A PATHAN HUSSAIN BASHA

v.

STATE OF A.P.

(Criminal Appeal No. 1712 of 2009)

AUGUST 16, 2012

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[SWATANTER KUMAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 - ss.304-B and 498-A - Suicide by C *married woman - Short span of time between marriage and death of the deceased - Prosecution case that deceased was being harassed and ill-treated by her husband, father-in-law and mother-in-law for non-payment of balance dowry amount - Trial court convicted all the three accused and sentenced* D *them to life imprisonment - High Court acquitted the accused-father-in-law but confirmed conviction and sentence of the accused-husband and mother-in-law (i.e. the appellants) - On appeal, held: The ingredients of s.304B r/w s.498A IPC were completely satisfied in the instant case - By a deeming fiction* E *in law, the onus was on the accused to prove as to how the deceased died - It was 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 - Denial cannot be treated to be discharge of onus - Onus has to be discharged by leading* F *proper and cogent evidence - Maintaining silence cannot be equated to discharge of onus by the accused - On facts, the prosecution established the guilt of the accused by reliable and cogent evidence - There being no rebuttal thereto, no occasion for interference by Supreme Court - Appellants were* G *rightly held guilty by the courts below - However, keeping in view the attendant circumstances and in the interest of justice, punishment awarded to them reduced to ten years rigorous imprisonment.*

In a case of death of a married woman, her husband

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and parents-in-law were charged with offences under Sections 304-B and 498-A IPC. The prosecution case was that at the time of marriage of the deceased, it was promised that a dowry of Rs. 25,000/-, would be paid by the side of the wife to the husband; that out of this amount, a sum of Rs. 15,000/- was paid at that time and it was promised that the balance dowry of Rs. 10,000/- would be paid after four months, upon which the marriage was performed; that the deceased's father could not pay the balance amount within time as he lacked the resources; that despite pressure from accused-husband and parents-in-law, the deceased was not able to get the balance amount of dowry from her family; that for non-payment of dowry, the accused persons harassed the deceased and subjected her to cruelty and even refused to send her to her parental house; that deceased was unable to bear such cruelty by the accused persons and consequently committed suicide by hanging herself in the house of the accused. The trial court convicted all the three accused under ss.304B and 498A IPC and sentenced them to life imprisonment. In appeal, the High Court acquitted the accused-father-in-law, but confirmed the conviction of accused-husband and mother-in-law (i.e. the appellants). Hence the present appeals.

Partly allowing the appeals, the Court

HELD: 1. From the evidence, it is clear that the dowry demands were being raised by the accused persons persistently from the family of the deceased and for that they even harassed the deceased, by beating and abusing her. The deceased had informed her parents of the ill-treatment and the cruelty inflicted on her for non-giving of dowry. The period intervening between the marriage and the death of the deceased was very small. They were married in the year 2002 and she committed suicide by hanging on 15th February, 2003. The witnesses, including LW-1 (father of the deceased) stated

A that for the first few months they were happy, but thereafter, there were quarrels between the accused-husband and the deceased. Accused-husband when he had gone to the parental house of the deceased, demanded different items like fan, ring and Rs. 1,000/- in B cash, and the balance of the agreed dowry amount. Since, these demands were not satisfied instantaneously, he even left the deceased at her parental house. [Paras 12, 13] [298-C-F]

2. It is clear that the ingredients of Section 304B read C with Section 498A IPC are completely satisfied in the present case. By a deeming fiction in law, the onus shifts on to the accused to prove as to how the deceased died. It was for the accused to show that the death of the deceased did not result from any cruelty or demand of D dowry by the accused persons. The accused-hsuband did not care to explain as to how the death of his wife occurred. Denial cannot be 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 E 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 silence cannot be equated to discharge of onus by the accused. In the present case, the prosecution by reliable and cogent evidence F 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. [Para 15] [305-G-H; 306-A-C]

G *Biswajit Halder alias Babu Halder and Others v. State of W.B.* (2008) 1 SCC 202: 2007 (4) SCR 120 and *Ashok Kumar v. State of Haryana* (2010) 12 SCC 350: 2010 (7) SCR 1119 - relied on.

3. The High Court acquitted the accused-father-in-H law, as there was no direct evidence against him. His

acquittal was not challenged by the State before this Court, thus, this Court is not called upon to discuss this aspect of the matter. The appellants (i.e. accused-husband and mother-in-law) were rightly found guilty of the offence by the courts. While there is no reason to differ with the concurrent findings recorded by the trial court and the High Court, there is some substance in the argument raised on behalf of the appellants that keeping in view the prosecution evidence, the attendant circumstances, the age of the accused and the fact that they have already been in jail for a considerable period, the Court may take lenient view as far as the quantum of sentence is concerned. The offences having been proved against the accused and keeping in view the attendant circumstances, ends of justice would be met, if the punishment awarded to the appellants is reduced. Consequently, ten years Rigorous Imprisonment is awarded to the appellants. [Paras 16, 17, 18] [306-C-G]

Case Law Reference:

2007 (4) SCR 120	**relied on**	**Para 13**
2010 (7) SCR 1119	**relied on**	**Para 14**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1712 of 2009 etc.

From the Judgment & Order dated 26.10.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 2368 of 2004.

WITH

Crl. Appeal No. 1706 of 2009.

Param Kumar Mishra (for Kumud Lata Das) for the Appellant

D. Mahesh Babu for the Respondent.

The Judgment of the Court was delivered by

A **SWATANTER KUMAR, J.** 1. Accused Pathan Hussain Basha, was married to Pathan Haseena Begum (now deceased) on 23rd June, 2002 at Guntur. It was an arranged marriage. At the time of marriage, it was promised that a dowry of Rs. 25,000/-, besides other formalities, would be paid by the B side of the wife to the husband. Out of this amount, a sum of Rs. 15,000/- was paid at that time and it was promised that the balance dowry of Rs. 10,000/- would be paid in the month of October, 2002, upon which the marriage was performed.

2. The father of the bride could not pay the balance amount C within time, because he lacked the resources. The accused Pathan Hussain Basha, his father Pathan Khadar Basha, and mother Pathan Nazeer Abi forced her to get the balance amount of dowry. Despite such pressure, she was not able to get that money from her family. It is the case of the prosecution that for D non-payment of dowry, the accused persons harassed the deceased and subjected her to cruelty. They even refused to send her to her parental house. This was informed by the deceased to various persons, including her relatives and elders. She was unable to bear the cruelty to which she was subjected, E by the accused persons. On 15th February, 2003, at about 11 a.m., the deceased committed suicide by hanging herself in the house of the accused.

3. When Pathan Basheerunnisa, LW3 returned from her work, the accused sent her out giving her money to bring the F soaps upon which she went out and when she came back, she found the accused absent and the bride hanging in the house. Subsequently, LW-3 Pathan Basheerunnisa sent her grandson Pathan Inayatullah Khan, LW-4 to the house of the parents of the deceased to inform them about the incident. When the G parents of the deceased came to the house of the accused and found the deceased hanging from the beam with a saree, they untied her and took her to the Government General Hospital, Guntur hoping that the deceased may be alive. However, upon medical examination by the doctor, she was declared brought H dead.

4. The father of the deceased Pathan Yasin Khan, LW-1 and her mother Pathan Shamshad Begum, LW-2 were present at that time. LW-1, lodged the report, which was registered by Sri K. Srinivasarao, LW-16, the Sub-Inspector of Police. The FIR was registered under Section 304B and Section 498A of the Indian Penal Code, 1860 (for short the "IPC"). Thereafter, investigation was conducted by one Shri P. Devadass, LW-17. He inspected the site from where he recovered and seized the saree that had been used for hanging. This was done in the presence of LW-10 and LW-11, Shaik Ibrahim and Mohd. Ghouse, respectively. Thereupon, the body was sent for post-mortem examination through Constable P. Venkateswara Reddy, LW-15. LW-17, P. Devdass, also took photographs of the scene. LW-13, Dr. M. Madhusudana Reddy conducted autopsy over the body of the deceased and prepared post-mortem certificate giving the cause of death as asphyxia, as a result of hanging.

5. On 16th February, 2003, at about 5 p.m., Investigating Officer arrested all the three accused persons. They faced the trial and were convicted by learned Sixth Additional Munsif Magistrate, Guntur for committing an offence under Sections 498A and 304B IPC.

6. They were committed to the Court of Sessions, Guntur Division, Guntur for such an offence. They faced the trial and the learned Sessions Judge vide its judgment dated 4th October, 2004 found them guilty of the said offences and punished them as follows:-

> "Hence A.1 to A.3 are sentenced to undergo R.I. for THREE YEARS and further sentenced to pay a fine of Rs. 1,000/- each (total fine amount Rs. 3,000/-) offence punishable u/s. 498-A IPC. I.D. of the fine amount of Rs. 1000/- to undergo SI for 9 months. And further A.1 to A.3 are sentenced to undergo imprisonment for LIFE for the offence u/s. 304-B IPC. Both the sentences shall run concurrently. The undergone remand period of A.1 to A.3

A shall be set off u/s. 428 Cr.P.C. M.O.1 shall be destroyed after expiry of appeal time. The unmarked property if any shall be destroyed after expiry of appeal time."

7. The judgment dated 4th October, 2004 passed by the learned Trial Court was challenged in appeal before the High B Court. The High Court of Andhra Pradesh, vide its judgment dated 26th October, 2006, while allowing the appeal in part, convicted accused Nos.1 and 2 for the aforementioned offences, however, acquitted accused No. 3, namely, Pathan Khadar Basha. The sentence awarded by the Trial Court was C confirmed. This gave rise to filing of the present appeals.

8. First and the foremost, we must consider what is the evidence led by the prosecution to bring home the guilt of accused. Accused were charged with offences under Sections D 498A and 304B of the IPC. The FIR in the present case was lodged by LW-1, who is the father of the deceased. According to this witness, on 23rd January, 2002, the marriage of his daughter was solemnised with accused Pathan Hussain Basha and he had accepted to give Rs. 25,000/- in marriage. He had given only Rs. 15,000/- and had agreed to pay Rs. 10,000/-, E after four months. This witness has further specifically stated that the said accused treated his daughter in a proper manner for about two months. In the marriage, he had also given a gold chain, a double bed, an iron safe and other items. He had called his son-in-law, accused No. 1, to his house, as per custom, at F that point the accused demanded a ceiling fan. A ceiling fan was lying with the witness and he gave that to his son in law, however, he protested the same on the ground that the old fan is not acceptable to him and he would like to have a new fan, which was bought for Rs. 650/- by the witness and given to his G son-in-law. When he again invited his son-in-law and the mother-in-law of his daughter, even then he had gifted some presents to them. The accused asked for Rs. 1,000/- with a ring for the deceased. The witness could pay only Rs. 500/- upon which the accused refused to take the deceased to the H matrimonial home and went away. Later on, the accused came

to fetch deceased. Subsequently, the mother-in-law of the deceased, again, demanded the balance dowry amount of Rs. 10,000/-, which he could not pay. His daughter, after the Ramzan festival, had informed him that the accused persons were harassing her and were even beating and abusing her. All three accused used to beat her for the remaining amount of dowry. On 15th February, 2003, a boy had come to him and told him that his daughter had died by hanging herself, whereupon he went to the house of the accused and found that his daughter was hanged to a wooden beam with a saree and she was dead. The saree was removed, she was taken to the hospital where she was reported to have 'brought dead'. The statement of this witness i.e. LW-1 is corroborated by LW-3 and LW-7.

9. It is stated by LW-3 that she knew all the accused persons as she was residing in the house of the accused and the deceased. According to this witness also, in the beginning they were happy, however after some time, she used to hear some quarrel between the deceased and the accused persons. Accused No. 2, Pathan Nazeer Abi had given her some amount and asked her to go and bring the soaps. After bringing the soaps, she went to the house of the accused persons and found that the accused was absent and the deceased was hanging on one side of the room. After seeing this, she raised cries and people came to the scene. LW-4, Pathan Inayatullah Khan, the grandson of LW-3, went to the house of the parents of the deceased and informed them about the unfortunate incident.

10. LW-7 stated on oath that he was present at the time of giving of dowry to the accused by the family of the deceased. He confirmed the fact that Rs. 15,000/- was given at the time of marriage and Rs. 10,000/- was to be given within some time, which the father of the deceased failed to provide. According to him, the accused persons used to harass the deceased primarily for non-payment of the amount of dowry, as a result of which, she was forced to commit suicide.

11. In fact, there is no dispute to the fact that the deceased

A died of hanging. Dr. M. Madhusudana Reddy, LW-13 who was the Associate Professor in Forensic Medicine at Guntur Medical College, performed the post-mortem over the body of the deceased. In the medical report, LW13, he noticed "Oblique ligature mark of 17 x 2.5 cm present over front and left sides
B of neck" as well as noticed "Abrasion 1.5 x 1 cm present over lower part of middle of chin." Injuries were found to be antemortem in nature, and the cause of death was stated to be asphyxia, as a result of hanging

12. LW-14 is a witness to the seizure of the body and she
C noticed injuries on the body of the deceased. From the above evidence, it is clear that the dowry demands were being raised by the accused persons persistently from the family of the deceased and for that they even harassed the deceased, by beating and abusing her. She had informed her parents of the
D ill-treatment and the cruelty inflicted on her for non-giving of dowry.

13. The period intervening between the marriage and the death of the deceased is very small. They were married in the
E year 2002 and she committed suicide by hanging on 15th February, 2003. The witnesses, including LW-1 have stated that for the first few months they were happy, but thereafter, there were quarrels between the accused and the deceased. Accused Pathan Hussain Basha, when he had gone to the parental house of the deceased, demanded different items like
F fan, ring and Rs. 1,000/- in cash, and the balance of the agreed dowry amount. Since, these demands were not satisfied instantaneously, he even left the deceased at her parental house. At this stage, it will be appropriate for us to examine as to what are the ingredients of an offence punishable under
G Section 304B of the IPC. In the case of *Biswajit Halder alias Babu Halder and Others v. State of W.B.* [(2008) 1 SCC 202], the Court stated the ingredients of this provision as follows:-

"10. The basic ingredients to attract the provisions of Section 304-B are as follows:

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(1) the death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;

(2) such death should have occurred within seven years of her marriage;

(3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(4) such cruelty or harassment should be for or in connection with demand for dowry.

11. Alongside insertion of Section 304-B in IPC, the legislature also introduced Section 113-B of the Evidence Act, which lays down when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

12. Explanation appended to Section 113-B lays down that:

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

13. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives."

14. Besides examining the ingredients of the provision, it

would also be necessary for us to examine the meaning and connotation of the expressions 'dowry death', 'soon before her death' and 'in connection with, any demand for dowry' as appearing in the said section. Amongst others, lapse of time between the date of marriage and the date of death is also a relevant consideration for the Court while examining whether the essential ingredients of the provision are satisfied or not in a given case. In the case of *Ashok Kumar v. State of Haryana* [(2010) 12 SCC 350], this Court explained these terms in some elucidation and the effect of the deeming fiction appearing in the section, as follows:-

> "11. The appellant was charged with an offence under Section 304-B of the Code. This penal section clearly spells out the basic ingredients as well as the matters which are required to be construed strictly and with significance to the cases where death is caused by burns, bodily injury or the death occurring otherwise than under normal circumstances, in any manner, within seven years of a marriage. It is the first criteria which the prosecution must prove. Secondly, that "soon before her death" she had been subjected to cruelty or harassment by the husband or any of the relatives of the husband for, or in connection with, any demand for dowry then such a death shall be called "dowry death" and the husband or the relative, as the case may be, will be deemed to have caused such a death. The Explanation to this section requires that the expression "dowry" shall have the same meaning as in Section 2 of the Act.
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> 12. The definition of "dowry" under Section 2 of the Act reads as under:
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> > "2. Definition of dowry.-In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-
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> > (a) by one party to a marriage to the other party to

the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

* * *

Explanation II.-The expression 'valuable security' has the same meaning as in Section 30 of the Penal Code (45 of 1860)."

13. From the above definition it is clear that, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the Muslim Personal Law. All the expressions used under this section are of a very wide magnitude.

14. The expressions "or any time after marriage" and "in connection with the marriage of the said parties" were introduced by the amending Act 63 of 1984 and Act 43 of 1986 with effect from 2-10-1985 and 19-11-1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression "in connection with the marriage" cannot be given a restricted or a narrower meaning. The expression

A "in connection with the marriage" even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be
B "in connection with the marriage" and not so customary that it would not attract, on the face of it, the provisions of this section.

15. At this stage, it will be appropriate to refer to certain examples showing what has and has not been treated by
C the courts as "dowry". This Court, in *Ran Singh v. State of Haryana,* (2008) 4 SCC 700 held that the payments which are customary payments, for example, given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be
D covered under the expression "dowry".

16. Again, in *Satvir Singh v. State of Punjab,* (2001)8 SCC 633 this Court held that the word "dowry" should be any property or valuable given or agreed to be given in connection with the marriage. The customary payments in
E connection with birth of a child or other ceremonies are not covered within the ambit of the word "dowry".

17. This Court, in *Madhu Sudan Malhotra v. Kishore Chand Bhandari,* 1988 Supp. SCC 424 held that furnishing
F of a list of ornaments and other household articles such as refrigerator, furniture and electrical appliances, etc. to the parents or guardians of the bride, at the time of settlement of the marriage, prima facie amounts to demand of dowry within the meaning of Section 2 of the
G Act. The definition of "dowry" is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands, was the dictum of this Court in State of A.P. v. Raj Gopal Asawa, (2004)4 SCC 470.

H 18. The courts have also taken the view that where the

husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of "dowry" under the Act. Section 4 of the Act is the penal section and demanding a "dowry", as defined under Section 2 of the Act, is punishable under this section. As already noticed, we need not deliberate on this aspect, as the accused before us has neither been charged nor punished for that offence. We have examined the provisions of Section 2 of the Act in a very limited sphere to deal with the contentions raised in regard to the applicability of the provisions of Section 304-B of the Code.

19. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the section is "soon before her death". In our view, the expression "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.

20. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in *Tarsem Singh v. State of Punjab,* (2008) 16 SCC 155 held that the legislative object in providing such a radius of time by employing the words "soon before her death"

A is to emphasise the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her.

B 21. Similar view was expressed by this Court in *Yashoda v. State of M.P,* (2004)3 SCC 98 where this Court stated that determination of the period would depend on the facts and circumstances of a given case. However, the expression would normally imply that there has to be C reasonable time gap between t he cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would attract the provisions of this section. However, there must be existence of proximate link between the acts of cruelty D along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient, whereafter, the couple and the family members have lived happily and E that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and F circumstances of a given case.

22. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression "demand for dowry" will have to be construed ejusdem generis to the word G immediately preceding this expression. Similarly, "in connection with the marriage" is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to H either of the parties. These are penal provisions but

ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage.

23. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be *deemed* to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.

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

A accused did not care to explain as to how the death of his wife occurred. Denial cannot be 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 B and subsequent to the death of the deceased. Maintaining 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 C judgments of the courts under appeal.

16. The High Court acquitted Pathan Khadar Basha, the father-in-law of the deceased, as there was no direct evidence against him. His acquittal has not been challenged by the State before us, thus, we are not called upon to discuss this aspect D of the matter.

17. Accused Pathan Hussain Basha and Pathan Nazeer Abi have rightly been found guilty of the offence by the courts. While we see no reason to differ with the concurrent findings recorded by the trial court and the High Court, we do see some E substance in the argument raised on behalf of the appellants that keeping in view the prosecution evidence, the attendant circumstances, the age of the accused and the fact that they have already being in jail for a considerable period, the Court may take lenient view as far as the quantum of sentence is F concerned. The offences having been proved against the accused and keeping in view the attendant circumstances, we are of the considered view that ends of justice would be met, if the punishment awarded to the appellants is reduced.

G 18. Consequently, we award ten years Rigorous Imprisonment to the appellants. The appeals are partially accepted to the extent afore-indicated.

B.B.B. Appeals partly allowed.