

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

492.[[s 304B] Dowry death.

- (1) **Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.**

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

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

COMMENT.—

The above provision was inserted by Dowry Prohibition (Amendment) Act 1986, (Act 43 of 1986) and came into force with effect from 19 November 1986. The necessity for insertion of the provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10 August 1988 on 'Dowry Deaths and Law Reform.' Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, legislature thought it's wise to insert a provision relating to presumption of dowry death ([section 113B, Evidence Act, 1872](#)) on proof of certain essentials.^{493.}

[s 304B.1] Object.—

Both [section 304B, IPC, 1860](#) and [section 113B, Evidence Act, 1872](#), were inserted by the Dowry Prohibition (Amendment) Act, 1986, for combating the menace of dowry killings. The attempt was to encounter difficulties of proof by creating a presumption.^{494.}

[s 304B.2] Ingredients.—

The Supreme Court took occasion in *Shanti v State of Haryana*, [AIR 1991 SC 1226](#) [[LNIND 1990 SC 696](#)] : [1991 Cr LJ 1713](#),^{495.}^{496.} to explain the ingredients of section 304B. K Jayachandra Reddy, J, said;^{497.}

A careful analysis of s. 304B shows that this section has the following essentials : (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;^{498.} (2) Such death should have occurred within seven years of her marriage;^{499.} (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death; (4) Such cruelty or harassment should be for or in connection with demand for dowry.^{500.} This section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in - laws for dowry

and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.^{501.}

To establish the offence of dowry death under [section 304B, IPC, 1860](#), the prosecution has to prove beyond reasonable doubt that the husband or his relative had subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death.^{502.}

[s 304B.3] **Dowry—meaning of.—**

For the purposes of the section, "dowry" shall have the same meaning as in [section 2 of the Dowry Prohibition Act, 1961](#). "*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 parent 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^{503.} [or any time after the marriage]^{504.} [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.^{505.} From the above definition it is clear that, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the [Muslim Personal Law \(Shariat\) Application Act, 1937](#). All the expressions used under this section are of a very wide magnitude. The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties' were introduced by amending Dowry Prohibition (Amendment) Act 1984, (Act 63 of 1984) and Dowry Prohibition (Amendment) Act 1986, (Act 43 of 1986) with effect from 2 October 1985 and 19 November 1986, respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression 'in connection with the marriage' cannot be given a restricted or a narrower meaning. The expression 'in connection with the marriage' even in common parlance and in its plain language has to be understood generally. The object being that everything which is offending at any time, i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.^{506.} The payments which are customary payments, for example, given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression 'dowry'.^{507.} Furnishing of a list of ornaments and other household articles, such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, *prima facie* amounts to demand of dowry within the meaning of section 2 of the Act.^{508.} The definition of 'dowry' is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands.^{509.} It is not necessary for the purposes of the offence under the section to show that there was an agreement for payment of dowry.^{510.}

The in-laws of the deceased woman could not be roped in only because they were close relatives. The overt-acts which are attributed to them would require to be proved beyond reasonable doubt.^{511.}

[s 304B.4] **"Husband"—meaning of.—**

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 and subjects the woman concerned to cruelty or coerces her in any manner or 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, 1860](#). Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who enter into contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of [sections 304B or 498A, IPC, 1860](#), viewed in the context of the very object and aim of the legislations introducing those provisions.^{512.}

[s 304B.5] Relative of the husband.—

The word "relative of the husband" in [section 304B of IPC, 1860](#) would mean such persons, who are related by blood, marriage or adoption. The brother of the aunt of the husband is not a relative.^{513.}

[s 304B.6] "Soon before death".—

To attract the provisions of [section 304B, IPC, 1860](#), one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".^{514.} The provision does not employ the term "at any time before" or "immediately before" and must be construed according to its true import.^{515.} The expression "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.^{516.} The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her.^{517.} There was a demand of Maruti Car being pressed by the two accused persons after about six months of the marriage of the deceased (which took place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to her parental home and on telephone. She might have thought that things would improve with the passage of time, but it seemed that that did not happen. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. The test of 'soon before' was held satisfied in the facts, evidence and circumstances of the present case.^{518.} Evidence that the deceased told her mother one month prior to her unnatural death, that the accused husband used to subject her to cruelty, was held to be not within the four corners of time frame.^{519.} Where the death occurred after five days of the demand of dowry, it was considered to be soon before death.^{520.}

The expression "soon before" is a relative term. It has to be construed in the context of specific circumstances of each case. No hard and fast rule of a universal application can be laid down by prescribing a time-limit.^{521.} These words are to be understood in a relative and flexible sense. There can be no fixed period of time in this regard.^{522.} If the incident alleged of cruelty is remote in time and has become ineffective, so as not to

disturb the mental equilibrium of the victim concerned, it would be of no consequence.^{523.}

Where the death was due to electrocution and there is evidence that the victim was subjected to cruelty demanding a motor bike, it was held that the harassment made 15–20 days before her death was considered to be soon before her death.^{524.} Cruelty caused to her (*the deceased*) on any day from the date of her marriage, i.e., 20 April 1994 till the date of her death, i.e., 22 July 1994 could be cruelty caused 'soon before' her death.^{525.}

[s 304B.7] Proximity Test.—

The expression "soon before her death" used in [section 304B, IPC, 1860](#) and [section 113B of the Evidence Act, 1872](#) is present with the idea of proximity test. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the Courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.^{526.} The section was not attracted where there had been no harassment for about 15 months prior to the occurrence.^{527.} Where the wife was persistently subjected to cruelty and harassment by the husband and other in-laws for gold ornaments and the last such torture was practiced 15 days before the occurrence, the Court said that the requirement of "soon before" was very well satisfied.^{528.} The import of this expression was examined by the Orissa High Court^{529.} in a case in which there was a history of beating the wife up for dowry. But the couple reconciled and resumed joint life. The wife joined her husband after a long stay with her parents. The husband left her back with her parents and after a fortnight took her away. Within two days thereafter her parents were informed of her death. During the fortnight, she had not made any complaint to her parents about dowry or torture. The Court held that the section was not attracted because there was no cruelty or harassment soon before her death. The Court compared section 304B with [section 113B of the Evidence Act, 1872](#) where also the words "soon before" occur and said:^{530.} A conjoint reading of section 113B of the Act and [section 304B, IPC, 1860](#) shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances." The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.^{531.}

Principles relating to [section 304B IPC, 1860](#) and [113B Evidence Act](#) summarised by Supreme Court

- (a) To attract the provisions of [section 304B, IPC, 1860](#), the main ingredient of the offence to be established is that soon before the death of the deceased, she was subjected to cruelty and harassment in connection with the demand of dowry.
- (b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.
- (c) Such death occurs within seven years from the date of her marriage.
- (d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.
- (e) Such cruelty or harassment should be for or in connection with demand of dowry.
- (f) It should be established that such cruelty and harassment was made soon before her death.
- (g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.
- (h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [section 113B of the Evidence Act, 1872](#).
- (i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.
- (j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.
- (k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of [Article 20 of the Constitution](#), as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of section 304B.
- (l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of section 304B were not satisfied.
- (m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied, it will be called dowry death and by deemed fiction of law, the husband or the relatives will be deemed to have committed that offence.

Kashmir Kaur v State of Punjab.⁵³².

[s 304B.8] **Comparison between section 304B and section 498A.—**

Cruelty has been defined in the explanation for the purpose of section 498A. Substantive [section 498A, IPC, 1860](#) and presumptive [section 113A of the Evidence Act, 1872](#) have been inserted in the respective statutes by [Criminal Law \(Second Amendment\) Act, 1983](#). It is to be noted that [sections 304B and 498A, IPC, 1860](#) cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to section 498A gives the meaning of "cruelty". In section 304B, there is no such Explanation about the meaning of "cruelty". But having regard to common background to these offences, it has to be taken that the meaning of "cruelty or harassment" is the same as prescribed in the Explanation to section 498A under which "cruelty" by itself amounts to an offence. Under section 304B, it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in section 498A. A person charged and acquitted under section 304B can be convicted under section 498A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections.⁵³³ [Section 498A, IPC, 1860](#) and [section 113A of the Evidence Act, 1872](#) include in their amplitude past event of cruelty. Period of operation of [section 113A of the Evidence Act, 1872](#) is seven years. Presumption arises when a woman committed suicide within a period of seven years from the date of marriage.⁵³⁴

Following this in *Nand Kishore v State of Maharashtra*,^{535, 536} it was held that all the ingredients of this section must exist conjunctively. There must be nexus between cruelty and harassment to raise the presumption of dowry death under [section 113B of the Evidence Act, 1872](#).

The Supreme Court again explained the expression "soon before death" in *Hans Raj v State of Punjab*.^{537, 538} There should have been continuous cruelty connected with demand of dowry and the same should have been shown to be in existence till date when the deceased met her parents two days before her death. In this case, there was no intervening circumstance on record showing settlement regarding demand of dowry. The existence of harassment for dowry would be deemed to be there right up to the point of death. The accused was liable to be convicted. The meaning of the expression is to be decided by the Court after analysing facts and circumstances leading to the victim's death to see whether there is any proximate connection between the cruelty or harassment for dowry demand and the death.⁵³⁹

The Supreme Court held under [section 2 of the Dowry Prohibition Act, 1961](#) that an agreement for dowry is not always necessary. There was in this case a persistent demand for a TV set and a scooter. The demand was related with marriage. It fell within the meaning of the word dowry under section 304B.⁵⁴⁰ The woman died of self-poisoning. The evidence of her sister revealed that she had informed her about the harassment about one and a half years before death. The Court said that such harassment could not come within the words "soon before death". There was no convincing evidence to prove the grave charge of "dowry death". The accused persons were acquitted.⁵⁴¹ A harassment shown to have taken place eight months before the suicide was held to be not coming within the scope of the words "soon before". The conviction under section 304B was set aside. The evidence showed that cruelty was there. The accused persons were not able to explain why the deceased wife committed suicide. The conviction and sentence under section 306 (abetment of suicide), [section 498A](#) and [section 4 of the Dowry Prohibition Act, 1961](#) was maintained.⁵⁴²

[s 304B.9] **Presumption of guilt and Doctrine of reverse burden.—**

The rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradiction to

this aspect, the legislature has applied the concept of deeming fiction to the provisions of section 304B. Where other ingredients of section 304B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of section 304B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under section 304B of the Code. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of section 304B were not satisfied, rebut the same.⁵⁴³ By a deeming fiction in law, the onus shifts on to the accused to prove as to how the deceased died. It is for the accused to show that the death of the deceased did not result from any cruelty or demand of dowry by the accused persons.⁵⁴⁴ The Court has to presume that the appellant has committed the offence under [section 304B, IPC, 1860](#). The prosecution had led sufficient evidence before the Court to raise a presumption that the appellant had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption. The appellant has chosen not to examine any defence witness to rebut this presumption of dowry death against him under [section 113B of Evidence Act, 1872](#). The Courts below were, thus, right in holding that the appellant was guilty of the offence under [section 304B, IPC, 1860](#).⁵⁴⁵

As the financial status of both the families seems to be very very poor, the demand of dowry and meeting out such demand seems to be highly improbable.

[s 304B.10] [Section 113B of Evidence Act, 1872](#).—

Alongside insertion of section 304B in [IPC, 1860](#), the legislature also introduced [section 113B of the Evidence Act, 1872](#), which lays down *when the question as to whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death*. If [section 304B, IPC, 1860](#) is read together with [section 113B of the Evidence Act, 1872](#), a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within seven years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives.⁵⁴⁶ When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.⁵⁴⁷ The Court shall not presume the same unless it is established that soon before her death, a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry.⁵⁴⁸ For the purposes of this section, "dowry death" shall have the same meaning as in [section 304B of IPC, 1860](#) (45 of 1860).⁵⁴⁹ As per the definition of "dowry death" in [section 304B, IPC, 1860](#) and the wording in the presumptive [section 113B of the Evidence Act, 1872](#), one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment "for or in connection with the demand for dowry".⁵⁵⁰ But the prosecution under [section 304B of IPC, 1860](#) cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and such was caused "soon before her death".⁵⁵¹

The presumption shall be raised only on proof of the following essentials:

(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under [section 304B, IPC, 1860](#).)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death⁵⁵².

[s 304B.11] Injuries insufficient to cause death.—

Where injuries as found on the person of the deceased could not have caused her death, the offence would not attract the mischief of the section 304B, though there might have been history of torture for dowry.⁵⁵³

Asphyxia only means that the death took place due to lack of air going to the lungs. The Doctor had to clearly opine whether this was due to strangulation or hanging and if it was due to hanging, whether the hanging was suicidal or homicidal.⁵⁵⁴

[s 304B.12] Normal circumstances.—

These words apparently carry the meaning of natural death. The expression "otherwise than under normal circumstances" means a death not taking place in the course of nature and apparently under suspicious circumstances if not caused by burns or bodily injury.⁵⁵⁵

[s 304B.13] Nexus between suicide and harassment.—

The prosecution has to show nexus between suicide and harassment in the sense that the victim was induced by the cruelty to take the extreme step. In this case, the accused was not able to point out any other cause. Evidence showed that she was driven away from the matrimonial home and came back because of the intervention of *Panchayat*. Within a period of two months thereafter, there was the suicide. The Court said that the cruelty and suicide were inter-related. Presumption under [section 113B of the Evidence Act, 1872](#) became applicable. The accused was convicted under the section.⁵⁵⁶

[s 304B.14] Presumption.—

Where there was sufficient evidence to prove dowry demand and death had also taken place within seven years, the Supreme Court held that the presumption arising under the section did not become automatically rebutted by the fact that the accused persons had been acquitted under section 302. There were 15 injuries on her person which were not self-inflicted. Thus, they were homicidal.⁵⁵⁷

[s 304B.15] Section attracted whether death homicidal or suicidal.—

Where the suicide is due to demand of dowry soon before bride's death, section 304B would apply. The section applies irrespective of the fact whether there is homicide or suicide.⁵⁵⁸

[s 304B.16] Comparison with [section 498A, IPC, 1860](#).—

Where two women were acquitted of charges under section 498A which deals with cruelty by husband or relatives of husband. Disapproving the High Court view, K Jayachandra Reddy, J, observed⁵⁵⁹ that sections 304B and 498A cannot be held to be mutually exclusive.

These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to s. 498A gives the meaning of "cruelty". In s. 304B there is no such Explanation about the meaning of "cruelty". But having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" be the same as we find in the Explanation to s. 498A under which "cruelty" by itself amounts to an offence. Under s. 304B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in s. 498A.... Further it must also be borne in mind that a person charged and acquitted u/s. 304B can be convicted u/s. 498A without that charge being there, if such a case is made out...

If the case is established, there can be a conviction under both the sections but no separate sentence would be necessary under section 498A in view of the substantive sentence being awarded for the major offence under section 304B.^{560.}

[s 304B.17] **Comparison with Dowry Prohibition Act, 1961.—**

The Supreme Court stated this comparison in the following words:

The object of s. 4, Dowry Prohibition Act 1961 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for "giving" property or valuable security which demand, if satisfied, would constitute an offence u/s. 3 read with s. 2 of the Act. Thus, the ambit and scope of ss. 3 and 4 of the 1961 Act are different from the ambit and scope of s. 304-B IPC. Hence the ingredients of s. 498-A IPC and ss. 3 and 4, Dowry Prohibition Act, are different from the ingredients of s. 304-B IPC. The High Court gravely erred in coming to the finding that once the charge u/s. 304-B IPC could not be proved, then conviction u/s. 498-A IPC and ss. 3 and 4 of the 1961 Act also could not be recorded.^{561.} Section 4 of the Act is the penal section and demanding a "dowry", as defined u/s. 2 of the Act, is punishable under this section.^{562.}

[s 304B.18] **New offence.—**

Retrospective operation.—The section creates a new offence. An act committed prior to its enactment and enforcement cannot be tried under this section.^{563.} The Allahabad High Court proceeded somewhat differently. In reference to the offence of bride burning for dowry which occurred before coming into force of section 304B, it cannot be said that section 304B is an *ex post facto* law and it cannot apply in connection with an occurrence which took place prior to its enactment. The new offence of 'bride burning' was unknown on the date of occurrence in this case. Section 304B does not create a new offence, rather it reiterates in substance the offence under section 302 under which such offences were punished. So, doctrine of *ex post facto* would not apply.^{564.}

[s 304B.19] **Inclusion of section 302 in all Dowry death Cases.—**

In *Rajibir v State of Haryana*,^{565.} a two-Judge Bench of the Supreme Court directed all trial Court to ordinarily add section 302 to the charge of section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women. The Supreme Court has clarified the direction in *Rajibir* by observing that:

Be that as it may the common thread running through both the orders is that this Court had in *Rajibir's* case^{566.} directed the addition of a charge u/s. 302 IPC to every case in which the accused are charged with s. 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge u/s. 302 can also be framed if the evidence otherwise permits.

[s 304B.20] **Charge under section 304B.—Conviction under section 306.—**

An offence of abetment of suicide punishable under section 306 of IPC, 1860 is much broader in scope than an offence punishable under section 304B of IPC, 1860.^{567.} Plea that only charge under section 304B, IPC, 1860 framed and no charge under section 306, IPC, 1860 framed the appellant could not be convicted for offence punishable

under [section 306, IPC, 1860](#) repealed.⁵⁶⁸ Accused originally charged and convicted under [section 304B of IPC, 1860](#). The Court found Conviction for dowry death unsustainable. Prosecution adduced evidence on the issue of cruelty to deceased not only on ground of alleged demand of dowry but also on ground of her having no issue. Court held that mere failure to mention section 306 in charge cannot adversely prejudice the defence of accused. Held while acquitting accused for offence punishable under [section 304B of IPC, 1860](#), conviction can be recorded under [section 306 of IPC, 1860](#).⁵⁶⁹ In *K Prema S Rao v Yadla Srinivasa Rao*,⁵⁷⁰ the Court, analysing the evidence, ruled thus:

The same facts found in evidence, which justify conviction of the appellant u/s. 498A for cruel treatment of his wife, make out a case against him u/s. 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" u/s. 304B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption u/s. 113A of the [Evidence Act](#) could also be raised against him on same facts constituting offence of cruelty u/s. 498A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge u/s. 498A IPC.

In a case, the Supreme Court said:

the basic ingredients of the offence u/s. 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one u/s. 304B IPC to that u/s. 306 IPC.⁵⁷¹

[s 304B.21] Sections 304B and 306 together–

The Supreme Court, in *Bhupendra v State of MP*,⁵⁷² examined that whether an offence under sections 304B and 306 together would be attracted in a case and was of the opinion that [section 306 of IPC, 1860](#) is much broader in its application and takes within its fold one aspect of [section 304B of the IPC, 1860](#). These two sections are not mutually exclusive. If a conviction for causing a suicide is based on [section 304B of IPC, 1860](#), it will necessarily attract [section 306 of IPC, 1860](#). However, the converse is not true.

[s 304B.22] Evidence of date of marriage.–

The presumption starts running from the date of marriage. The prosecution has therefore to prove the date of marriage. The prosecution failed to do so. It was held that the Courts below erred in shifting the burden of showing the date of marriage to the defence and then the presumption on the basis of their statement about the fact of marriage.⁵⁷³ Where the marriage had taken place more than seven years before the incident, the husband was acquitted under the section.⁵⁷⁴

⁴⁹². Ins. by Act 43 of 1986, section 10 (w.e.f. 19-11-1986).

⁴⁹³. *Dhan Singh v State of UP*, [2012 Cr LJ 3156](#) (All).

⁴⁹⁴. *Kunhiabdulla v State of Kerala*, (2004) 4 SCC 13 [[LNIND 2004 SC 291](#)] : [AIR 2004 SC 1731](#) [[LNIND 2004 SC 291](#)] : (2004) 2 KLT 152 . *State of AP v Raj Gopal Asawa*, (2004) 9 SCC 157 [[LNIND 2003 SC 715](#)] : [2003 Cr LJ 157](#) .

⁴⁹⁵. *State of HP v Jagroop Singh*, [1993 Cr LJ 2766](#) (HP), though there was proof of harassment, but near about the period of the incident, cordial relations prevailed, no presumption, *Ratan Lal v State of MP*, [1993 Cr LJ 3723](#) (MP), no presumption because, no proof of marriage beyond