

Section 304B. Dowry death

- '[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.]**

Essentials of Dowry Death:

- 1) Death of woman in in-laws house
- 2) Death other than **ordinary circumstances**
- 3) Death **within 7 years of marriage**
- 4) **Demand of dowry**
- 5) Harassment in connection with demand of dowry
- 6) Harassment happened **soon before death**

Kansraj v. State of Punjab

AIR 2000 SC 2324

- **Facts:** Lady died 7 years of marriage, brother of lady went to her house on occasion of karvachauth with jewellery, found her dead body, saw marks on the neck of the woman, brother suspected, post-mortem report said that she died of asphyxiation, when she met her parents 2 months earlier, she told them that he was asking for dowry –scooter and refrigerator, they gave 30 000, then went back to her matrimonial house, then never saw her parents again
- Earlier everyone, her husband and his relatives were charged
- TC and HC: acquitted everyone except husband
- SC- only husband
- Defence counsel-
- 1) 2/3 months earlier he was asking for dowry, not soon enough
- 2) lady's bro went to her sister's house on karvachauth, but 23rd October not karvachauth
- Husband was convicted under 304B, given life imprisonment

K Bala Subrahmanyam v. State of Andhra Pradesh 1993 Cr LJ 163

- **Facts:** Bala subrah belonged to a village, completely illiterate, into agricultural flourishing business, girl was studying B Tech and was brought up in Mumbai, could not speak in Telugu, her mother-in-law (her own aunt) was ill-treating her, beating her, she wrote letters to her parents in Hindi telling them about her plight, her sister-in-law used to post the letters for her, neighbours saw this girl crying and asking for help, husband and mother-in-law were not helping at all, had put her to fire, father-in-law went to get water for her to save her, but he was stopped by the mother-in-law.
- TC- acquitted all of them
- 1) she had told the neighbours about her plight
- 2) she was speaking to her brother in Hindi
- 3) sometimes, the neighbour said that she was in verandah, sometimes in kitchen, hence changing statements
- 4) In the letters, they could not find evidence of much of cruelty
- Defence counsel:
 - 1) Before death, she had watched a movie in Telugu about Parvati, and under that influence she committed suicide
- HC- convicted only husband and acquitted rest
- SC- husband and mother-in-law were convicted, father-in-law was acquitted

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- The deceased told her neighbour that "her mother-in-law had poured kerosene over her and her husband had set fire to her"
 - Statement to brother "please tell mother and father as I am telling you. My mother-in-law poured kerosene on me and my husband set fire. You tell father and mother about this. Don't fight. Anyhow I am dying."

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- She also told her brother PWI to take back the cash given to her and divide it amongst the sisters in equal share and get them married off to nice persons. At this juncture, the first appellant, husband of the deceased came inside the kitchen and with folded hands begged the deceased for forgiveness saying that he would not repeat what he had done and therefore he may be pardoned.

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- , the deceased had allegedly told him that he had consumed dettol to commit suicide and since she could not bear the pain she had set herself on fire.

Section 2 in The Dowry Prohibition Act 1961

- 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 a other person, to either party to the marriage or to any other person; at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I.- For the removal of doubts, it is hereby declare that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Section 113B in The Indian Evidence Act, 1872

113B. 4[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 304B of the Indian Penal Code.]

Section 498A. Husband or relative of husband of a woman subjecting her to cruelty

¹[498A. 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 likely 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.]

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- **A SURVEY OF CASES ON SECTIONS 304B OF THE IPC IN THE STATE OF Punjab and Haryana and Uttar Pradesh FROM 2005-2010 and the Supreme Court for the years 2004-2005**
TRENDS IN SENTENCING

S304B Supreme Court- 2004-05

- No. of cases: 22
- No. of convictions in the trial court: 18
- No of acquittals in the trial court: 4
- No. of convictions in the High Court where sentence has been maintained: 12
- No. of convictions where sentence has been reduced or changed: 6
- No of convictions changed to acquittal in the High Court: 5
- No. of acquittal changed to conviction in the High Court: 1
- No. Of convictions in the Supreme Court where sentence of the High Court has been maintained: 9
- No. Of convictions where sentence of the High Court has been changed or reduced: 5
- No. Of acquittals changed to conviction in the Supreme Court: 1
- No. Of convictions changed to acquittal in the Supreme Court: 5

Observations

- **SI 13B-** Burden of Proof
- **Defences-**
 - A. Validity of the marriage
 - B. When the marriage was solemnised?
 - C. “Soon before her death”
- An average time of **10 years** has been taken to reach a Supreme Court decision
- Usually the minimum punishment of **7 years of RI** is what is awarded to the accused.

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- Special and Adequate Reasons
 - a. Old age of the in-laws
 - b. Youth of the husband
 - c . Dependents on the accused
 - d. No criminal record

High Court of Punjab and Haryana, Uttar Pradesh

High Court	No. Of Cases	No of Convictions	No. Of Acquittals
Punjab and Haryana	36	28	7
Uttar Pradesh	15	10	5

Observations in the High Courts

- Charged with **S302**, convicted under it very rarely
- **S306** Abetment to commit suicide- if S304B could not be proved
- The method of killing the wife is usually that of **burning her** and the defence taken is that the **fire was accidental**. But circumstantial evidence as to the nature of the fire and its origin help to determine whether the death was accidental or homicidal- **Dying Declaration**

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- In this High Court, the husband of the deceased is usually convicted but **the in-laws are acquitted** due to lack of evidence to prove cruelty or harassment on their part.
 - Usual Punishment- 7-10 years RI(LI given only in 2)
 - Duration- 7-8 years

**Ashok Kumar
Vs.
State of Haryana
I(2006)DMC466**

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- Shashi Bala married to Ashok Kumar
 - Harassed by mother- in- law and brothers-in-law for insufficiency of dowry
 - Shashi Bala visited the house of her father Ram Avtar twice during this period. She wept before him and told him that her in-laws were harassing her. Complainant gave her Rs. 10,000 and sent her back. The second time also when she came, complainant gave her another sum of Rs. 10,000 after borrowing it from his brother and he sent his daughter back to Village Durana.

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- Dead on the bed, strangulation marks on her neck(within 3 months of marriage)
 - The conduct of the appellant is highly suspicious. (poison- strangulation)
 - Defences- suicide by hanging
 - “soon before her death”- death 13 days after demand
 - Why life imprisonment? – within 3 months of marriage, defence not able to refute presumption under S113B, No discrepancy in prosecution witnesses



Prem Nath and otrs.

v.

State of Haryana
2005 CriLJ 2244

- Husband-Convicted under Sections 302 and 304-B I. P. C. and sentenced to undergo R.I. for life under Section 302 I. P. C. No separate sentence under Section 304-B
- Father-in-law, brother-in-law (S304B)- 7RI(acquitted by HC)
- Demand for home appliances+ 2 lacs
- In-laws alleged- death by stove bursting
- Post mortem report- strangulation
- Elements of S304B proved beyond doubt

Arun Garg Vs. State of Punjab and Anr. (2004)8SCC251

- Death within 3 years of marriage
- Appellant alleged to have administered aluminium phosphate
- Seema started complaining that her husband, Arun Garg, father-in-law, Sham Lal Garg and mother-in-law, Shimla Garg were not satisfied with the dowry given to her at the time of her marriage and all of them often used to taunt her on the ground that she had not brought sufficient dowry at the time of her marriage.

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- 26.03.1999,(4 days before death) Seema telephoned her father, that her husband, father-in-law, mother-in-law and sister-in-law were planning to kill her.
 - Cause of death- Aluminium phosphate intake
 - 10 years RI

- The Sessions Judge who imposed a fine of Rs. 2,000 to the appellant did not take notice that for the offence under Section 304B, the Court is not empowered to impose fine as a punishment. Section 304B is one of the few sections in the Indian Penal Code where imposition of fine is not prescribed as a punishment.
- The Division Bench of the High Court which confirmed the conviction of the appellant under Section 304B instead of setting aside the fine, which is not warranted by law, enhanced a sum to Rs. 2 lakhs and also directed that the fine, if recovered, shall be paid to the complainant.
- The appellant could have been sentenced only to a punishment which is prescribed under the law. As no fine could be imposed as punishment for offence under Section 304B, the direction to the appellant to pay a fine of Rs. 2 lakhs was held to be wholly illegal.