could not, as such, pass any order in connection with the affairs of a society.

(7) For the reasons recorded above, the present petition is allowed, the resolution Annexure P-6 and the action taken thereafter on its basis are quashed but the committee which is said to have been recently elected, is granted permission to proceed afresh against the petitioner in accordance with law. There will, however, be no order as to costs.

*J.S.T.*

*Before Hon'ble J. S. Sekhon, S. S. Grewal & Amarjeet Chaudhary, JJ.*
**(F.B.)**

KRISHAN LAL AND OTHERS,—*Petitioners.*

*versus*

THE UNION OF INDIA AND OTHERS,—*Respondents.*

*Civil Writ Petition No.* 11541 *of* 1990

May 4, 1994.

*Indian Penal Code,* 1860—*Ss.* 107, 304-*B and* 498*A*—*Indian Evidence Act*—*Ss.* 113-*A and* 113-*B*—*Dowry Prohibition Act* 1961 *as amended by Act* 43 *of* 1986—*S.* 2—*Code of Criminal Procedure,* 1974—*S.* 315—*Criminal Law (Second Amendment) Act No.* 46 *of* 1983—*Constitution of India,* 1950—*Arts.* 14, 20, 20 (2) & (3) *and* 21—*Dowry death—Presumption as to abetment of suicide by a married woman—Vires of Section* 304*B of the Indian Penal Code and S.* 113-*A and* 113-*B of the evidence Act challenged as being violative of Arts.* 14, 20, 20(2) & (3) *and* 21—*Held, the said provisions are constitutionally valid.*

*Held,* that it cannot be said by any stretch of imagination that Section 498-A or Section 113-A has introduced invidious classification *qua* the treatment of a married woman by her husband or relative of her husband *vis-a-vis* the other offenders. On the other hand, such women form a class apart than the one which married more than seven years earlier to the commission of such offence because with the passage of time after marriage and birth of children there are remote chances of treating a married woman with cruelty by her husband or his relatives. Thus, the classification is reasonable and has close nexus with the object sought to be achieved i.e. eradiction of the evil of dowry in the Indian social set up and to ensure that the married women live with dignity at their matrimonial home.

**(Para 14)**

*Held*, that the term 'Cruelty' is used in explanation 113-A of the Indian Penal Code keeping in view the object which was required to be achieved. Thus, the ordinary dictionary meaning of 'Cruelty' would not be applicable to hold that it is vague being interpreted in so many ways.

(Para 15)

*Held*, that the husband and relatives of husband of a married woman form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four-walls of the house of her husband and there is no likelihood of any evidence available. Consequently, section 498-A of the Code cannot be said to be offensive of Article 14 of the Constitution.

(Para 15)

*Held*, that the Explanation appended to S. 113-A further shows that the word 'cruelty' has the same meaning as in Section 498-A of the Code. No doubt the cardinal principle of criminal jurisprudence is that the accused is presumed to be innocent unless proved otherwise by the prosecution, yet all the same keeping in view that in case of cruelty to a married woman by the husband or the relatives of the husband is done within the four-walls of her matrimonial home and there is no likelihood of any evidence available, this presumption on proof of certain facts regarding abetment of a suicide by a woman against her husband or by the relatives of the husband cannot be said to be arbitrary or negation of the Rule of fair procedure or equality.

(Para 16)

*Held*, that the word "intentionally aids" figuring in clause Thirdly of Section 107 of the Indian Penal Code is wide enough to conclude that treating a married woman with cruelty would certainly fall within its ambit. The legislature in its wisdom by inserting the provisions of Section 113-A of the Indian Evidence Act had further clarified the import of definition abetment of suicide by a married woman in view of social challenge of the present times as already discussed in the earlier part of the judgment. Thus, it cannot be said by any stretch of imagination that the provisions of Section 113-A are contradictory to the one contained in Section 107 of the Indian Penal Code. On the other hand, these can be said to be supplementary to the above-referred provisions under the general law.

(Para 18)

*Held*, that a bare glance of Section 2 of the Dowry Prohibition Act, 1961 leaves no doubt that the Court will presume only that the husband or his relation has caused dowry death if in a particular case, it is proved that soon before her death, such women had been subjected by such person to cruelty or harassment for, or in connection with, any demand to dowry. Thus, it will be a matter of evidence in each case for the Court concerned to infer that such woman

was subjected to cruelty or harassment for, or in connection with any demand of dowry soon before her death.

(Para 23)

*Held*, that the provisions of Section 113-B although mandatory in nature, simply enjoin upon the Court to draw such presumption of dowry death on proof of circumstances mentioned therein and amounts to shifting the onus on the accused to show that she was not treated with cruelty by her husband soon before her death. It is for the accused to exercise his option whether to appear as a witness through a written request to the trial Court as provided under Section 315 of the Code of Criminal Procedure. It is noteworthy that clause (b) to proviso to Section 315 of the Code of Criminal Procedure clearly provides that his failure to give evidence shall not be made the subject to any comment by any of the parties or the Court of give rise to any presumption against himself or any person charged together with him at the same trial. These safeguards are also available to the accused facing trial on a charge of dowry death or abetment of suicide. Consequently these provisions cannot be said to be *ultra vires* of the provisions of Article 14 or Article 21 and Article 20(3) of the Constitution of India as the accused can lead some other evidence rather than stepping himself into a witness-box to dislodge such presumption. By no stretch of imagination, it can be said that the discretion of the Court to appraise evidence has been taken away.

(Para 24)

*Held*, that the provisions of Section 304-B are specific in nature as these relate to imposition of imprisonment attributing that the husband or the relation of the husband had caused the death of married woman. Thus, by no stretch of imagination, it can be said to be a case of double jeopardy. Consequently, it cannot be said that these provisions are violative of mandate contained in Article 20, sub-clause (2) of the Constitution of India.

(Para 30)

*Held*, that there is no force in the contention of Mr. Gaur that the classification *qua* the death of a married woman within seven years of her marriage *qua* the death of other married woman beyond that period has resulted in discrimination. On the other hand, it is a well founded classification and have direct nexus with the object sought to be achieved i.e. curbing the vice and menace of dowry deaths. Similarly raising a presumption of dowry death or providing for punishment for dowry death against a husband or the relatives of husband of married woman is a sound classification *qua* other offenders of the murder wives or the relations of the husband.

(Para 31)

*Held*, that it can be said that attempt to commit suicide is a major offence while abetment to the offence of suicide is a minor offence. On the other hand, abetment to suicide is altogether a different offence. In the very nature of things, the offence of committee suicide is not rightly made punishable under the Code as a dead person who has

committed suicide cannot be prosecuted. Thus, the analogy of attempt to commit suicide is violative of right of liberty enshrined in Article 21 of the Constitution the offence of abetment to commit suicide would also be *ultra vires* of the Constitution is not acceptable because attempt to commit suicide is volitional and well planned act of the person concerned whereas abetment of the offence of suicide is on different footing as a third person is forcing the other person to take his life by committing suicide. Thus, the ratio of the decision of the Apex Court in *P. Rathinam/Nagbhusan Patnaik* v. *Union of India and another* J.T. 1994(3) S.C. 392 is not applicable to the facts of circumstances of this case in holding that the provisions of offence of abetment of suicide are *ultra vires* of Article 14 and 21 of the Constitution. (Para 34)

U. D. Gour, Senior Advocate, Sunil Gour, Advocate with him, *for the Petitioners.*

S. K. Pipat, Senior Central Government Standing Counsel, *for the Respondents.*

Joginder Sharma, Advocate with him D. D. Sharma, Addl. C.G.S.C., J. C. Sethi, Addl. A.G., Haryana.

(*Judgment of Full Bench Consisting of Hon'ble Mr. Justice J. S. Sekhon, Hon'ble Mr. Justice S. S. Grewal and Hon'ble Mr. Justice Amarjeet Chaudhary dated 4th May*, 1994)

JUDGMENT

*J. S. Sekhon, J.*

(1) On the recommendation of a Division Bench of this Court the Hon'ble Chief Justice has referred the controversy regarding the constitutional validity of Section 304-B of the Indian Penal Code (hereinafter referred to as 'the Code') and Sections 113-A and 113-B of the Indian Evidence Act to be thrashed on the envil of Article 14, 20 and 21 of the Constitution. However, the Division Bench has not formulated any specific question in the order of reference.

(2) As the controversy is purely a legal one, only a brief brush with the facts of the case is called for.

(3) In the First Information Report, based on the statement of Smt. Poonam deceased, it is averred that she was daughter of Mehar Chand, resident of Tilak Nagar, Delhi and was married on June 27, 1985 with Anil Kumar son of Krishan Kumar, resident of Faridabad. On the occasion of marriage, her parents had given dowry according

to their status. Her father died about 6 or 7 months after the marriage and her younger brother Girish Kumar had already died due to electric shock. Her elder sister Surinder Nagpal is married at Faridabad. After her marriage she was blessed with a daughter who has about 4 years old on the date of the occurrence. At that time, she was also carrying pregnancy of about 5/6 months. Soon after her marriage her mother-in-law Kamla Devi, father-in-law Krishan Kumar and elder brother-in-law Dinesh Kumar started maltreating and teasing her on account of having brought less dowry. She was also subjected to harassment by the said three persons. She was given beatings by her father-in-law Krishan Kumar and was being forced to leave her matrimonial home and to take possession of the house of her parents located at Faridabad. She informed her sister Surinder Nagpal and the latter's husband at Faridabad of this episode. They persuaded the accused persons not to harass the deceased. Thereafter, they had also talks with her husband Anil Kumar who frankly expressed his helplessness to go against the wishes of his parents and elder brother. He further told them that if the deceased wanted to live in his house then she had to agree to the demands of his parents. The accused persons started demanding a scooter and the possession of her parents' house. On her failure to acceed to their demand all the accused even snatched the truck from her husband which was the only source of their livelihood. Once she brought Rs. 7,000 from her mother and gave the amount to her in-laws. On the date of occurrence, after being harassed by her father-in-law, mother-in-law and her elder brother-in-law on the question of dowry, she put herself on fire after sprinkling kerosene oil and attempted to commit suicide. Meanwhile, her sister Surinder Nagpal also fortunately arrived there and removed her to the hospital. Smt. Poonam deceased succumbed to the burn injuries in the hospital.

(4) After the completion of investigation, all the accused were sent up for trial on such like allegations. The case was committed to the Court of Sessions. The learned Sessions Judge, Faridabad,—*vide* his order dated April 26, 1990, framed a charge for offences punishable under Sections 498-A and 304-B of the Indian Penal Code against all the accused persons. The application of the accused-petitioners to review the order of framing charge was dismissed on July 28, 1990.

(5) Under these circumstances all the accused-petitioners filed this Civil Writ Petition under Articles 226 and 227 of the Constitution of India challenging the validity of Section 304-B of the Code of and Sections 113-A and 113-B of the Indian Evidence Act, order Annexure P1, framing charge against the petitioners as well as order Annexure

P4 dated July 28, 1990 of the trial Court dismissing the application of the petitioners for reviewing its earlier order of framing the charge.

(6) The petitioners have challenged the vires of the above-referred provisions on the ground that these provisions violate the spirit of Article 14 of the Constitution concerning right to equality before law and equal protection of the laws, as well as Clause (3) of Article 20 compelling the accused to be a witness against himself in order to dislodge the statutory presumption of abetment of suicide and dowry death under Sections 113-A and 113-B of the Indian Evidence Act, as also the mandate of Article 21 of the Constitution by depriving the petitioners of their personal liberty on the basis of unfair, unjust, arbitrary, fanciful and oppressive procedure prescribed by law. It was also averred that the words 'cruelty' and 'harassment' figuring in Section 304-B of the Code are misleading and the possibility of a married woman having met with an unnatural death within seven years of her marriage due to other causes beyond the comprehension of the accused would result in raising the presumption of dowry death against the husband or the relatives of the husband on the vague assertion that soon before her death she was subjected to harassment or cruelty for or in connection with any demand of dowry.

(7) In the return filed by Shri S. Shiva Kumar, Desk Officer in the Ministry of Home Affairs, Government of India on behalf of respondent No. 1, it is maintained that the petition has been filed on misconceived facts and that providing for raising of presumption of guilt against the husband or his relatives under certain circumstances can be considered in the nature of special provisions for women constitutionally permissible under Article 15(3) of the Constitution. having regard to the economic, social and other disparities from which women suffer in our society and keeping in view the rising incidents of dowry death. It was further highlighted that the evil of dowry has spread its tentacles by leaps and bounds and even the spread of education has not helped to liberalise the attitude of the Society regarding dowry. On the contrary, even in educated society in the urban areas such incidence have increased considerably. In many cases, higher the education of the boy greater the demand of dowry. Under these circumstances the Legislature thought it fit to enact special provisions of Sections 498-A and 304-B of the Code for curbing the vice of cruelty towards married women as well as dowry deaths. It was also maintained that the provisions of Sections 113-A and 113-B of the Indian Evidence Act were perfectly constitutional as these simply raise rebuttable presumption on the proof of certain facts against the offender the onus shifts to the offender to rebut the same. Thus, it is maintained that the classification of a married woman who

dies within seven years of her marriage on proof that the husband or his relatives have treated her with cruelty for or in connection with any demand of dowry soon before her death is reasonable and has nexus with the object sought to be achieved i.e. curbing the dowry deaths.

(8) Mr. U. D. Gaur, Senior Advocate, learned counsel for the petitioners contends that the definition of 'cruelty' figuring in Section 498-A of the Code is vague and fanciful. The words 'wilful conduct' figuring in Clause (a) of the Explanation are capable of being interpreted widely and thus the definition is arbitrary. It was also maintained that the provisions of Sections 498-A and 304-B of the Indian Penal Code introduces indivious classification between the husband the other relatives of the husband treating the woman with cruelty *vis-a-vis* the other persons who may treat the woman with cruelty after more than seven years of her marriage. Accordingly, it is maintained that there is no reasonable rationale or nexus with the object sought to be achieved. i.e. saving the married woman from being treated with cruelty. Thus, it offends Article 14 of the Constitution. It was also maintained that Sections 113-A and 113-B of the Evidence Act place burden on the accused to prove his innocence in negation to the cardinal principles of criminal jurisprudence that the accused has to be presumed innocent unless proved otherwise beyond reasonable doubt.

(9) Mr. S. K. Pipat, Senior Central Government Standing Counsel with Mr. Joginder Sharma, Advocate and the Additional Central Government Standing Counsel as also Shri J. C. Sethi, Additional Advocate General, Haryana, on the other hand maintained that the classification of the husband or the relatives of the husband *qua* treating a married woman with cruelty within seven years of her marriage *vis-a-vis* other offenders is reasonable and has close nexus with the object to be achieved, i.e. to prevent the married women from being treated with cruelty by the husband or the relatives of the husband with a view to coercing her or any person related to her to meet an unlawful demand for any property or valuable security, or on account of her failure to meet such a demand.

(10) The provisions of Section 498-A of the Code were brought on the statute book by inserting Chapter XXA,—*vide* Section 2 of the Criminal Law Second Amendment No. 46 of 1983, which received the assent of the President on December 25, 1983 which read as under:—

> "498-A *Husband or relative of husband of a woman subjecting her to cruelty* Whoever, being the husband or the relative of the husband of a woman, subjects such woman to

cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Explanation* : For the purpose of this section 'cruelty' means—

(a) any wilful conduct which is of such a nature as is to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman ; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

(11) *Vide* said amending act, Sections 174, 176 and 198-A of the Criminal Procedure Code were amended or added as the case may be besides amendment of the First Schedule of the Code of Criminal Procedure. Corresponding amendment was also made in the Indian Evidence Act in the shape of inserting section 113-A after section 113 raising a presumption as to abetment of suicide by a married woman. The provisions of section 113-A read as under :—

"113-A : *Presumption as to abetment of suicide by a married woman*

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within *a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty*, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

*Explanation* : For the purposes of this section, *'cruelty'* shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860). (Emphasis supplied).

(12) No doubt the vires of section 113-A of the Evidence Act are not directly in issue in this writ petition as no charge for an offence of abetment to commit suicide has been framed, yet all the

same since Mr. Gaur had dilated upon the provisions of this section *qua* raising a rebuttable presumption *vis-a-vis* the provisions of section 113-B of the Evidence Act raising irrebuttable presumption against the accused. The above referred provisions are considered worth noticing.

(13) The statement of objects and reasons for enacting Criminal Law (Second Amendment) Act No. 46 of 1983 read as under :—

> "The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws."

(14) Thus, there is no escape but to conclude that the Legislature has tried to amend the law in order to curb the vice of cruelty to the married woman by their husband or the relatives of her husband which may culminate in suicide by or murder of the hapless woman concerned. It can be safely said that this amendment of the criminal law and the rule of procedure was necessitated to meet the social challenge to save the married women from being ill-treated or forced to commit suicide by the husband or relatives of the husband generally in order to coerce her to fetch more dowry or on her refusal to do so kill herself keeping in view that the mal-treatment of a mairred woman is usually confined within the four-walls of her matrimonial home which in most of the cases are located far away from the home of her parents and there is no likelihood of availability of any evidence. The Legislature in its wisdom has rightly enacted Section 113-A raising a presumption against the husband or the relatives of the husband for the abetment of suicide by a married woman within a period of seven years of her marriage if she has been treated with cruelty by her husband or such a relation in order to coerce her to fetch more dowry or on her refusal to do so. Thus, it cannot be said by any stretch of imagination that Section 498-A or section 113-A has introduced invidious classification *qua* the treatment of a married woman by her husband or relatives of her husband *vis-a-vis* the other offenders. On the other hand, such women form a class apart than

the one which married more than seven years earlier to the commission of such offence because with the passage of time after marriage and birth of children there are remote chances of treating a married woman with cruelty by her husband or his relatives. Thus, the classification is reasonable and has close *nexus* with the object sought to be achieved i.e. eradiction of the evil of dowry in the Indian social set up and to ensure that the married woman live with dignity at their matrimonial home.

(15) There is no force in the contention of Mr. Gaur that the definition of 'cruelty' figuring in the Explanation appended under Section 498-A of the Code is vague as the perusal of clause (a) would show that the prosecution has to establish firstly the wilful conduct of the offender, secondly that the nature of such conduct was likely to drive a woman to commit suicide or to cause grave injury or danger to life or limb (whether mental or physical). Thus, on proof of these facts to the satisfaction of the Court under the circumstances of a particular case the husband or relatives of the husband shall be presumed to have treated the woman with cruelty. The wilful conduct certainly implies the establishing of a motive to treat such a woman with cruelty. The gravity of such conduct is also reflected in the wording of Clause (a) of the Explanation that such conduct should be likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental of physical) of a woman. Consequently, the definition under Clause (a) cannot be said to be vague as it rules out minor differences between the wife and husband or the latter's relatives. Clause (b), the definition of 'crulelty' pertains to harassment of a married woman with a view to cocercing her or any person related to her to meet the unlawful demand of dowry or for any property or valuable security or on account of her failure or failure of any person related to her to meet such a demand. Thus, on the given facts of a particular case the Court has first to form an opinion that as a matter of fact such harassment has close *nexus* for cocercing a married woman to meet the unlawful demand of her husband or relatives of the husband *qua* any property or valuable security. Thereafter the presumption of treating her with cruelty will arise. Obviously, the Legislature has defined the term 'Cruelty' while keeping in view the object which was required to be achieved. Thus, the ordinary dictionary meaning of 'cruelty' would not be applicable to hold that it is vague being interpreted in so many ways. Article 14 of the Constitution accords equality of treatment to all persons similarly situated any invidious discrimination is obnoxious to equality. Thus, the husband and

relatives of husband of a married worm form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four-walls of the house of her husband and there is no likelihood of any evidence available. Consequently, section 498-A of the Code cannot be said to be offensive of Article 14 of the Constitution.

(16) Whether the provision of Section 113-A of the Evidence Act violates the right to life and fair procedure provided under Article 21 or Article 20(3) by compelling the accused to appear as a witness against himself, it transpired that it cannot be said to be unjust, unfair or arbitrary procedure because rebuttable presumption has to be raised against the husband or the relatives of the husband *qua* the abetment of suicide by a married woman, if it is proved on facts that she committed suicide within seven years of her marriage and that her husband or such a relation of the husband had subjected her to cruelty and that regard to other circumstances of the case the Court may presume that such suicide has been abetted by the husband or such a relative of the husband. The Explanation appended to this section 113-A further shows that the word 'cruelty' has the same meaning as in Section 498-A of the Code. No doubt the cardinal principle of criminal jurisprudence is that the accused is presumed to be innocent unless proved otherwise by the prosecution, yet all the same keeping in view that in case of cruelty to a married woman by the husband or the relatives of the husband is done within the four-walls of her matrimonial home and there is no likelihood of any evidence available, this presumption on proof of certain facts regarding abetment of a suicide by a woman against her husband or by the relatives of the husband cannot be said to be arbitrary or negation of the Rule of fair procedure or equality. Mr. Gaur contended that there may be chances where the woman may commit suicide due to certain circumstances even beyond the knowledge of the husband or his relatives yet due to this presumption may be indicted for the offence of suicide as it would be impossible for them to rebut this presumption. He further contended that the provisions of this Section are against the definition of abetment infiguring in Section 107 of the Code.

(17) There is no force in this contention as to draw such presumption for abetment of suicide by a married woman under Section 113-A of the Evidence Act, there are in-built safeguards in the above referred provisions itself. The words "having regard to all the other circumstances of the case, "give wide powers to the Court concerned to appraise the evidence and come to the conclusion whether there was

some other extraneous cause for a woman to commit suicide within a period of seven years from the date of her marriage. The definition of abetment figuring in Section 107 of the Code reads as under :—

"107. Abetment of a thing.—A person abets the doing of a thing, who—First instigates any person to do that thing ; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly.—Intentionally aids, by an act or illegal omission, the doing of that thing.

*Explanation* : 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration*

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

*Explanation* : 2. Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

(18) The word "intentionally aids" figuring in clause Thirdly of Section 107 of the Indian Penal Code is wide enough to conclude that treating a married woman with cruelty would certainly fall within its ambit. The Legislature in its wisdom by inserting the provisions of Section 113-A of the Indian Evidence Act had further clarified the import of definition of abetment of suicide by a married woman in view of social challenges of the present times as already discussed in the earlier part of the judgment. Thus, it cannot be said by any stretch of imagination that the provisions of Section 113-A are contradictory to the one contained in Section 107 of the Indian Penal

Code. On the other hand, these can be said to be supplementary to the above-referred provisions under the general law.

(19) The matter is not *res integra* as the Division Bench of Andhra Pradesh High Court in *Poluvarapu Satyanarayana alias Narayan* v. *Polavarapa Soundaryavalli and two others*" (1), has upheld the vires of Section 498-A of the Indian Penal Code and 113-A of the Indian Evidence Act by holding that under Clause (a) of the explanation figuring under Section 498-A of the Indian Penal Code, it is wilful conduct that is made punishable. It has also been highlighted that the phrase 'wilful conduct is not capable of precise definition but the provisions cannot be said to be vague in nature by observing in para 7 of the judgment as under :—

> "In this light, we have to examine explanation appended to Section 498-A. As seen, under clause (a) of the explanation it is wilful conduct that is made punishable. The phrase 'wilful conduct, is not capable of of precise definition. The human ingenuity is such that several forms could be devised to drive a married woman to the extremity of putting an end to her precious life. The conjugal society and martial home are intractable terrain to others and exclusive domain to the husband and accessible habitation to his relations. From crude physical injury or harm to subtle devices with intellectual arrogance could be employed in causing cruelty or harassment to a married woman. Each case is to be adjudged in the light of the facts presented and proved. Under Clause (b) thereof, if the harassment of the woman is with a view to coercing her on any person related to her to meet any unlawful demand or any property of valuable security or is on account of failure by her or any person related to her to meet such demand, it is defined to be cruelty punishable under the main part of the section. The explanation explains only some of the facts latent in word 'cruelty'. The harassment under clause (b) of the explanation to Section 498-A also brought within its ambit the word 'cruelty'. When the word 'cruelty' is read in this light and the historical circumstances which necessitated the Legislature to bring on statute Section 498-A, we find no vagueness nor appear to be imprecise. Therefore, it is not

(1) 1987 (3) Crimes 471.

arbitrary, nor vague, nor indefinite. It is not violative of Article 14 of the Constitution as being arbitrary."

(20) The question then arises whether the provisions of Section 113-B of the Indian Evidence Act raise unrebuttable presumption of dowry death against the husband or his relations regarding the unnatural death of married woman who died unnatural death if it is shown that soon after her death she has been subjected to cruelty by her husband or his relatives for or in connection with the demand of dowry or that it is ultravires of the rule of personal liberty as enshrined in Article 21 or against the mandate of Article 14 and infringes the right of the accused not to become a witness against himself under Article 20(3).

(21) The Legislature in its wisdom being not satisfied with the adequacy of law for curbing the menace of dowry deaths not only amended the definition of dowry, but also inserted Section 304-B besides providing presumption as to dowry death by inserting Section 113-B of the Indian Evidence Act. The provisions of Sections 113-B read as under :—

"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.

*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)."

(22) The Dowry Prohibition (Amendment) Act No. 43 of 1986 came into force with effect from 19th November, 1986. The definition of dowry figuring in Section 2 of the Dowry Prohibition Act, 1961 as amended reads as under :—

"2. Definition of "dowry".—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.—

(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) dowry or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

*Explanation* 1 (* * *)

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

(23) A bare glance through the same leaves no doubt that the Court will presume only that the husband or his relation has caused dowry death if in a particular case, it is proved that soon before her death, such women had been subjected by such person to cruelty or harassment for, or in connection with, any demand to dowry. Thus, it will be matter of evidence in each case for the Court concerned to infer that such woman was subjected to cruelty or harassment for, or in connection with any demand of dowry soon before her death.

(24) The provision of Section 304-B of the Indian Penal Code provides for imposition of sentence in the case of dowry death of a married woman. It provides inbuilt safeguards for the accused in coming to the conclusion that he is guilty of dowry death. It reads as under :—

"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 purposes 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."

A bare perusal of the above referred provisions leaves no doubt that in a particular case before a person is sentenced for the commission of offence of dowry death, the prosecution or the complainant has to prove firstly that the death of women has taken place by burns or bodily injury or occurred otherwise than under normal circumstances, secondly, that it had taken place within seven years of her marriage and thirdly 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. The fact that maximum sentence provided for the offence under Section 304-B is imprisonment for life and extreme penalty of death is provided for murder under Section 302 of the Indian Penal Code clearly implies that the Legislature has given due allowance to the accused in the matter of sentence in dowry death. Under Section 113-A of the Indian Evidence Act, onus is shifted on the accused to dislodge the presumption of having committed abetment of suicide by a married woman. Similarly, the provisions of Section 113-B although mandatory in nature, simply enjoin upon the Court to draw such presumption of dowry death on proof of circumstances mentioned therein and amounts to shifting the onus on the accused to show that she was not treated with cruelty by her husband soon before her death. It is for the accused to exercise his option whether to appear as a witness through a written request to the trial Court as provided under Section 315 of the Code of Criminal Procedure. It is note-worthy that clause (b) to proviso to Section 315 of the Code of Criminal Procedure clearly provides that his failure to give evidence shall not be made the subject to any comment by any of the parties or the Court of give rise to any presumption against himself or any person charged together with him at the same trial. These safeguards are also available to the accused facing trial on a charge of dowry death or abetment of suicide. Consequently these provisions cannot be said to be *ultra vires* of the provisions of Article 14 or Article 21 and Article 20(3) of the Constitution of India as the accused can lead some other evidence rather than stepping himself into a witness-box to dislodge such presumption. By no stretch of imagination, it can be said that the discretion of the Court to appraise evidence has been taken away.

(25) The Apex Court in *"Emden v. State of U.P."* (2), considered the validity of presumption evidence against the accused in a case under Section 4(1) of the Prevention of Corruption Act, 1947, on the

(2) A.I.R. 1960 S.C. 548.

anvil of Article 14 of the Constitution. It was held that the basis adopted by the Legislature in classifying one class of public servants who are brought within the net of Sections 161, 165 of the Code of Section 5(1) of the Prevention of Corruption Act, is a perfectly rational basis, being based on intelligible differentia and there can be no difficulty in distinguishing the class of persons covered by the impugned section from other classes of persons who are accused of committing other offences. Besides it has reasonable nexus with the object sought to be achieved i.e. eradication of corruption among public servants. It was held that it is not offensive of equality clause.

(26) A Division Bench of Rajasthan High Court in *"Gurditta Singh* v. *The State of Rajasthan"* (3), while dealing with the provisions of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act observed that there are sufficient in-built safeguards for the accused in these provisions itself before raising a presumption for dowry death or holding the accused guilty of such offence because the Courts are to scrutinise the evidence carefully as cases are not rare in which occasionally there is demand and then the atmosphere becomes calm and quiet and then again there is demand. It was further remarked that where a wife dies in the house of the husband within a short span of seven years of her marriage, it is of considerable difficulty to assess the precise circumstances in which the indicent occurred because ordinarily independent witnesses are not available as torture and harassment is confined in the four walls of the house. The Division Bench also sounded a note of caution by observing that the Courts should be vigilant to scrutinise the evidence regarding the harassment and torture carefully if the witnesses are relatives of the deceased and the relations between them and her in-laws are strained for any reason whatsoever it might be. Although the ratio of the Division Bench is not directly applicable to the case in hand because in vires of these provisions were not being assailed in that appeal yet all the same it has been referred in support of the conclusion that these provisions do not debar the Court from appraising the evidence of the witnesses on the touch-stone of broad probabilities of the case and normal behaviour of human beings under the circumstances of a particular case.

(27) Lastly Mr. Gaur contends that the provisions of Section 304-B had done away with the *mens rea* to commit the offence *Mens*

(3) 1992 Criminal Law Jaurnal 309.

*rea* is essential requisite of a criminal offence. Thus, he contends that the provisions suffer from the vagueness. There is no force in this contention as the requirement of proving that soon before her death the woman was subjected to cruelty or harassment by her husband or any relation of her husband for or in connection with any demand of dowry clearly shows that the Legislature had imbibed the necessary *mens rea* for offence of dowry death.

(28) The prescribing of minimum sentence for seven years under Section 304-B of the Indian Penal Code for dowry death also cannot be said to have taken away judicial discretion in this regard because the Legislature in its wisdom had provided minimum sentence and left discretion with the Court to punish such an offender with imprisonment of life also. The observations of the Apex Court in "*Inderjeet* v. *State of U.P. and another*" (4), can be referred with advantage in this regard. In that case, while discussing the constitutionality of the provisions of Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954. The Apex Court in paras Nos. 5, 6 and 7 of the judgment observed as under :—

> "5. If a sentence, as here is prescribed at a mandatory minimum and that is too cruel to comport with Article 21 and too torturesome to be reasonably justifiable or socially defensible under Article 19 then a case for judicial review may arise. But we see none here. Nor can we agree that judge-proof sentencing is per se bad. Sometimes judicial fluctuations in punishment, especially on the softer side where white collar criminals are involved induce legislative standardisation of sentence, to avoid giving societal protection in hostage to fortune. There is a wide play still left for the court, and mandatory minimal are familiar from the days of the Penal Code,—(*vide* Section 302). The prescription of equal protection is not breached either because within the range of judicial discretion the court deals out of each what he deserves according to established principles.
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> 6. Shri R. K. Garg feelingly urged that the poor and the weak, who are the larger, lower sector of retail traders, will have to suffer the standardised imprisonment if food Inspectors can challan them in Court and, on some minor

(4) A.I.R. 1979 S.C. 1867.

variation in the chemical composition of food sold, get them convicted sans mens *rea* merely because, along the chain, some bigger trader has robbed off inferior commodities on them. We are disturbed that it is possible that small men become the victims of harsh law when there is not executive policy which guides posecution of offenders. Petty victuallers and big sharks operate on society in different degrees and draconian equality will be tempered by flexible policy.

7. This is a matter of penal policy in constitutionality and so it is, in a sense, out of bounds for judicial advice. Even, so, we feel constrained to state that public authorities entrusted with the enforcement of regulatory provisions, to protect society may, in proper cases, examine those prosecutions which are harassments to the humbler folk even if they technically violate the law and cause only minimal harm to society and decide whether they should at all sanction their prosecution. The Legislature, in its wisdom, may also consider the advisability of resting power somewhere to reduce the sentence without the bigger offender escaping through these wider meshes meant for the smaller offenders. Even otherwise, there is a general power in the executive to compute sentences and such power can be put into action on a principled basis when small men get caught by the law.

(29) There is no force in the contention of Mr. Gaur that awarding punishing to the accused for an offence under Sections 498-A, 306 or 304-B of the Indian Penal Code would be offensive to the mandate of Article 20(2) of the Constitution as all these provisions create specific offences although cruelty or harassment of the wife is one of the essential ingredients thereof. Provisions of Section 113-A of the Indian Evidence Act clearly provide that presumption of abetment to suicide by a wife against her husband or his relative shall be available only if she is subjected to cruelty by the husband or his relations whereas in Section 113-B of the Indian Evidence Act pertaining to presumption of dowry death, it is clearly provided that such cruelty or harassment should be soon before the unnatural death by a married woman. The provisions of Section 113-A would be attracted in those cases where the married woman is subject to cruelty by her husband or relatives of her husband. The cruelty defined in Explanation (a) to Section 498-A of Penal Code is wilful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger life, limb or health,

whether mental or physical. The second limb of cruelty includes harassment of the woman with a view to forcing her or any person related to her to meet any unlawful demand for any property or valuable security etc. Thus, the provisions of Section 4 of the Dowry Prohibition Act make the demand of dowry punishable.

(30) The provisions of Section 498-A of the Penal Code creates a specific offence for punishing a husband or relation of the husband of a married women if they subject her to cruelty. The punishment provided therein for a term which may extend to three years besides fine whereas the offence of abetment to suicide punishable under Section 306 of the Indian Penal Code is a graver offence and provides for imposition of sentence of imprisonment which may extend to ten years besides the sentence of fine. The provisions of Section 304-B are specific in nature as these relate to imposition of imprisonment attributing that the husband or the relation of the husband had caused the death of married woman. Thus, by no stretch of imagination, it can be said to be a case of double jeopardy. Consequently it cannot be said that these provisions are violative of mandate contained in Article 20, sub-clause (2) of the Constitution of India.

(31) Presumption regarding dowry death and punishment for dowry death of a married woman within seven years of her marriage is based on sound reasons as seven years of marriage is a sufficient time for the wife to rehabilitate in the house of her in-laws and thereafter there are very remote chances of her being killed by her husband or the relations of her husband on account of having brought less dowry, because even if such a grouse exists at the outset, it pales into insignificance with a passage of time and invariably with the birth of children. Thus, there is no force in the contention of Mr. Gaur that the classification *qua* the death of a married woman within seven years of her marriage *qua* the death of other married woman beyond that period has resulted in discrimination. On the other hand, it is a well founded classification and have direct nexus with the object sought to be achieved i.e. curbing the vice and menace of dowry deaths. Similarly raising a presumption of dowry death or providing for punishment for dowry death against a husband or the relatives of husband of married woman is a sound classification *qua* other offenders of the murder of their wives or the relations of the husband.

(32) For the foregoing reasons, all the above referred provisions of law cannot be said to be violative of Articles 14, 21, 20(2) and 20(3) of the Constitution. The Legislature in its wisdom has rightly

made classifications of the married woman who died unnatural death within a period of seven years of her marriage and who commits suicide within a span of seven years. The classification cannot be said to be invidious as it has close nexus with the object sought to be achieved i.e. curbing the evil of dowry and dowry deaths. Thus, we uphold the constitutional validity of these provisions. From the proceedings pending before the trial Court against the petitioners for offences under Sections 498-A and 304-B of the Code of Criminal Procedure, it transpires that the trial Court had already recorded evidence and the case is at final stage. We, therefore, refrain ourselves from stepping into the shoes of the trial Court in order to appraise the evidence. Consequently this writ petition is dismissed being devoid of any force but the parties are left to bear their own costs, in view of peculiar circumstances of the case.

Sd/-
J. S. Sekhon
Judge

Sd/-
S. S. Grewal
Judge

Sd/-
Amarjeet Chaudhary
Judge

May 4, 1994.

*Note* :—

(33) At the time of pronouncing the order, Mr. Gaur learned Senior Advocate brought to our notice that since the Apex Court, as per reporting in the newspaper had held the provisions of Section 309 of the Penal Code *ultra vires* of the provisions of the Constitution it will hit the provisions of Section 306 and Section 113-A also as if the major offence is held *ultra vires* of the Constitution, then one cannot be punished for abetment to suicide.

(34) There is no force in this contention as the Apex Court has struck down the provisions of Section 309 of the Indian Penal Code pertaining to attempt to commit suicide in *'P. Rathinam/Nagbhusan Patnaik* v. *Union of India and another"* (5). *inter alia*, on the ground that it is violative of Article 21 of the Constitution as a person cannot be forced to enjoy right to life to his detriment, disadvan-

(5) J.T. 1994 (3) S.C. 392.

tage or disliking. It was also held that suicide is not irreligious and not immoral whereas the offence of abetting suicide is graver as abetment of offence of murder. The Legislature in its wisdom had made the offence of abetment to suicide punishable under Section 306 of the Indian Penal Code with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. By no stretch of imagination, it can be said that attempt to commit suicide is a major offence while abetment to the offence of suicide is a minor offence. On the other hand, abetment to suicide is altogether a different offence. In the very nature of things, the offence of committing suicide is not rightly made punishable under the Code as a dead person who has committed suicide cannot be prosecuted. Thus, the analogy of attempt to commit suicide is violative of right of liberty enshrined in Article 21 of the Constitution the offence of abetment to commit suicide would also be *ultra vires* of the Constitution is not acceptable because attempt to commit suicide is volitional and well planned act of the person concerned whereas abetment of the offence of suicide is on different footing as a third person is forcing the other person to take his life by committing suicide. Thus, the ratio of the decision of the Apex Court in *P. Rathinam/ Nagbhusan Patnaik's* case (supra) is not applicable to the facts of circumstances of this case in holding that the provisions of offence of abetment of suicide are *ultra vires* of Articles 14 and 21 of the Constitution.

*R.N.R.*

*Before S. S. Sodhi & Ashok Bhan, JJ.*

PANJAB UNIVERSITY, CHANDIGARH AND ANOTHER,—*Petitioners.*

*versus*

MISS SHABNAM KUMARI AND ANOTHER,—*Respondents.*

*L.P.A. No.* 726 of 1991.

September 9, 1991.

*Constitution of India,* 1950—*Arts.* 226/227—*Panjab University Calendar* 1988, *Chapter III, Vol. II—Regulation* 14.3 & 14.4—*Admission—Petitioner qualified in examination held in foreign country—When candidate on basis of foreign qualification/degree seeks admission in University, the equivalence of such degree vis-a-vis any degree or examination conducted by the Panjab University is*