RAJINDER SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 2321 of 2009)

FEBRUARY 26, 2015.

[T.S. THAKUR, R.F. NARIMAN AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – s.304B – Dowry death – Conviction by courts below – Held: In the facts of the case it is proved that it was a case of dowry death – Conviction upheld.

Dowry Prohibition Act, 1961 – s.2 – Dowry – Meaning of – Held: Any money/property/valuable security demanded by any persons mentioned in s.2 of the Act, at/before/any time after marriage which is reasonably connected to the death of a married woman, would be in connection with the marriage, unless unequivocally pointed otherwise.

Words and Phrases:

'Dowry' – Meaning of, in the context of s.2 of Dowry Prohibition Act, 1961.

"Soon before her death" – Meaning of, in the context of s.304B of IPC – Discussed.

Dismissing the appeal, the Court

HELD: 1. There are four ingredients of the offence u/s. 304B IPC and they are said to be that (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise

A **than under normal circumstances; (b) such death must have occurred within seven years of her marriage; (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and (d) such cruelty or harassment**
B **must be in connection with the demand for dowry. [para 9] [846-B-D]**

Ashok Kumar v. State of Haryana, **2010 (7) SCR 1119 = (2010) 12 SCC 350;** *Bachni Devi & Anr. v. State of*
C *Haryana* **2011 (2) SCR 627 = (2011) 4 SCC 427,** *Pathan Hussain Basha v. State of A.P.* **2012 (7) SCR 290 = (2012) 8 SCC 594,** *Kulwant Singh & Ors. v. State of Punjab***2013 (5) SCR 604 = (2013) 4 SCC177,** *Surinder Singh v. State of Haryana*, **(2014) 4 SCC 129,** *Raminder Singh v. State of*
D *Punjab*, **(2014) 12 SCC 582,** *Suresh Singh v. State of Haryana*, **(2013) 16 SCC 353,** *Sher Singh v. State of Haryana* **2015 1 SCALE 250 – relied on.**

2. The word "soon" occurring in s.304B of IPC
E **does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Days or months are not what is to be seen. Time lags**
F **may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304B IPC. [para 23] [858-B-C]**

G

Surinder Singh v. State of Haryana **(2014) 4 SCC 129;** *Sher Singh v. State of Haryana* **2015 (1) SCALE 250 – relied on.**

Dinesh v. State of Haryana, **2014 (5) SCALE 641 –**
H

held not correct law. A

3. Section 304B of IPC is a stringent provision, meant to combat a social evil of alarming proportions. In order to give a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be B **achieved by Parliament, it is held that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death** C **of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. [paras 13 and 20] [847-H, 854-G-H; 855-A-B]**

D

M. Narayanan Nambiar v. State of Kerala, **1963 Supp. (2) SCR 724;** *Standard Chartered Bank v. Directorate of Enforcement* **2005 (1) Suppl. SCR 49 = (2005) 4 SCC 530 – followed.**

E

Appasaheb v. State of Maharashtra **2007 (1) SCR 164 = (2007) 9 SCC 721;** *Vipin Jaiswal vs. State of Andhra Pradesh* **2013 (3) SCR 449 = 2013 (3) SCC 684 - held not correct law.**

Bachni Devi v. State of Haryana **2011 (2) SCR 627 =** F **(2011) 4 SCC 427;** *Kulwant Singh & Ors. v. State of Punjab* **2013(5) SCR 604 = (2013) 4 SCC 177;** *Surinder Singh v. State of Haryana* **(2014) 4 SCC 129;** and *Raminder Singh v. State of Punjab* **(2014) 12 SCC 582;** *K. Prema S. Rao and another v. Yadla Srinivasa Rao and others* **2002 (3)** G **Suppl. SCR 339 = (2003) 1 SCC 217;** *Reema Aggarwal v. Anupam* **2004 (1) SCR 378 = (2004) 3 SCC 199 – referred to.**

H

A **4. In the present case, demands for money were made shortly after one year of the marriage. A she-buffalo was given by the father to the daughter as a peace offering. The peace offering had no effect. The deceased was ill-treated. She went back to her father**
B **and demanded money again. The father, then, went along with his brother and the Sarpanch of the village to the matrimonial home with a request that the daughter be not ill-treated. The father also assured the said persons that their money demand would be**
C **fulfilled Fifteen days before her death, the deceased again visited her parents' house on being maltreated by her new family. Then came her death by poisoning. The cross-examination of the father of the deceased has,**
D **in no manner, shaken his evidence. Therefore, the concurrent findings recorded by both the courts below are upheld. [para 26] [858-H; 859-A-D]**

Case Law Reference

E	2010 (7) SCR 1119	relied on para 10
	2011 (2) SCR 627	relied on para 10
	2012 (7) SCR 290	relied on para 10
F	2013 (5) SCR 604	relied on para 10
	2014 (12) SCC 582	relied on para 10
	2013 (16) SCC 353	relied on para 10
G	2015 1 SCALE 250	relied on para 10,22
	2007 (1) SCR 164	held not correct law para 11,20
	2013 (3) SCR 449	held not correct law para 12,20
H	2013 (5) SCR 604	referred to para 12

(2014) 4 SCC 129	**referred to**	**para 12**	A
(2014) 12 SCC 582	**referred to**	**para 12**	
1963 Supp. (2) SCR 724	**followed**	**para 14**	
2005 (1) Suppl. SCR 49	**followed**	**para 15**	B
2002 (3) Suppl.SCR339	**referred to.**	**para 19**	
2004 (1) SCR 378	**referred to.**	**para 19**	
2014 (4) SCC 129	**relied on**	**para 21**	C
2014 (5) SCALE 641	**held not correct law**	**para 24**	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2321 of 2009 D

From the Judgment and Order dated 10.12.2008 of the High Court of Punjab & Haryana at Chandigarh in Criminal No. 84-SB of 1998

Sudhir Walia, Niharika Ahluwalia, Dr. Abhishek Atrey for E the Appellant.

Jayant K. Sud, Jasleen Chahal, AAG, Kuldip Singh for the Respondent.

F

The Judgment of the Court was delivered by

R.F.NARIMAN, J. 1. The facts of this case raises questions relating to one of the two great social evils practiced against the women of this country for centuries. G In the facts presented before us, a young woman consumes pesticide having been driven to do so by repeated demands being made on her for money by the family into which she is supposed to merge her identity. Sati and dowry deaths have plagued this nation for centuries. Sati – the practice H

of sending a widow to her husband's funeral pyre to burn in it - was first outlawed under British Rule in 1829 and 1830 under the Governor Generalship of Lord William Bentinck in the Bengal, Madras and Bombay Presidencies. General Sir Charles Napier, the Commander-in-Chief of the British Forces in India between 1859 and 1861, is supposed to have said to the Hindu Priests who complained to him about the prohibition of Sati that "the burning of widows is your custom but in my country, when a man burns a woman alive, we hang them and confiscate all their property. Let us both, therefore, act in accordance with our national customs."

2. It took free India many years before the Commission of Sati (Prevention) Act, 1987 was passed by Parliament setting down various offences relating to the commission of Sati and the trial of such offences by special courts. In this appeal, however, we are confronted with the other major problem, namely, dowry deaths. Parliament responded much earlier so far as the prohibition of dowry is concerned by enacting the Dowry Prohibition Act, 1961 under which minimum sentences were prescribed as penalty for the giving or taking of dowry. The specific menace of dowry deaths, however, was tackled by the introduction of a new provision in 1986 - Section 304B in the Penal Code together with another new provision Section 113B of the Evidence Act. These two Sections read as follows:

> **"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. A

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). B

(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." 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 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. D

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

3. Coming back to the facts of the present appeal, a young woman, namely, Salwinder Kaur was married to the appellant Rajinder Singh sometime in the year 1990. On 31st August, 1993, within four years of the marriage, Salwinder Kaur consumed Aluminium Phosphide, which is a pesticide, as a result of which her young life was snuffed out. On the same day, an FIR was lodged against the husband, his older brother and the older brother's wife. The trial court after examining the evidence of the prosecution and the defence, acquitted the appellant's older brother and his wife but convicted the appellant under Section 304B and F G H

A sentenced him to undergo rigorous imprisonment for seven years, which is the minimum sentence that can be pronounced on a finding of guilt under the said Section. This was done after examining in particular the evidence of PW.2 – Karnail Singh, the father of the deceased woman, B PW-3 – Gulzar Singh, his elder brother and PW-4 – Balwinder Singh, Sarpanch of the village. The High Court of Punjab and Haryana confirmed the conviction and the sentence *vide* the impugned judgment.

C 4. For the purpose of this appeal it is sufficient to set out the dead woman's father's evidence which has been accepted by the two courts below.

"I have three daughters and two sons, Paramjit Kaur, D Manjit Kaur and Salwinder Kaur are my daughters. Salwinder Kaur my daughter was married to Rajinder Singh r/o Bathwala. She was married to Rajinder Singh four years prior to her death. After one year of the marriage, my daughter came to me and told that her E husband Rajinder Singh, the brother-in-law Davinder Singh and Gurmit Kaur, present in court, are demanding money for constructing a house. She also informed me that they were quarrelling with her for the said demand of money. At the time of marriage of my daughter, I F had given sufficient dowry according to my status. I told my daughter that at that moment I am not in possession of money. However, I gave she-buffalo to my daughter for taking the same to her in-laws' house and asked her to pull on with the parents-in-law. After G 7/8 months, when my daughter was again ill-treated by the accused, she came to me and again demanded money. The accused, present in court, were demanding and compelling my daughter to back with a promise that I would visit her shortly and on the H

following day, I alongwith my brother Gulzar Singh, the then Sarpanch Balwinder Singh and Ex-Sarpanch Hazura Singh went to the house of the accused in village Bathawals. On arrival at the house of the accused, the accused, present in court, along with father-in-law of my daughter were present at their house. Harjinder Singh, my son-in-law along with Gurmit Kaur and Davinder Singh were also present. I requested all of them not to quarrel with my daughter on account of demand of money. I also assured the accused that I would pay them the said amount at the time of harvesting the crop. The accused insisted about the demand of money. My daughter Salwinder Kaur visited my house 15 days prior to her death. I again pacified my daughter that I would definitely pay the amount after harvesting the crop. Salwinder Kaur was not happy for not getting the money from me. She was maltreated by the accused. After the death of Salwinder Kaur, member panchayat Harbhajan Singh of V. Bathwala and Davinder Singh accused came to my house and informed that my daughter has died after consuming some poisonous substance and I was asked to accompany them for cremating the dead body."

5. We have heard learned counsel for the parties. Counsel for the appellant relied upon the cross-examination of Karnail Singh which is set out hereinbelow:-

"I do not know if Devinder Singh had separate portion. My daughter had come to me for the first time 5/6 months after her marriage, but she did not make any complaint to me regarding the conduct of the accused persons. She complained to me only after about a year and she had told me that they wanted to build a joint

A house and asked her to bring money for that purpose. I however did not give any money to her for this purpose. No written complaint was ever made to the panchayat. I never talked about it to Balwinder Singh. It is incorrect to suggest that no demand of money was
B ever made from my daughter or that I have deposed falsely."

6. Based on this, learned counsel argued that the link required between the demand made being connected with
C the marriage was snapped as also the fact that since initially, the complaints were made at long intervals, no offence under Section 304B could be said to be made out. Counsel for the State of Punjab reiterated the findings of both courts and argued in support of the judgment of the
D High Court.

7. The primary ingredient to attract the offence under Section 304B is that the death of a woman must be a "dowry death". "Dowry" is defined by Section 2 of the Dowry
E Prohibition Act, 1961, which reads as follows:

> **"2. Definition of "dowry".**—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—
>
> F
>
> (*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
> G 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
> H to whom the Muslim Personal Law (*Shariat*) applies.

Explanation I.— [***] A

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

B

8. A perusal of this Section shows that this definition can be broken into six distinct parts.

1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever. C

2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary. D

3) Such property or security can be given or agreed to be given either directly or indirectly.

4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned. E F

5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised. G

6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act H

A mean "in relation with" or "relating to".

9. The ingredients of the offence under Section 304B have been stated and restated in many judgments. There are four such ingredients and they are said to be:

B

(*a*) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

C

(*b*) such death must have occurred within seven years of her marriage;

(*c*) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

D

(*d*) such cruelty or harassment must be in connection with the demand for dowry.

10. This has been the law stated in the following

E judgments:

Ashok Kumar v. **State of Haryana**, (2010) 12 SCC 350 at pages 360-361; **Bachni Devi & Anr.** v. **State of Haryana**, (2011) 4 SCC 427 at 431, **Pathan Hussain Basha** v. **State**

F **of A.P.**, (2012) 8 SCC 594 at 599, **Kulwant Singh & Ors.** v. **State of Punjab,** (2013) 4 SCC 177 at 184-185, **Surinder Singh** v. **State of Haryana**, (2014) 4 SCC 129 at 137, **Raminder Singh** v. **State of Punjab**, (2014) 12 SCC 582 at 583, **Suresh Singh** v. **State of Haryana**, (2013) 16 SCC

G 353 at 361, **Sher Singh** v. **State of Haryana**, 2015 1 SCALE 250 at 262.

11. This Court has spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death".

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In **Appasaheb** v. **State of Maharashtra**, (2007) 9 SCC 721, this Court construed the definition of dowry strictly, as it forms part of Section 304B which is part of a penal statute. The court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said:

> "A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure." (at page 727)

12. This judgment was distinguished in at least four other judgments (see: **Bachni Devi** v. **State of Haryana** (2011) 4 SCC 427 at pages 432 to 434; **Kulwant Singh & Ors.** v. **State of Punjab**, (2013) 4 SCC 177 at page 185; **Surinder Singh** v. **State of Haryana** (2014) 4 SCC 129 at pages 139 to 141 and **Raminder Singh** v. **State of Punjab** (2014) 12 SCC 582 at page 586. The judgment was, however, followed in **Vipin Jaiswal** v. **State of Andhra Pradesh**, (2013) 3 SCC 684 at pages 687-688.

13. In order to arrive at the true construction of the definition of dowry and consequently the ingredients of the offence under Section 304B, we first need to determine how a statute of this kind needs to be interpreted. It is obvious that Section 304B is a stringent provision, meant to combat a social evil of alarming proportions. Can it be argued that it is a penal statute and, should, therefore, in case of

A ambiguity in its language, be construed strictly?

14. The answer is to be found in two path-breaking judgments of this Court. In **M. Narayanan Nambiar** v. **State of Kerala**, 1963 Supp. (2) SCR 724, a Constitution Bench
B of this Court was asked to construe Section 5(1)(d) of the Prevention of Corruption Act, 1947. In construing the said Act, a penal statute, Subba Rao,J. stated:

"The preamble indicates that the Act was passed as it
C was expedient to make more effective provisions for the prevention of bribery and Corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant. Bribery is form of
D corruption. The fact that in addition to the word "Bribery" the word "corruption" is used shows that the legislation was intended to combat also other evil in addition to bribery. The existing law i.e. Penal Code was found insufficient to eradicate or even to control the growing
E evil of bribery and corruption corroding the public service of our country. The provisions broadly include the existing offences under Sections 161 and 165 of the Indian Penal Code committed by public servants and enact a new rule of presumptive evidence against
F the accused. The Act also creates a new offence of criminal misconduct by public servants though to some extent it overlaps on the pre-existing offences and enacts a rebuttable presumption contrary to the well known principles of Criminal Jurisprudence. It also aims
G to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other
H appropriate officer a pre-condition for their prosecution.

As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, i.e. to prevent corruption among public servants and to prevent harassment of the honest among them.

A decision of the Judicial Committee in Dyke v. Elliott, cited by the Learned Counsel as an aid for construction neatly states the principle and therefore may be extracted: Lord Justice James speaking for the Board observes at page 191:

"No-doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective."

15. In **Standard Chartered Bank** v. **Directorate of**

Enforcement, (2005) 4 SCC 530 at page 547, another Constitution Bench, 40 odd years later, was faced with whether a corporate body could be prosecuted for offences for which the sentence of imprisonment is mandatory. By a majority of 3:2, the question was answered in the affirmative. Balakrishnan,J. held:

> "23. The counsel for the appellant contended that the penal provision in the statute is to be strictly construed. Reference was made to *Tolaram Relumal* v. *State of Bombay* [(1955) 1 SCR 158 : 1954 Cri LJ 1333] , SCR at p. 164 and *Girdhari Lal Gupta* v. *D.H. Mehta* [(1971) 3 SCC 189 : 1971 SCC (Cri) 279] . It is true that all penal statutes are to be strictly construed in the sense that the court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment. Here, the legislative intent to prosecute corporate bodies for the offence committed by them is clear and explicit and the statute never intended to exonerate them from being prosecuted. It is sheer violence to common sense that the legislature intended to punish the corporate bodies for minor and silly offences and extended immunity of prosecution to major and grave economic crimes.
>
> 24. The distinction between a strict construction and a more free one has disappeared in modern times and now mostly the question is "what is true construction of the statute?" A passage in *Craies on Statute Law*, 7th Edn. reads to the following effect:

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. 'All modern Acts are framed with regard to equitable as well as legal principles.' 'A hundred years ago,' said the court in *Lyons' case* [*Lyons* v. *Lyons*, 1858 Bell CC 38 : 169 ER 1158] , 'statutes were required to be perfectly precise and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."

At p. 532 of the same book, observations of Sedgwick are quoted as under:

"The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the legislature, without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the courts inclining to mercy."

16. Concurring with Balakrishnan,J., Dharmadhikari,J. added:

"36. The rule of interpretation requiring strict construction of penal statutes does not warrant a narrow and pedantic construction of a provision so as to leave loopholes for the offender to escape (see *Murlidhar Meghraj Loya* v. *State of Maharashtra* [(1976) 3 SCC 684 : 1976 SCC (Cri) 493]). A penal statute has to also be so construed as to avoid a lacuna and

A to suppress mischief and to advance a remedy in the light of the rule in *Heydon's case* [(1584) 3 Co Rep 7a : 76 ER 637] . A common-sense approach for solving a question of applicability of a penal statute is not ruled out by the rule of strict construction. (See *State of A.P.* B v. *Bathu Prakasa Rao* [(1976) 3 SCC 301 : 1976 SCC (Cri) 395] and also *G.P. Singh on Principles of Statutory Interpretation*, 9th Edn., 2004, Chapter 11, Synopsis 3 at pp. 754 to 756.)"

C 17. And Arun Kumar,J., concurring with both the aforesaid Judges, followed two earlier decisions of this Court as follows:-

"49. Another three-Judge Bench of this Court in a D judgment in *Balram Kumawat* v. *Union of India* [(2003) 7 SCC 628] to which I was a party, observed in the context of principles of statutory interpretation: (SCC p. 635, para 23)

E "*23.* Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the F law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

50. In *M.V. Javali* v. *Mahajan Borewell & Co.* [(1997) 8 G SCC 72 : 1997 SCC (Cri) 1239] this Court was considering a similar situation as in the present case. Under Section 278-B of the Income Tax Act a company can be prosecuted and punished for offence committed under Section 276-B; sentence of imprisonment is H required to be imposed under the provision of the

statute and a company being a juristic person cannot be subjected to it. It was held that the apparent anomalous situation can be resolved only by a proper interpretation of the section. The Court observed: (SCC p. 78, para 8)

> "*8.* Keeping in view the recommendations of the Law Commission and the above principles of interpretation of statutes we are of the opinion that the only harmonious construction that can be given to Section 276-B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely on persons coming under categories (*ii*) and (*iii*) above, but where it cannot be imposed, namely on a company, fine will be the only punishment."

18. In keeping with these principles, in **K. Prema S. Rao and another v. Yadla Srinivasa Rao and others,** (2003) 1 SCC 217, this Court said:

> "The legislature has by amending the Penal Code and the Evidence Act made penal law more strident for dealing with and punishing offences against married women."

19. In **Reema Aggarwal** v. **Anupam,** (2004) 3 SCC 199, in construing the provisions of the Dowry Prohibition Act, in the context of Section 498A, this Court applied the mischief rule made immortal by Heydon's case and followed Lord Denning's judgment in **Seaford Court Estates Ltd.** v. **Asher**, where the learned Law Lord held:

> "He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise

A to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature." (at page 213)

B The Court gave an expansive meaning to the word 'husband' occurring in Section 498A to include persons who entered into a relationship with a woman even by feigning to be a husband. The Court held:

C "....It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or D for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has E to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to F exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions." (at page 210)

G 20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament, we feel that the judgment in **Appasaheb's** case followed by the judgment of **Vipin Jaiswal** do not state H the law correctly. We, therefore, declare that any money or

property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Coming now to the other important ingredient of Section 304B – what exactly is meant by "soon before her death"?

21. This Court in **Surinder Singh** v. **State of Haryana** (2014) 4 SCC 129, had this to say:

> "17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some

A instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-
B lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to the judgment of this Court in *Kans Raj* v. *State of Punjab* [(2000) 5 SCC
C 207 : 2000 SCC (Cri) 935] where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)

"*15.* ... 'Soon before' is a relative term which is
D required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the
E term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (*a*) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement
F and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the
G deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon
H before death' if any other intervening circumstance

showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

22. In another recent judgment in **Sher Singh** v. **State of Haryana**, 2015 (1) SCALE 250, this Court said:

"We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence

A dislodging his guilt, beyond reasonable doubt." (at page 262)

23. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What B must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Time lags may differ C from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304B.

D 24. At this stage, it is important to notice a recent judgment of this Court in **Dinesh** v. **State of Haryana,** 2014 (5) SCALE 641 in which the law was stated thus:

"The expression "soon before" is a relative term as held E by this Court, which is required to be considered under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time of allotment. It can be said that the term "soon before" is synonyms with the term "immediately before". The F determination of the period which can come within term "soon before" is left to be determined by courts depending upon the facts and circumstances of each case." (at page 646)

G 25. We hasten to add that this is not a correct reflection of the law. "Soon before" is not synonymous with "immediately before".

26. The facts of this appeal are glaring. Demands for H money were made shortly after one year of the marriage.

A she-buffalo was given by the father to the daughter as a peace offering. The peace offering had no effect. The daughter was ill-treated. She went back to her father and demanded money again. The father, then, went along with his brother and the Sarpanch of the village to the matrimonial home with a request that the daughter be not ill-treated on account of the demand for money. The father also assured the said persons that their money demand would be fulfilled and that they would have to wait till the crops of his field are harvested. Fifteen days before her death, Salwinder Kaur again visited her parents' house on being maltreated by her new family. Then came death by poisoning. The cross-examination of the father of Salwinder Kaur has, in no manner, shaken his evidence. On the facts, therefore, the concurrent findings recorded by both the courts below are upheld. The appeal is dismissed.

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Kalpana K. Tripathy Appeal dismissed.