuse her and threaten her. She asked her (Alka) to live in a separate room of the house. She says that she had filed a complaint against Manju Rani on a previous occasion. She then proceeds to narrate that the deceased was talking to her quite often on telephone complaining that her mother-in-law Manju accused was constantly troubling/maltreating/harassing her despite the fact that she was residing separately. She used to taunt her and as a result her daughter used to live in a constant state of mental tension. On 19.3.2003 her daughter and son-in-law Sheetal had visited her on the occasion of Holi when the deceased informed her that her mother-in-law had made life hell for her (Jeena Haram Kar Diya Hai) and she was very un-happy. Her daughter was not in a fit state of mind, perplexed and was capable of taking any action. On that day at around 3 a.m. she learnt that her daughter had consumed poison and had been hospitalized. She rushed to the hospital and found that her daughter was in an unconscious state. She died later on. She fixed the entire responsibility on the mother-in-law of the deceased.

3. This is the gist of the prosecution case on which the State relies for seeking conviction of the accused under Sections 304-B, 498-A read with Section 34 IPC.

4. Smt. Bachani Devi appeared as PW1. After stating the facts about marriage etc. she says that on 12.11.2002 at about 10 a.m. accused Manju Rani telephoned her and told her that she would kill Alka and she (complainant) could do whatever she wanted to save her life. At that time accused Manju was demanding dowry. Thereafter the mother of the deceased (Bachani Devi alias Shashi Rani) wrote an application (Ext. PA) to the Station House Officer, Police Station, Nahan, but no action was taken by the police. Thereafter, accused Devinder Dutt (father-in-law) gave a separate room to the deceased in the ground floor of his house where Sheetal accused and the deceased started residing together. On the demand of accused-Manju, she had given all the items of dowry like bed, mattresses, T.V. and electric press etc. She says that they rendered help to Sheetal for running his shop, for which purpose, they had brought bakery/confectionery items, toys for children and general merchandise items for sale. She says that she had complied with the request at the behest of Manju, who was demanding dowry on behalf of all accused. Manju and Devinder accused (father-in-law and mother-in-law of the deceased) were greedy persons and respondent Sheetal was also assisting them on this demand. Sheetal accused was an active conniver encouraging the parents though outwardly he used to show lot of affection for his wife. She then states:

Waha apney patee kay sath bahut khush thee parantu uskee shash ushay tang kartee thee. Ishi karan waha dimagi tor par parayshan thee. 19.3.2003 ko Alka wa uska patee hamaray ghar Holi khalaney kay leye aay aur sham ko apney ghar loat gaye. Ush samay, waha shmaney thee. Ushee deen, raat ko barah bajay muljeem Sheetal hamaray ghar aaya aur Alka kay dawara leekha kaguj deekhaya aur Alka kay baray maay pucha, jish baray mainey bataya kee raat ko waha uskey sath gai thee. Uskey baat Sheetal apney ghar chala gai. Uskey baad hamney mujreemo ko phone keeya, prantu koi uttar naa meela. Unt may mainay 3 a.m. per phone keeya, jeesay murjeem Devinder ney uthaya jishney mujhay batya kee Alka nay kuch kha leeya hai wa ushay uspatal ley gai hai.

We extract this portion of the evidence which reads:

Translation: She was very happy with her husband but her mother-in-law used to trouble her. For this reason, she used to be in a mental tension. On 19.3.2003 Alka and her husband came to her house for celebrating Holi and returned home in the evening. At that time, she was behaving normally. On that day, at mid night accused Sheetal came to her house and made inquiry about Alka, he told him that she had gone with him at night

5. She then says that at around 3 a.m., Devinder accused told her that Alka has been taken to the hospital. She rushed there and found Alka in an unconscious state. At that time, the accused Sheetal was alone. She died after some time. Her statement Ext. PB was recorded by the Police and was signed by her. On the day of the incident, all the accused were present in the house with Alka, who used to trouble her and it is for this reason she had ended her life. Bachani Devi PW1 says that she was running a shop which is in the name of her daughter. The accused used to say that when the shop is in the name of Alka why it has not been given to them?.

6. We also advert to the other evidence on the record. These are the hand written notes/poetical expression of the deceased and have been extensively dealt with by the learned trial Court. Only fact we need to observe about these writings is that they do not in any manner suggest that the accused were responsible for any demand of dowry or had created a situation for which would make it difficult for her to live with her husband Sheetal accused. These writings reveal the personal philosophy of the deceased of expressing a desire to go higher up in life, attain spiritual bliss, prayers to God and expressions of endearment for her husband. There is no demand of dowry neither is there any hint of any maltreatment meted out to the deceased. We need not reproduce these notes here as it would only encumber the judgment had have been reproduced by the learned Sessions Judge in detail. But suffice it to say that they do not contain one word against the respondents. We now advert to the evidence of PW1 Bachani Devi. She admits that the deceased and husband accused Sheetal had visited them only on 19.3.2003 when everything was normal.

7. PW2 Puneeta Rani is the younger sister of the deceased. She says that she used to visit the deceased and whenever they met or talked on the telephone, she found her

under depression/tension. On 3.3.2003 she visited the house of the deceased at around 7.30 p.m. She had taken tea with her when accused Manju Rani came there from the upper storey and she started abusing the deceased saying that she was a lazy woman and a work shirker. She was confronted with a statement u/s 161 Cr.P.C. where she does not state all these facts.

8. PW3 Dhanwant Singh is the owner of readymade garments shop next to that of PW1 Bachani Devi. He says that the deceased used to visit his shop quite often and he was on visiting terms with the family of the deceased. She told him that she was not leading a happy life. His statement general in nature and does not describe any specific incident. PW5 Akhil Bhardwaj says that he used to get tuitions from the deceased. She told him that she was not treated well by her in-laws. This is the evidence without specific incidents or details on the record which has been led by the prosecution to establish the fact that the death was the result of cruel treatment meted out to the deceased.

9. Looking at the evidence on the record, we cannot find any demand for dowry has been proved. Besides making a general statements in Court for the first time, there is nothing on the record to show that such demand for specific articles were made prior to the point of time when the F.I.R. was lodged. The presumption u/s 113-B of the Evidence Act could only have been invoked, in case it was established and proved that there had been a demand for dowry. In Subhash Chand v. State of H.P. and others, Latest HLJ 2009 (2) (HP) 1076 has held that:

10. As already noticed in the earliest version, given to the police, vide statement Ext. PW3/A by PW-3 Bihari Lal, not only that there is not a whisper of the allegation that Rs. 25000/- were demanded by the appellant and his parents and that demand had been made within a few days of the marriage and that soon thereafter another demand for a larger amount of Rs. 50000/- had been made, but also there is no allegation of any harassment or cruelty. What is recorded in Ext. PW3/A is that on her first visit, about 15 days after the marriage, deceased had complained that she felt suffocated and uncomfortable on account of the appellant being in the habit of consuming liquor and eating meat. If a man consumes liquor or eats meat that cannot be said to be a case of harassment of wife, within the meaning of Section 498-A IPC. PW-3 Bihari Lal was duly confronted with Ext. PW3/A, the statement u/s 154 Cr.P.C., made by him to PW-12 SI Harnam Singh.

11. Even in complaint Ext. DA, which PW-3 Bihari Lal lodged about 1 1/2 month after the occurrence, there is no mention of amount of Rs. 25,000/- having been paid, on account of dowry demand, by the appellant and his parents or a further demand for Rs. 50,000/-. PW-3 Bihari Lal was duly confronted with complaint Ext. DA. He could not offer any explanation, whatsoever, for the omission of these material facts in the complaint, despite the fact that such a complaint was lodged about 1 1/2 months after the occurrence and was drafted by a legal practitioner:

12. PW-4 Prem Chand, a brother of the deceased was also confronted with his statement Ext. DD, recorded by the police, u/s 161 Cr.P.C. In that statement also, there is no mention not only of payment of Rs. 25,000/- or demand for another sum of Rs. 50,000/- but also of the allegation that the deceased was harassed for seeking dowry from him or his father.

13. From the above discussion, it is clear that story regarding harassment of the deceased, on account of dowry demand, is an afterthought and, hence, not believable. Now when there is no evidence that there was any demand for dowry nor is there any evidence that the deceased was ever subjected to cruelty or harassment, neither the charge of dowry death, u/s 304-B IPC nor the charge of cruelty, u/s 498-A IPC can be said to have been established.

10. The case of demand for dowry is not stated by PW1 Bachani Devi before the police in the first instance and later it is built up in the Court for the first time, no reliance can be placed on such evidence. {See: [Bholi @ Veena and Another Vs. State of H.P.](#),

11. In fact, what we find from the record is that the deceased and the accused Sheetal had a love marriage and were living separately from the parents. In these circumstances, there could be no demand for dowry.

12. The presumption u/s 113-B cannot be invoked in every situation but only on proof of treatment with cruelty and harassment with respect to demand of dowry. It reads:

113-B. 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, on in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.--For the purpose of this Section "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code.

13. It is now well established that presumption u/s 113-B of the Evidence Act and 304-B of the Indian Penal Code can be raised only when the element of cruelty or harassment has been established on the record. (See Babaji Charan Barik v. State, 1994 Cr.L.J. 1684 (Ori); Keshab v. State, 1995 Cr.L.J. 174 (Ori), Bhakhar Ram v. State, 1995 Cr.L.J. 1345, [State of Himachal Pradesh Vs. Nikku Ram and others](#), .

14. In [State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi](#), the Supreme Court held that when there are infirmities in the evidence of the prosecution and improvements have been made in the testimony of the witnesses, acquittal would be the only consequence. In [Bhaskar Lal Sharma and Another Vs. Monica](#), , the Court emphasizes that the necessary ingredients u/s 498-A should be proved. The Court holds:

38. The scope of the aforementioned provision came up for consideration in some of the decisions of this Court. We may notice a few. In *Noorjahan v. State* this Court held : (SCC P. 59, paras 16-17)

16. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman is required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498-A gives the meaning of "cruelty".

17. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Amendment) Act, 1983 (46 of 1983). As clearly stated therein the increase in the number of dowry death is a matter of serious concern. The extent of the evil has been commented upon the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some case, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. There-fore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

It was observed in the fact situation obtaining therein : (SCC pp. 59-60, para 18)

18. So far as the present appellant is concerned, the evidence is inadequate to show that she was party to any demand for dowry. In fact, PW 1 stated that when she went to the place of her daughter the appellant was present along with A-1 and A-2. The said A-1 demanded jewels and presentation of Rs. 5000 for Ramzan. She accepted that she told A-1 and A-2 that she will send the same within a week. The next statement of this witness is very significant. She (the appellant) told that two months" time will be sufficient for offering the presentation. In other words, she did not made any demand for dowry. That aspect has been accepted by PW 1. Significantly, this witness in her cross-examination had admitted that the appellant is residing at Coimbatore for the last 35 years. She has categorically admitted that while she went to the house of her daughter, she (the appellant) was not present. Therefore, there is no evidence to show that the appellant was either present when the demand was made or she herself made any demand.

39. In *Sushil Kumar Sharma v. Union of India* this Court held: (SCC pp 285 & 287-88, paras 10 & 19)

10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "Cr.P.C") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, inlaws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of the investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the Courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalized a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the Courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the Courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

15. In [Raman Kumar Vs. State of Punjab](#) , the Court holds:

15. The necessity for insertion of the two provisions has been amply analyzed by the Law Commission of India in its Twenty-first Report dated 10.8.1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with demand for dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304-B IPC.)
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114

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

16. [M. Srinivasulu Vs. State of A.P.](#), considered the combined impact of Section 304-B I.P.C. and Section 113-B of the Evidence Act, the Court holds:

9. The necessity for insertion of the two provisions has been amply analyzed by the Law Commission of India in its 21st Report dated 10th August, 1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption u/s 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304B IPC).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

10. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section

113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC 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 after" used in Section 114 (illustration (a)) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

17. [Ramesh Kumar Vs. State of Chhattisgarh](#), the Supreme Court elaborates:

12. This provision was introduced by 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 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 any one 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-B shows that to attract applicability of Section 113-B, it must be shown that (i) 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 above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The 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 above said 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-B 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-B is defined in Section 4 of the Evidence Act, which says-"whenever it is provided by this Act that 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.

18. In [Amar Singh Vs. State of Rajasthan](#), the Supreme Court holds:

29. We are unable to accept this submission of Dr. Singhvi. The evidence of PW-2, PW-4 and PW-5 shows that Jagdish and Gordhani played a role in the demand of dowry of a Scooter or Rs. 25,000/- for Amar Singh, but demand of dowry by itself is not an offence u/s 498A or Section 304B IPC. What is punishable u/s 498A or Section 304B IPC is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113B of the Indian Evidence Act that only when it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the Court to presume that the accused has caused the dowry death.

We need not multiply precedent any further. What we find here is that barring the fact that the deceased committed suicide, we do not find one single element either of cruelty, harassment or demand for dowry either in isolation or conjointly established on the record. We find that from the hand writings of the deceased (Ext. P14/A and Ext. PW14/F), there is not one word against the accused. From whatever angle we consider the case, we do not find that the evidence proves the offences against the accused. This appeal is accordingly dismissed. Bail bonds furnished by the respondents are discharged.