A MUTHU KUTTY AND ANR.

v.

STATE BY INSPECTOR OF POLICE, TAMIL NADU

NOVEMBER 19, 2004

B [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Evidence Act, 1872; Ss. 32, 60 and 113B/Penal Code, 1860; Ss. 302, 304B and 498 :

C *Demand of dowry—Daughter-in-law tortured to death by in-laws by setting her on fire—Conviction based on dying declaration—Correctness of—Held : Dying declaration should be of such nature as to inspire full confidence of the Court in its correctness and not the result of tutoring, prompting or imagination—Courts must ensure that the deceased was in* D *a fit state of mind and had an opportunity to observe and identify the assailants—Once the Court is satisfied that the declaration was true and voluntary, it could base its conviction without any further corroboration—The declaration satisfied all such tests to the satisfaction of the Court, thus trustworthy and reliable—Hence, Courts below rightly recorded the conviction.*

E *Dowry Prohibition Act, Section 4—Scope of—Discussed.*

Legal Maxims :

Maxim **"Nemo Moriturus Prosemuitur Mentiri"***—Applicability of.*

F

Appellants, In-laws of the deceased, allegedly set her on fire since her parents could not meet out their demands of dowry. On hearing cry of the victim, some of the neighbourers, (prosecution witnesses) came to her rescue and took her to a nearby hospital and also informed about the incident to her mother. The Medical Officer found 90% burn injuries G **on her body and informed the matter to Police. Dying declaration of the deceased was recorded by the Judicial Magistrate in the presence of a doctor, who certified that the deceased was conscious and able to give the declaration. Later, the deceased succumbed to the burn injuries in the Hospital. Police, after completion of the investigation, submitted** H **charge-sheet against the accused under Section 498A, 304B r/w Section**

302 IPC and Section 4 of the Dowry Prohibition Act. Trial Court found the accused persons guilty of the offence under Section 498A and 304B IPC, and sentenced them to imprisonment accordingly. The appeal was dismissed by the High Court. Hence the present appeal. A

Accused-appellant contended that there was no cogent evidence furnished by the prosecution in support of the allegation of demand of dowry; that the deceased was not in a fit condition to give any statement, moreover the medical officer did not certify so; and that the deceased had committed suicide due to depression. B

Respondent-State submitted that the dying declaration was recorded by the Judicial Magistrate following the due procedure of law; and that the Medical officer has certified fitness of the deceased before recording her evidence. C

Dismissing the appeal, the Court D

HELD : 1.1. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, the dying declaration, if excluded, will result in miscarriage of justice because the victim being generally and only eye-witness in the serious crime, the exclusion of the statement would leave the Court without a scrap of evidence. [231-F-H] E

R. v. *Wood Cock,* [1789] 1 Leach 500, referred to. F

1.2. Though a dying declaration is entitled to great weight, but then the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason why the Court insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must also be satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. The dying declaration is only a piece of untested evidence and must like any G H

A other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny the Court is satisfied that it is true and free form any effort to induce the deceased to make a false statement and it is coherent and consistent, there shall be no legal impediment to make it basis
B of conviction, even if there is no corroboration. In the present case, there is no material to show that the dying declaration was the result of product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and credible. [231-A-C; 232-G-H; 233-B]

C *Laxman* v. *State of Maharashtra,* [2002] 6 SCC 710, followed.

Gangotri Singh v. *State of U.P.,* JT (1992) 2 SC 417; *Goverdhan Rooji Ghyare* v. *State of Maharashtra,* JT (1993) 5 SC 87; *Meesala Ramakrishan* v. *State of Andhra Pradesh,* JT (1994) 3 SC 232; *State of Rajasthan* v. *Kishore,* JT (1996) 2 SC 595 and *Rambai* v. *State of Chhattisgarh,* [2002]
D 8 SCC 83, relied on.

Smt. Paniben v. *State of Gujarat,* AIR (1992) SC 1817; *Munnu Raja & Anr.* v. *The State of Madhya Pradesh,* [1976] 2 SCR 764; *State of Uttar Pradesh* v. *Ram Sagar Yadav & Ors.,* AIR (1985) SC 416; *Ramavati Devi*
E v. *State of Bihar,* AIR (1983) SC 164; *K. Ramachandra Reddy & Anr.* v. *The Public Prosecutor,* AIR (1976) SC 1994; *Rasheed Beg* v. *State of Madhya Pradesh,* (1974) 4 SCC 264; *Kaka Singh* v. *State of M.P.,* AIR (1982) SC 1021; *Ram Manorath & Ors.* v. *State of U.P.,* [1981] 2 SCC 654; *State of Maharashtra* v. *Krishnamurthi Laxmipati Naidu,* AIR (1981) SC 617; *Surajdeo Oza & Ors.* v. *State of Bihar,* AIR (1979) SC 1505; *Nanahau*
F *Ram & Anr.* v. *State of Madhya Pradesh,* AIR (1988) SC 912; *State of U.P.* v. *Madan Mohan & Ors.,* AIR (1989) SC 1619 and *Mohanlal Gangaram Gehani* v. *State of Maharashtra,* AIR (1982) SC 839, referred to.

2.1. The Courts below have rightly relied upon the dying declaration.
G But something unusual is found in the conclusion of the Trial Court. The Trial Court observed that the accused without knowing what they were doing at the relevant time poured kerosene and set fire on the deceased and in view of this situation Section 304 IPC was applied instead Section 302B IPC. The reasoning in clearly wrong. But the State had not questioned the correctness of the conclusions arrived at by the trial
H Court in directing acquittal of the accused persons from the charge

under Section 302 IPC. Even then the case would be covered by Section 304 Part II IPC, on the basis of the conclusions arrived at by the trial Court. [233-E-G]

2.2. Section 304B IPC and Section 113B of the Evidence Act clearly indicate that law authorizes a presumption that the husband or any of his relatives has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. Thus the husband or the relatives need not be the actual or direct participants in the commission of the offence. For direct participants in such commission of the offence, there are already provisions incorporated in Sections 300, 302 and 304 IPC. [233-H; 234-A-B]

2.3. The provisions contained in Section 304B IPC and Section 113B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the Courts below. But that cannot bring any relief if the conviction is altered to section 304 Part II. No prejudice is caused to the accused appellants as they were originally charged for offence punishable under Section 302 IPC along with Section 304B IPC. Hence the conviction as recorded and the sentence imposed and affirmed by the Courts below do not warrant any interference. [234-B-D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1301 of 2004.

From the Judgment and Order dated 7.8.2003 of the Madras High Court in Crl.A. No. 333 of 1996.

S. Nanda Kumar, Anuj Kr. Chauhan and Rakesh K. Sharma for the Appellants.

Subramonium Prasad for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

A Appellants (described as A-1 and A-2) who were convicted for offence punishable under Sections 498A and 304B of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo two years' rigorous imprisonment and a fine of Rs. 1,000 with default stipulation in respect of the former offence and 7 years' RI for the latter offence by the Trial Court B have filed this appeal questioning the correctness of judgment rendered by a learned Single Judge of the Madras High Court who confirmed the Trial Court's judgment.

Factual position in a nutshell is as follow :

C Smt. Selva Backlam (PW-1) is the mother and Pon Pandian (PW2-2) is the brother of the Kodimalar (hereinafter referred to as the 'deceased') who was given in marriage to Bathel Raj (DW-1), son of both the accused. From this wedlock, a female child was born. Due to financial crisis, Bethal Raj went to Bombay seeking for better job, Deceased used to complain to D PW-1 that the accused were demanding and asking her to bring money. On one occasion, due to quarrel over the dowry demand, deceased came to the house of PW-1. On 28.5.1995, the date of occurrence, at about 1.30 p.m. on hearing cry from the house of the accused "Save me, Save me" Smt. Perkmen (PW-3) from the neighbouring house went to the house of the accused and found deceased lying on the floor with burn injuries, and smoke E was also coming out. On coming to know of the occurrence, Salva Backiam (PW-1), Sundar (PW-4), Ram Lakshmi (PW-5) and Gomathi (PW-6) came and saw the deceased who told them that A-2 poured kerosene on her and A-1 lit the match stick. The dress of deceased was found burnt. The part of the saree was cut and removed. Perkman (PW-3) and Smt. Gomathi (PW-F 6) changed the dress of the deceased and took her to the Government Hospital, Tenkasi by a taxi brought by Sundar (PW-4). On the way, she informed PW-3 that her mother-in-law and father-in-law had jointly set fire on her. Pon Pandia (PW-2) on hearing the occurrence through PW-4 went to the Government Hospital, Tenkasi and enquired about her sister, who told PW-2 about the act of the accused.

G

Adbulkhder (PW-7), Village Administrative Officer, Avudayanoor informed the occurrence at about 2.00 p.m. to his higher officials through Thalaiyari. At about 3.20 p.m. deceased was examined by Dr. Ramaswamy (PW-9), Assistant Medical Officer and he recorded the statement of deceased H that A-1 and A-2 poured kerosene on her and set fire. He found the burns

to be about 90%. He gave an intimation under Ex.P8 to Thenkasi Police Station. Sankaralingam (PW-14) head Constable of Pavurchathiram Police Station on receipt of the wireless message at about 4.00 p.m. from the Thenkasi Police Station went to the Thenkasi Police Station at about 4.45 p.m., received Ex.P8 went to the Government Hospital, Thenkasi at 5.15 p.m. and recorded the complaint of deceased under Ex.P1 in the presence of Doctor (PW-9) wherein the deceased has affixed her thumb impression. Ex.P1 complaint was attested by PW-4 and the same was also certified by PW-9 Doctor. PW-14 returned to Pavurchathiram Police Station at about 7.00 p.m. and registered a case in Crime No. 228/1992 under Sections 498A and 307 IPC. Sundaramurthy (PW-13), Grade I Constable attached to Pavurchathiram Police Station received the FIR and handed over the same to the Judicial Magistrate, Thenkasi. A copy of the FIR was also sent to the higher officials. On 28.5.1992 at about 8.00 p.m. on receipt of Ex.P4 memo from the Government Hospital, Thenkasi, Pitchai (PW-8), Judicial Magistrate, Thenkasi went to the Hospital, enquired as to the consciousness of the patient Kodimalar and recorded the dying declaration in the presence of Doctor (PW-9), who certified that she was conscious and able to give declaration. Ex.P5 was the dying declaration recorded by the Judicial Magistrate.

On receipt of the copy of the FIR, Vilavaranimurugan (PW-15) Inspector of Police, Thenkasi took up the investigation, went to the Government Hospital, examined PWs 4 and 9 and recorded their statements. He went to Pavurchathiram, examined PW-14 and recorded his statement. On 29.5.1992 at 6.30 a.m. he went to the site of occurrence, made an inspection and prepared Ex.P2 observation mahazar in the presence of PW-7 and one Sabbukutty and also prepared Ex.p16 rough sketch. He recovered M.O. 1 black can with lid, (M.Os. 2 and 3) and M.Os. 3 to 5 gowns and M.O. 6 match box under Ex.P3 mahazar which attested by PW-7 and one Subbukutty. At about 8.30 a.m. he arrested the accused in Salipudur Bus stop and brought them to police station. Dr. Elangovan Chellappa (PW-11) attached to the Government Hospital, Thenkasi sent an intimation at 9.00 a.m. that deceased who was under treatment succumbed to the burn injuries on the morning of 29.5.1992. On receipt of the intimation from the Government Hospital, Thenkasi PW-15 Investigating Officer altered the case to Sections 498A and 302 IPC. Ex. P14 altered FIR was sent to Ramamurthy (PW-16), Revenue Divisional Officer through Rajendran (PW-12), a Constable. PW-16 on receipt of the express altered report, went to the Government Hospital and

A saw the dead body of Kodimalar, the deceased. He conducted the inquest, prepared his report under Ex.P17 and sent to the Police Officials for necessary action. Dr. (Smt.) Vasantha Diana (PW-10) on receipt of the requisition under Ex.P9 given by PW-16 conducted the postmortem on the dead body of Kodimalar on 29.5.1992 at 4.15 p.m. She issued Ex.P10 postmortem B certificate. No poisonous substance was detected in the analysis, when the internal organs preserved were subjected to chemical analysis. The chemical analyst's report is marked as Ex.P11. Doctor (PW-10) opined that the deceased appeared to have died due to extensive burns 4.10 hours prior to the postmortem.

C Karuppiah (PW-17), Deputy Superintendent of Police, Thenkasi took up further investigation. He examined the witnesses. The successor in officer of PW-17 namely Durai Raj, Deputy Superintendent of Police completed the investigation and laid the charge sheet against the accused under Sections 498A, 304B read with 302 IPC and Section 4 of Dowry D Prohibition Act, 1961 (in short the 'Dowry Act').

In order to substantiate its accusations prosecution examined 17 witnesses. On completion of evidence tendered by the prosecution, the accused persons were questioned under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The accused persons pleaded innocence E and false implication.

The husband of the deceased was examined as DW-1. On consideration of the materials on record the trial Court found the accused persons guilty and sentenced them as afore-stated. It did not accept the defence plea that F because of depression, deceased committed suicide.

In the appeal before the High Court primarily two questions were raised. Firstly, there was no evidence of any dowry demand and secondly, the so-called dying declaration is not believable. The State reiterated its stand taken before the Trial Court that evidence is clear and cogent. The G High Court found that the appeal was without any merit, and accordingly dismissed it.

In support of the appeal, learned counsel for the appellants submitted that there was no cogent evidence to justify conclusion regarding the demand H of dowry. Further considering the extent of burns alleged to have been

suffered by the deceased, it is highly improbable that she was in fit condition to give any statement. The doctor has not certified that she was conscious, and/or, in a fit condition to make any declaration. Her statements have been treated as the FIR and dying declaration. Though the presence of a small girl who is supposed to witnessed the occurrence was stated by some of the prosecution witnesses, for reasons best known to the prosecution, the said child was not produced as a witness.

The acceptability of the defence version has been lightly brushed aside by the Courts below. It was the specific stand of the accused persons that because of depression the deceased had committed suicide and the prosecution case as claimed is totally improbable.

In response, learned counsel for the State submitted that the Courts below have analysed the evidence in great detail, found the same to be clear and cogent. The dying declaration was recorded by a Judicial Magistrate (PW-8) in the presence of the doctor. There is no reason as to why these witnesses would falsely implicate the accused persons. In fact the Judicial Magistrate has categorically stated that the deceased herself in clear terms pointed out accusing fingers at the accused persons and following all requisite formalities the dying declaration was recorded in the presence of the doctor. It is not correct that the doctor has not certified about the deceased being conscious and in a fit condition to make the declaration.

At this Juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz. if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of

admission are : firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice. These aspects have been eloquently stated by Lyre LCR in *R.* v. *Wood Cock,* [1789] 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain :

> "Have I met hideous death within my view,
> Retaining but a quantity of life,
> Which bleeds away even as a form of wax,
> Resolveth from his figure 'gainst the fire?
> What is the world should make me now deceive,
> Since I must lose the use of all deceit?
> Why should I then be false since it is true
> That I must die here and live hence by truth?"
>
> (See King John, Act 5, Sect. 4)

The principle on which dying declaration is admitted in evidence is indicated in legal maxim *"nemo moriturus proesumitur mentiri* — a man will not meet his maker with a lie in his mouth."

This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Panjben* v. *State of Gujarat,* AIR (1992) SC 1817:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja & Anr.* v. *The State of Madhya Pradesh,* [1976] 2 SCR 764)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of Uttar Pradesh* v. *Ram Sagar Yadav and Ors.,* AIR (1985) SC 416 and *Ramavati Devi* v. *State of Bihar,* AIR (1983) SC 164)

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy and Anr.* v. *The Public Prosecutor,* AIR (1976) SC 1994].

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg.* v. *State of Madhya Pradesh,* [1974] 4 SCC 264).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See *Kaka Singh* v. *State of M.P.,* AIR (1982) SC 1021].

A (vi) A dying declaration with suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath and Ors* v. *State of U.P.*, [1981] 2 SCC 654)

(vii) Merely because a dying declaration does contain the details as to B the occurrence, it is not to be rejected. [See *State of Maharashtra* v. *Krishnamurthi Laxmipati Naidu,* AIR (1981) SC 617].

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See *Surajdeo Oza and Ors* v. *State of Bihar,* AIR (1979) SC 1505]. C

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot D prevail. [See *Nanahau Ram and Anr.* v. *State of Madhya Pradesh,* AIR (1988) SC 912].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See *State of U.P.* v. *Medan Mohan and Ors.,* AIR (1989) SC 1519]. E

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See *Mohanlal Gangaram Gehani* v. *State of* F *Maharashtra,* AIR (1982) SC 839].

In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is G absolutely safe to act upon it. If after careful scrutiny the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration. (See *Gangotri Singh* v. *State of U.P.,* JT (1992) 2 SC 417, *Goverdhan Raoji* H *Ghyare* v. *State of Maharashtra,* JT (1993) 5 SC 87, *Meesala Ramakrishan*

v. *State of Andhra Pradesh,* JT (1994) 3 SC 232 and *State of Rajasthan* v. *Kishore,* JT (1996) 2 SC 595). A

There is no material to show that dying declaration was result of product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility. B

It was observed by a Constitution Bench of this Court in *Laxman* v. *State of Maharashtra,* [2002] 6 SCC 710 that where the medical certificate indicated that the patient was conscious, it would not be correct to say that there was no certification as to state of mind of declarant. Moreover, state of mind was proved by testimony of the doctor who was present when the dying declaration was recorded. In the aforesaid background it cannot be said that there was any infirmity. Further if the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make dying declaration then such dying declaration will not be invalid solely on the ground that the doctor has not certified as to the condition of the declarant to make the dying declaration. (See *Rambai* v. *State of Chhattisgarh,* [2002] 8 SCC 83). In the instant case contrary to what accused-appellants plead, the doctors' certificate is there. C D

Judged in the background of the legal principles as stated above, the Courts below have rightly relied upon the dying declaration. But we find something unusual in the conclusion of the trial Court. After having accepted that the accused persons were responsible for setting the deceased ablaze, applied Section 304 Part B IPC and not Section 302 IPC. The Trial Court observed that the accused without knowing what they were doing at the relevant time poured kerosene and set fire on the deceased and in view of this situation Section 302 IPC was not applied and Section 304B IPC was applied. The reasoning is clearly wrong. But we find that the State had not questioned correctness of the conclusions arrived at by the learned Trial Judge in directing acquittal of the accused persons from the charge under Section 302 IPC. But even then the case would be covered by Section 304 Part II IPC, on the basis of the conclusions arrived at by the Trial Court. E F G

A reading of Section 304-B IPC and Section 113-B Evidence Act together makes it clear that law authorizes a presumption that the husband or any other relative of the husband has caused the death of a woman if she H

A happens to die in circumstance not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are B direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their C relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the Courts below. But that cannot bring any relief if the conviction is altered to Section 304 Part II. No prejudice is caused to the accused appellants as they were originally charged for offence punishable under Section 302 IPC along with Section D 304-B IPC.

Looked at from any angle, the conviction as recorded and affirmed and the sentences imposed do not warrant any interference. The appeal being without any merit is dismissed accordingly.

E S.K.S. Appeal dismissed.