

SURESH KUMAR

v

STATE OF HARYANA

(Criminal Appeal Nos.218-219 of 2009)

NOVEMBER 11, 2013

**[RANJANA PRAKASH DESAI AND MADAN
B. LOKUR, JJ.]**

Penal Code, 1860 – s. 304B and 498A – Dowry death – Death of wife within seven years of marriage – Under unnatural circumstances – Prosecution of husband (appellant) and mother-in-law of deceased – Acquittal by trial court on the ground that the death was accidental – Acquittal of appellant-accused reversed and convicted u/s. 304B and 498A – Held: Initial burden of proving the death of a woman within seven years of marriage in abnormal circumstances in connection with demand of dowry accompanied by cruelty/harassment, is on the prosecution – After discharge of initial burden, reverse onus is put on the accused to prove his innocence by showing that death was accidental – In the present case, ingredients of s. 304B have been met – The accused failed to rebut the presumption u/s. 113B – Conviction confirmed – Evidence Act, 1872 – s. 113-B.

Evidence Act, 1872 – s. 113-B – Presumption under – Nature of – Held: Such presumption is mandatory – The courts have no option but to presume dowry death, unless such presumption is rebutted by the accused – Penal Code, 1860 – s. 304 B.

Appeal – Against acquittal – Held: Interference with order of acquittal cannot be a matter of course – But the court can interfere with such order if there is any jurisdictional error – In the present case, High Court as appellate court rightly

A *interfered with order of trial court which committed jurisdictional error.*

Practice and Procedure – New plea – Held: Plea raised for the first time before Supreme Court, cannot be entertained.

B Appellant-accused alongwith his mother was prosecuted u/ss. 304B and 498A IPC. The prosecution case was that the accused used to demand dowry from her wife and also used to threaten and harass her on that account. On the day of the incident, brother of the appellant-accused went to the house of brother of the deceased (PW4) and informed that the deceased died having suffered an electronic shock. When PW 4, PW 5 alongwith the Sarpanch of the village went to the matrimonial house of the deceased, they came to know that the deceased had already been cremated. PW-4 lodged FIR alleging that the appellant and his mother killed the deceased for dowry. Trial Court acquitted both the accused. High Court reversed the acquittal order of the appellant-accused and held him guilty u/ss. 304B and 498A IPC. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. Section 304-B IPC does not categorize death as homicidal or suicidal or accidental. Death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring “otherwise than under normal circumstances” can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B of the IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman’s husband or his relative “shall be deemed to have caused

her death”. The Section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. [Para 33] [699-D-G]

Pawan Kumar vs. State of Haryana (1998) 3 SCC 309: 1998 (1) SCR 746; *Kans Raj vs. State of Punjab* (2000) 5 SCC 207: 2000 (3) SCR 662; *Hira Lal vs. State (Govt. of NCT), Delhi* (2003) 8 SCC 80: 2003 (1) Suppl. SCR 734; *Bakshish Ram vs. State of Punjab* (2013) 4 SCC 131 – relied on.

1.2. The evidentiary value of the presumption is stated in Section 113-B of the Evidence Act, 1872 (the Act). The key words in this Section are “shall presume” leaving no option with a Court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113-B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her. [Para 34] [699-H; 700-A-B]

1.3. The presumption under Section 113-B of the Act is mandatory may be contrasted with Section 113-A of the Act which was introduced contemporaneously. Section 113-A of the Act, dealing with abetment to suicide, uses the expression “may presume”. This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B of the IPC: it is necessary to first ascertain whether the ingredients of the Section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. [Para 36] [700-E-G]

1.4. The initial burden of proving the death of a

A woman within seven years of her marriage in circumstances that are not normal is on the prosecution; such death should be in connection with or for a demand of dowry which is accompanied by such cruelty or harassment that eventually leads to the woman's death in circumstances that are not normal. After the initial burden of a deemed dowry death is discharged by the prosecution, a reverse onus is put on the accused to prove his innocence by showing, *inter alia*, that the death was accidental. [Para 48] [707-D-F]

C *Pawan Kumar vs. State of Haryana* (1998) 3 SCC 309: 1998 (1) SCR 746; *Shamnsaheb M. Multtani vs. State of Karnataka* (2001) 2 SCC 577: 2001 (1) SCR 514; *Yashoda vs. State of Madhya Pradesh* (2004) 3 SCC 98; *Nallam Veera Stayanandam vs. Public Prosecutor, High Court of A.P.* (2004) 10 SCC 769; *Sharad vs. State of Maharashtra* (2012) 5 SCC 548; *Pathan Hussain Basha vs. State of A.P.* (2012) 8 SCC 594: 2012 (7) SCR 290; *Hira Lal vs. State (Govt. of NCT), Delhi* (2003) 8 SCC 80: 2003 (1) Suppl. SCR 734 – relied on.

E *Hira Lal vs. State (Govt. of NCT), Delhi* (2003) 8 SCC 80: 2003 (1) Suppl. SCR 734; *Kunhiabdulla vs. State of Kerala* (2004) 4 SCC 13: 2004 (2) SCR 853; *State of Andhra Pradesh vs. Raj Gopal Asawa* (2004) 4 SCC 470: 2004 (3) SCR 32; *Kamesh Panjiyar vs. State of Bihar* (2005) 2 SCC 388: 2005 (1) SCR 903; *Bakshish Ram vs. State of Punjab* (2013) 4 SCC 131 – referred to.

1.5. In the present case, the deceased is said to have died of an electric shock or electrocution, which is not a normal circumstance or a normal cause of death; her death was admittedly within seven years of her marriage; the finding of the High Court is that there was a demand by appellant-accused for dowry in the form of a motorcycle. This has come out in the evidence of PW-4,

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PW-5, PW-7 and father of the deceased. There is also evidence that the deceased was treated with cruelty or harassed for a motorcycle as dowry by the appellant-accused. He had subjected her to cruelty or harassment in connection with the demand by beating her despite the intervention of brother of the deceased (PW-4) and her father. The appellant-accused was unrelenting and insisted on a motorcycle being given by way of dowry; the finding of the High Court is that the deceased was treated with cruelty or harassment soon before (about 15 or 20 days) her death. [Para 49] [707-F-H; 708-A-B]

1.6. Thus, the ingredients of Section 304-B of the IPC having been met and the first stage process being over, it is deemed that the deceased was a victim of a dowry death and that the appellant-accused had caused the dowry death. The burden of rebutting the presumption was on the appellant-accused. He did precious little to rebut this presumption. The best evidence in this regard could have been given by the doctor who is said to have attended to the deceased and declared her dead, but he did not produce him/her in the witness box. [Paras 50 and 51] [708-B-C, E]

1.7. The theory of the deceased dying of an electric shock was put forward only by brother of the appellant-accused, who did not enter the witness box. Appellant-accused and another accused, in their statement under Section 313 of the Cr.P.C. did not mention anything about electrocution of the deceased. Consequently, on the facts of this case, appellant-accused has not been able to rebut the statutory presumption and thereby has failed to discharge the reverse onus placed upon him. [Para 54] [709-B-D]

1.8. The plea that there was a delay in lodging the FIR against the appellant-accused and so the prosecution is vitiated. This contention was not raised by the appellant-

A accused at any earlier stage and so the same cannot be entertained. There is also no adverse consequence or presumption in the delay, if any, in lodging an FIR. [Para 60] [712-B-C]

B 2. Interference against an order of acquittal should not be a matter of course, however, where the trial Judge commits a jurisdictional error, the appellate court is entitled to interfere and correct the error. In the present case, the trial Judge arrived at a conclusion that the death was accidental; he then proceeded on the basis that an
 C accidental death is not punishable under Section 304-B of the IPC; therefore, there was no option before the trial Judge but to acquit the appellant-accused. However, even an accidental death would fall within the purview of
 D Section 304-B of the IPC. That being so, the trial Judge committed a jurisdictional error in keeping accidental death of the deceased beyond the scope of Section 304-B of the IPC. It is this jurisdictional error that was corrected by the High Court. [Para 58] [711-E-H]

E *Ghurey Lal vs. State of U.P.* (2008) 10 SCC 450: 2008 (11) SCR 499; *S. Anil Kumar vs. State of Karnataka* (2013) 7 SCC 219; *Rohtash vs. State of Haryana* (2012) 6 SCC 589: 2012 (6) SCR 62 – relied on.

Case Law Reference:

F	1998 (1) SCR 746	relied on	Para 27
	2000 (3) SCR 662	relied on	Para 28
	2003 (1) Suppl. SCR 734	relied on	Para 30
G	(2013) 4 SCC 131	relied on	Para 31
	1998 (1) SCR 746	relied on	Para 37
	2001 (1) SCR 514	relied on	Para 40
H	(2004) 3 SCC 98	relied on	Para 41

(2004) 10 SCC 769	relied on	Para 42	A
(2012) 5 SCC 548	relied on	Para 43	
2012 (7) SCR 290	relied on	Para 44	
2003 (1) Suppl. SCR 734	referred to	Para 45	B
2004 (2) SCR 853	referred to	Para 46	
2004 (3) SCR 32	referred to	Para 46	
2005 (1) SCR 903	referred to	Para 46	
(2013) 4 SCC 131	referred to	Para 47	C
2008 (11) SCR 499	relied on	Para 55	
(2013) 7 SCC 219	relied on	Para 57	
2012 (6) SCR 62	relied on	Para 57	D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 218-219 of 2009.

From the Judgment & Order dated 25.03.2008 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 302-DBA of 1997. E

R.C. Kohli, S.S. Shamsbery, Bhakti Vardhan for the Appellant.

Kamal Mohan Gupta, Rajeev Gaur Naseem, Mohd. Zahid Hussain, Naresh Bakshi for the Respondent. F

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The correctness of the appellant's conviction for an offence punishable under Section 498-A and Section 304-B of the Indian Penal Code (IPC) is questioned before us. The appellant had earlier been acquitted by the Trial Court and on an appeal by the State, his acquittal was reversed and he was convicted of the offences charged. H

A In our opinion, the High Court was right, on merits, in convicting the appellant for the offences for which he was charged.

B 2. The scope of interference against an order of acquittal is also before us but in view of several decisions of this Court on this subject, we are not inclined to repeat the conclusions arrived at. All we need say is that on the facts of this case the High Court was justified in interfering with the order of acquittal passed by the Trial Court.

Brief facts

C 3. The appellant Suresh Kumar married Sulochana on 18th February, 1990 at village Bal Chhappar. Since Suresh Kumar was in the Army, he was not permanently staying in the matrimonial home but would come home while on leave.

D 4. According to PW-4 Gian Singh (Sulochana's brother) a substantial amount was spent on Sulochana's marriage but despite this, soon after the marriage, Suresh Kumar demanded a motorcycle as dowry. He even threatened that if the demand was not met, he would not allow Sulochana to stay in the matrimonial home. When the demand was communicated to Gian Singh, he and another person from his village PW-5 Mam Chand as well as Jagdish went to Suresh Kumar's residence and 'pacified' him.

F 5. A few days prior to 12th September, 1993 Suresh Kumar again raised a demand for a motorcycle as dowry and started harassing Sulochana, and even went to the extent of beating her. Therefore, on 12th September, 1993 Gian Singh went and met him in the matrimonial home and again pacified him but, as it appears, only temporarily. On 16th September, 1993 Krishan (Suresh Kumar's brother) came to Gian Singh's house in village Gaganheri and informed him and others in his family that Sulochana had died after having suffered an electric shock.

H 6. After receiving this information, Gian Singh, Mam Chand

and Jagdish went to village Bal Chhappar and on reaching there, they came to know that Sulochana had already been cremated. A

7. Gian Singh then made enquiries about the cause of Sulochana's death and on the basis of his enquiries he concluded that she had been killed by Suresh Kumar and his mother Leela Devi for dowry and that they had cremated Sulochana's body before Gian Singh could arrive at village Bal Chhappar. B

8. On these broad facts, Gian Singh lodged a first information report with Police Station Chhappar on 19th September, 1993. C

9. Pursuant to the investigation carried out by the police, Suresh Kumar was arrested on the same day while his mother Leela Devi was arrested on 20th September, 1993. D

10. Subsequently, both were tried for offences punishable under Section 498-A and Section 304-B of the IPC.

Decision of the Trial Court E

11. It came out in the evidence recorded before the Additional Sessions Judge, Yamuna Nagar at Jagadhari in Sessions Case No.72 of 1993 that Krishan had reached Gian Singh's village Gaganheri between 10 a.m. and 11 a.m. on 16th September, 1993. This conclusion was arrived at on the basis of Gian Singh's statement as well as the statement of Mam Chand and PW-6 Sardha (Sulochana's father). Gian Singh and others from his family also stated that they had gone to village Bal Chhappar, but they learnt on arrival that Sulochana had already been cremated. F G

12. However, the Trial Judge relied on the evidence of DW-1 Jagdish Singh, the Sarpanch of the village Bal Chhappar to conclude that several persons from Sulochana's family including her brother and father were present at the cremation and that H

A they did not voice any suspicion about Sulochana's death.

B 13. The Trial Judge also doubted the correctness of Gian Singh's testimony and in fact discarded it altogether in view of various discrepancies in his statement. It was further held that soon after his marriage Suresh Kumar did not ask for a motorcycle as dowry since no such evidence was given by Sardha. In fact, the demand for a motorcycle was made for the first time only about 15 or 20 days before Sulochana's death. That a demand for dowry was made is not in issue.

C 14. Finally, it was held that Suresh Kumar and Sulochana were happily married and there was no reason for either her homicidal or suicidal death and that she had died as a result of an accident for which the blame could not be foisted on the accused persons.

D 15. The Trial Judge concluded by his judgment and order dated 3rd October, 1996 that Sulochana had died of electrocution while she was in the kitchen and that her death was accidental and therefore the ingredients of Section 304-B of the IPC were not made out so as to convict Suresh Kumar and Leela Devi.

E 16. Feeling aggrieved by the acquittal of Suresh Kumar and Leela Devi, the State preferred an appeal in the High Court of Punjab and Haryana. While leave to appeal in respect of Leela Devi was refused by the High Court by an order dated 1st April, 1997 the appeal against Suresh Kumar's acquittal was admitted and registered as Criminal Appeal No.302-DBA of 1997.

G **Decision of the High Court**

H 17. By its judgment and order dated 25th March, 2008 the High Court reversed the acquittal of Suresh Kumar and held him guilty of offences punishable under Sections 498-A and 304-B of the IPC. By a separate order on sentence, he was awarded rigorous imprisonment for a period of seven years

under Section 304-B of the IPC and rigorous imprisonment of three years along with a fine of Rs.5,000/- for the offence punishable under Section 498-A of the IPC. The sentences were directed to run concurrently and the period of detention undergone by him was required to be set off in terms of Section 428 of the Code of Criminal Procedure.

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18. The High Court concluded that information about Sulochana's death was received in village Gaganheri between 10 a.m. and 11 a.m. on 16th September, 1993. The High Court referred to the testimony of the witnesses in respect of their arrival in village Bal Chhappar to attend Sulochana's cremation. While there is some discrepancy in the time of their arrival which ranges from 3 p.m. to 6 p.m., this seems to us to be not quite relevant, on the facts of the present case, whether Gian Singh and Sardha and others attended Sulochana's cremation.

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19. The High Court also did not accept the statement of Jagdish Singh that Sulochana's relatives had attended her cremation. The High Court however accepted his statement that Sulochana had died at about 7 a.m. on the morning of 16th September, 1993.

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20. The High Court meticulously examined the evidence on record and concluded that apart from the FIR lodged by Gian Singh which was based upon information given to him by Krishan that Sulochana had died of an electric shock, there was no evidence to suggest that she did in fact die of electrocution. The doctor who is said to have examined her and pronounced her dead was not examined by the prosecution or by the defence; neither Suresh Kumar nor Leela Devi mentioned in their statements under Section 313 of the Cr.P.C. that Sulochana's death was caused by electrocution.

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21. The High Court accepted the testimony of the prosecution witnesses that a demand for a motorcycle as dowry had been made almost immediately after Sulochana's marriage with Suresh Kumar even though her father Sardha had not so

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A stated. It was also held that soon before Sulochana's death, the demand was repeated by Suresh Kumar and on the failure of her family to meet that demand, she was treated with cruelty and beaten up.

B 22. The High Court was of the view that the Trial Court had not correctly appreciated the position at law and had therefore committed an error in acquitting Suresh Kumar. The conduct of Suresh Kumar was such as to hold that he had caused the death of Sulochana.

C 23. On this basis the High Court reversed the judgment and order passed by the Trial Court and converted the acquittal into one of conviction. The High Court held that the ingredients of Section 304-B of the IPC were made out inasmuch as Sulochana had admittedly died within seven years of her marriage. Her death was said to be by electrocution and by virtue of Section 113-B of the Evidence Act, 1872 the presumption was that her death had been caused by Suresh Kumar and it was for him to rebut the presumption. It was held that death by electrocution is not a death under normal
D circumstances.
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24. Feeling aggrieved, Suresh Kumar is before us.

Ingredients of Section 304-B of the IPC

F 25. Learned counsel for Suresh Kumar made two submissions. It was firstly contended on the merits of the case that there was nothing to suggest that his client was guilty of an offence punishable under Section 304-B of the IPC. Secondly it was contended that the High Court ought not to have
G lightly interfered against an order of acquittal.

26. The actual words used in Section 304-B of the IPC are of importance. This section reads as under:-

H **"304-B. Dowry death.**-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise

than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

27. In a large number of decisions, this Court has indicated the ingredients of Section 304-B of the IPC, which are now broadly accepted. In *Pawan Kumar v. State of Haryana*, (1998) 3 SCC 309 the ingredients were identified as:

"(a) When the death of a woman is caused by any burns or bodily injury, or

(b) occurs otherwise than under normal circumstances

(c) and the aforesaid two facts spring within 7 years of girl's marriage

(d) and soon before her death, she was subjected to cruelty or harassment by her husband or his relative,

(e) this is in connection with the demand of dowry."

28. The ingredients of Section 304-B of the IPC were rephrased in *Kans Raj v. State of Punjab*, (2000) 5 SCC 207 in the following words:

(a) the death of a woman was caused by burns or bodily

- A injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within 7 years of her marriage;
- B (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- C (e) to such cruelty or harassment the deceased should have been subjected soon before her death.

29. The expression "otherwise than under normal circumstances" was explained to mean "death not in the usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury."

30. A somewhat recent exposition is to be found in *Hira Lal v. State (Govt. of NCT), Delhi*, (2003) 8 SCC 80 wherein this Court held that to attract the application of Section 304-B of the IPC, the essential ingredients are as follows:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- F (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- G (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death."
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31. More recently the ingredients of Section 304-B of the IPC have been abbreviated in *Bakshish Ram v. State of Punjab*, (2013) 4 SCC 131 in the following words: A

"(a) that a married woman had died otherwise than under normal circumstances; B

(b) such death was within seven years of her marriage; and

(c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death." C

32. This 'formula', though framed in different words by this Court, from time to time, conveys the same meaning of the essential ingredients of an offence punishable under Section 304-B of the IPC. D

33. Importantly, Section 304-B of the IPC does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring "otherwise than under normal circumstances" can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B of the IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "dowry death" and the woman's husband or his relative "shall be deemed to have caused her death". The Section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. E F G

34. The evidentiary value of the presumption is stated in Section 113-B of the Evidence Act, 1872 (the Act). The key words in this Section are "shall presume" leaving no option with H

A a Court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113-B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her.

B 35. Section 113-B of the Act reads as follows:-

C **"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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

D *Explanation* - For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

E 36. That the presumption under Section 113-B of the Act is mandatory may be contrasted with Section 113-A of the Act which was introduced contemporaneously. Section 113-A of the Act, dealing with abetment to suicide, uses the expression "may presume". This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B of the IPC: it is necessary to first ascertain F whether the ingredients of the Section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death.

G **Some key decisions**

H 37. In *Pawan Kumar* this Court adverted to the reason for amending the IPC by Act 43 of 1986 to introduce Section 304-B therein and the difficulty in curbing the menace of dowry related deaths. This Court said in paragraph 11 of the Report:

"It is true, as argued by learned counsel for the appellants, that in criminal jurisprudence benefit of doubt is extendable to the accused. But that benefit of doubt would arise in the context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws. Since the cause of death of a married woman was to occur not in normal circumstances but as a "dowry death", for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband's house, where all likely accused reside. Hence the aforesaid amendments brought in the concept of deemed "dowry death" by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. Of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of "deemed dowry death"."

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38. This Court then observed that: "The objective is that men committing such crimes should not escape punishment. Hence stringent provisions were brought in by shifting the burden onto the accused by bringing in the deemed clause."

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39. On the question of burden of proof, this Court referred to Section 113-B of the Act and held in paragraph 19 of the Report:

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"We find that according to Section 8-A of the aforesaid 1961 Act¹ which came into force w.e.f. 2-10-1985 for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing an offence is made. Similarly, under

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1. Dowry Prohibition Act, 1961.

Crl. Appeal Nos. 218-219 of 2009.

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A Explanation to Section 113-B of the Indian Evidence Act, which was also brought in by the aforesaid Act 43 of 1986, there is presumption that such death is on account of dowry death. Thus the burden, if at all, was on the accused to prove otherwise."

B 40. In *Shamnsaheb M. Multtani v. State of Karnataka*, (2001) 2 SCC 577 a Bench of three judges of this Court elucidated the requirements of Section 304-B of the IPC read with Section 113-B of the Act and contrasted it with Section 113-A of the Act. Paragraphs 27 to 30 are extremely important
C in this context and are reproduced below:

"27. The postulates needed to establish the said offence² are: (1) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been
D subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading Section 113-B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds
E in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances "the court shall presume that such
F person had caused the dowry death".

28. Under Section 4 of the Evidence Act "whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved". So the court has no option but to presume that
G the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence

2. Section 304-B of the IPC.

for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

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29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can persuade the court against drawing a presumption adverse to him.

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30. But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it."

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41. In *Yashoda v. State of Madhya Pradesh*, (2004) 3

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A SCC 98 this Court held that once the ingredients of Section 304-B of the IPC are fulfilled, the onus shifts to the defence to produce evidence to rebut the statutory presumption and to show that the death was in the normal course with which the accused were not connected. This is what was said:

B "Once the prosecution proves the facts which give rise to
 C the presumption under Section 304-B IPC, the onus shifts
 D to the defence and it is for the defence to produce
 E evidence to rebut that presumption. The defence may
 adduce evidence in support of its defence or may make
 suggestions to the prosecution witnesses to elicit facts
 which may support their defence. The evidence produced
 by the defence may disclose that the death was not
 caused by them, or that the death took place in the normal
 course on account of any ailment or disease suffered by
 the deceased or that the death took place in a manner with
 which they were not at all connected. In the instant case if
 the defence wanted to prove that the deceased had
 suffered from diarrhoea and vomiting and that resulted in
 her death, it was for the defence to adduce evidence and
 rebut the presumption that arose under Section 304-B IPC.
 The defence could have examined the doctor concerned
 or even summoned the record from the hospital to prove
 that in fact the deceased has suffered such ailment and
 had also been treated for such ailment."

F 42. In *Nallam Veera Stayanandam v. Public Prosecutor,*
 G *High Court of A.P.*, (2004) 10 SCC 769 this Court specifically
 adverted to an accidental death and the applicability of Section
 304-B of the IPC as well as the presumption under Section
 113-B of the Act and held:

H "It is true from the evidence led by the prosecution it has
 been able to establish that the appellants were demanding
 dowry which was a harassment to the deceased. It is also
 true that the death of the deceased occurred within 7 years
 of the marriage, therefore, a presumption under Section

113-B of the Evidence Act is available to the prosecution, therefore, it is for the defence in this case to discharge the onus and establish that the death of the deceased in all probability did not occur because of suicide but was an accidental death."

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43. Similarly, in *Sharad v. State of Maharashtra*, (2012) 5 SCC 548 this Court was again concerned with an accidental death. This Court referred to Section 113-B of the Act to conclude that the burden of proving that it was an accidental death was upon the accused. It was held:

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"The counsel for the appellant next tried to advance the plea that it was in fact a case of accidental burn and Savita caught fire by falling down on the chulha. It is seen above that Savita died from burn injuries within two-and-a-half years of her marriage with the appellant. It is also established that soon before her death she was subjected to cruelty or harassment by the appellant in connection with the demand for the unpaid amount of the dowry. All the three facts and circumstances put together clearly attract the provisions of Section 113-B of the Evidence Act and the burden lay upon the appellant to prove the defence plea that it was a case of accidental burning. There is, however, no evidence on record even to remotely support the plea of accidental burn."

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44. Finally, in *Pathan Hussain Basha v. State of A.P.*, (2012) 8 SCC 594 this Court reiterated that the burden of proving the innocence of the accused or rebutting the statutory presumption is on him and not on the prosecution which has only to prove that the ingredients of an offence of dowry death are made out. It was held:

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"Applying these principles to the facts of the present case, it is clear that the ingredients of Section 304-B read with Section 498-A IPC are completely satisfied in the present case. By a deeming fiction in law, the onus shifts on to the

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A accused to prove as to how the deceased died. It is for
 the accused to show that the death of the deceased did
 not result from any cruelty or demand of dowry by the
 accused persons. The accused did not care to explain as
 to how the death of his wife occurred. Denial cannot be
 B treated to be the discharge of onus. Onus has to be
 discharged by leading proper and cogent evidence. It was
 expected of the accused to explain as to how and why his
 wife died, as well as his conduct immediately prior and
 subsequent to the death of the deceased. Maintaining
 C silence cannot be equated to discharge of onus by the
 accused. In the present case, the prosecution by reliable
 and cogent evidence has established the guilt of the
 accused. There being no rebuttal thereto, there is no
 occasion to interfere in the judgments of the courts under
 appeal."

D 45. A discordant note on the issue of burden of proof in
 an accidental death was struck in *Hira Lal* wherein this Court
 conjointly read Section 304-B of the IPC and Section 113-B of
 the Act. It was held that the onus is on the prosecution to rule
 E out the possibility of a natural or accidental death. It was held
 in paragraph 9 of the Report as follows:

F "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 "death occurring
 otherwise than in normal circumstances"."

G 46. These very words were repeated, almost in identical
 terms, in *Kunhiabdulla v. State of Kerala*, (2004) 4 SCC 13,
State of Andhra Pradesh v. Raj Gopal Asawa, (2004) 4 SCC
 470 and in *Kamesh Panjiyar v. State of Bihar*, (2005) 2 SCC
 388 that it is for the prosecution to show that the dowry death
 H was not natural or that it was accidental.

47. This view has recently been followed in Bakshish Ram wherein it was held that: A

"[A] perusal 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. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates." B C

48. We are, of course, bound by the decision of a larger Bench of this Court in Multtani. Following that decision, we must hold that the initial burden of proving the death of a woman within seven years of her marriage in circumstances that are not normal is on the prosecution; such death should be in connection with or for a demand of dowry which is accompanied by such cruelty or harassment that eventually leads to the woman's death in circumstances that are not normal. After the initial burden of a deemed dowry death is discharged by the prosecution, a reverse onus is put on the accused to prove his innocence by showing, inter alia, that the death was accidental. D E

49. So far as the present case is concerned, (i) Sulochana is said to have died of an electric shock or electrocution, which is not a normal circumstance or a normal cause of death; (ii) Sulochana's death was admittedly within seven years of her marriage; (iii) and (iv) The finding of the High Court (with which we agree) is that there was a demand by Suresh Kumar for dowry in the form of a motorcycle. This has come out in the evidence of Gian Singh, Mam Chand, Sardha and PW-7 Beer Singh. There is also evidence that Sulochana was treated with cruelty or harassed for a motorcycle as dowry by Suresh Kumar. He had subjected her to cruelty or harassment in connection F G H

- A with the demand by beating her despite the intervention of Sulochana's brother Gian Singh and her father Sardha. Suresh Kumar was unrelenting and insisted on a motorcycle being given by way of dowry; (v) The finding of the High Court (with which also we agree) is that Sulochana was treated with cruelty
 B. or harassment soon before (about 15 or 20 days) her death.

C 50. The ingredients of Section 304-B of the IPC having been met and the first stage process being over, it is deemed that Sulochana was a victim of a dowry death and that Suresh Kumar had caused the dowry death. To rebut the statutory presumption under Section 113-B of the Act, learned counsel for the appellant contended that Sulochana's death by an electric shock or by electrocution was an accident and therefore the case would fall outside the purview of Section 304-B of the IPC.

D 51. Therefore, the only matter in issue now is whether Sulochana's death by electrocution or electric shock was accidental or not. The burden of rebutting the presumption was on Suresh Kumar. Unfortunately he did precious little to rebut
 E this presumption. The best evidence in this regard could have been given by the doctor who is said to have attended to Sulochana and declared her dead, but he did not produce him/her in the witness box.

F 52. Learned counsel for Suresh Kumar submitted that it was for the prosecution to have produced the doctor as a witness to ascertain the cause of death. We are not in agreement with learned counsel. There is no doubt that the death of Sulochana was not under normal circumstances. As
 G mentioned above, all other ingredients under Section 304-B of the IPC having been made out, the burden of proving that Sulochana's death was accidental had shifted from the prosecution to Suresh Kumar, and it was for him to rebut the statutory presumption.

H 53. Section 113-B of the Evidence Act introduces a

reverse onus, which is to say that though it is ordinarily for the prosecution to prove its case beyond a reasonable doubt, but when a reverse onus is introduced, it is for the accused to refute the case of the prosecution and prove his innocence. Suresh Kumar has, unfortunately, not discharged the onus cast on him.

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54. On the contrary, the High Court has noted, and rightly so, that the theory of Sulochana dying of an electric shock was put forward only by Krishan, who did not enter the witness box. Suresh Kumar and Leela Devi, in their statement under Section 313 of the Cr.P.C. did not mention anything about Sulochana's electrocution. Consequently, on the facts of this case, we are clearly of the view that Suresh Kumar has not been able to rebut the statutory presumption and thereby has failed to discharge the reverse onus placed upon him.

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Appeal against acquittal

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55. The second contention is that the High Court ought not to have interfered in the acquittal by the Trial Court. It was submitted that if two views are possible, the High Court should lean in favour of the accused and should not interfere with an acquittal.

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56. A few years ago, the law on the subject was culled out from a large number of decisions and summed up in *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 as follows:

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"1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

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2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the

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A presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the

material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

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-(vii) This list is intended to be illustrative, not exhaustive."

57. Learned counsel for *Suresh Kumar* referred to *S. Anil Kumar v. State of Karnataka*, (2013) 7 SCC 219 particularly paragraph 14 of the Report wherein reliance was placed on *Rohtash v. State of Haryana*, (2012) 6 SCC 589 to conclude that it is "only in exceptional cases where there are compelling circumstances and where the judgment in appeal is found to be perverse, can the High-Court interfere with the order of acquittal." In *Rohtash* it was further observed:

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"The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide *State of Rajasthan v. Talevar*, (2011) 11 SCC 666 and *Govindaraju v. State*, (2012) 4 SCC 722.)

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58. While we agree that interference against an order of acquittal should not be a matter of course, however, where the Trial Judge commits a jurisdictional error, the appellate Court is entitled to interfere and correct the error. In the present case, the Trial Judge arrived at a conclusion that the death was accidental; he then proceeded on the basis that an accidental death is not punishable under Section 304-B of the IPC; therefore, there was no option before the Trial Judge but to acquit Suresh Kumar. However, as we have noted above even an accidental death would fall within the purview of Section 304-B of the IPC. That being so the Trial Judge committed a jurisdictional error in keeping Sulochana's accidental death beyond the scope of Section 304-B of the IPC. It is this jurisdictional error that was corrected by the High Court and this

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A clearly comes within the parameters of interference laid down in *Ghurey Lal*.

59. The second contention of learned counsel for Suresh Kumar is also rejected.

B 60. It was submitted that there was a delay in lodging the FIR against Suresh Kumar and so the prosecution is vitiated. This contention was not raised by Suresh Kumar at any earlier stage and so we decline to entertain it. We also do not see any adverse consequence or presumption in the delay, if any, in lodging an FIR.

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Conclusion

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61. We find no merit in these appeals and they are accordingly dismissed.

62. The bail bond of Suresh Kumar is cancelled and it is directed that he should be taken into custody to serve out the remainder of his sentence.

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Kalpana K. Tripathy

Appeals dismissed.