

Comments: this section now is obsolete. it is



Comments: Section 113 provides that if a notification in an official gazette that a portion of British territory has been ceded to any native state before commencement of Part III of the Government India Act, 1935 the notification is a conclusive proof and no court has any power to make any enquiry about cession. This section now is obsolete. It is hardly of any use in the present form. 113A.

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 498A of the Indian Penal Code (45 of 1860). Comments: This section has created a presumption as to abetment of suicide against the husband or his relative.

It lays down that when the question of commission of suicide by a woman is alleged to have been abated by the husband or his relatives the following presumptions can arise: 1. That the woman had committed suicide within the period of seven years after the date of her marriage; 2. That her husband or such relative of her husband had subjected her to cruelty; 3. That the case of such suicide had been abetted by her husband or such relative of her husband.

**Presumption:**

The presumption under the section is rebuttable and totally based on facts. If the married woman does not commit suicide the presumption of abetment will not arise. When suicide has been committed by a woman within seven years after marriage and such suicide has been abated by her husband or his relatives or she was subjected to cruelty the court may presume that the death in question is suicidal after taking into account all such circumstances. Presumption of abetment of suicide can be drawn only by the prosecution has discharged the initial onus of proving cruelty. In such type of cases the court may call upon the prosecution to adduce sufficient evidence and to prove that it was a case of suicide abated by the husband or his relation. The legal presumption provided under this provision clearly includes the past inference of cruelty spread over a period of seven years from the date of the marriage of the victim.

Where the deceased in her dying declaration stated that she poured kerosene on herself and lighted a match stick on account of ill-treatment and beating by her husband the court can draw a presumption under section 113A of the Act. This kind of presumption is totally in the discretion of the court. The presumption contemplated under section 113A is clearly attracted in the facts of the present case and the accused has not led any evidence to rebut the said presumption.

The presumption as to abetment of suicide arises where the woman has been subjected to cruelty by her husband and relations. Where the wife had committed suicide by consuming insecticide within seven years of marriage but evidence was leaving to show that ill-treatment to the deceased was on <https://assignbuster.com/comments-this-section-now-is-obsolete-it-is/>

account of failure to pay the demanded money, the accused was acquitted of charge under section 306, IPC. The facts and circumstances should be such that there is existence of nexus of cause and effect between cruelty and suicide.

**Seven years from the date of marriage:**

The prosecution has to prove that the case of suicide took place within seven years from the date of marriage. Where the death did not occur within a period of seven years from the date of marriage, the presumption regarding abetment of suicide cannot be raised invoking the provisions of Section 113A of the Evidence Act. Where the marriage was more than seven years there is no presumption.

There was no evidence of any act of cruelty also and therefore abetment of suicide could not be inferred. The marriage of the deceased had taken place in 1976, but the incident took place in 1988, that is after twelve years of the marriage, the presumption under Sections 113A and 113B was not available. In case of offences against married woman the presumption of abetment is not available when charge is under section 302 of I. P. C.

**Necessity of cruelty:**

In order to apply the Section 113A there must be some evidence to show that her husband and relatives subjected her to cruelty.

According to the explanation to this section "cruelty" shall have the same meaning as in Section 498A of the Indian Penal Code. According to Section 113A if a husband or his relatives is guilty of cruelty committed to a married

woman, both are punishable under section 498A of the IPC, provided a presumption of abetment of suicide took place within the period of seven years. In a dowry case the accused husband used provocative language that led to amount instigation of suicide. The conviction of the husband was proper. Unless the husband can be held guilty of subjecting the deceased with cruelty no presumption of abetting the deceased in committing the suicide is available under this section.

But, ill-treatment for several years created the presumption in favour of the commission of a forced suicide.

**Provisions under this section are retrospective:**

The provisions of this section are applicable in pre-amendment cases. This section does not create any new offence nor does it create any substantial right but merely a matter of procedure and as such are retrospective and applicable to the present case.

**113B.**

**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 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. Explanation: For the purposes of this section, “ dowry death” shall have the same meaning as in Section 304B, of the Indian Penal Code, (45 of 1860). Comments:

**Scope:**

Section 113B creates a presumption of dowry death. In such cases, under this section, the “ Court will take for granted that the accused has committed dowry death.” The prosecution has to prove that the death of a married woman was caused by any burns, bodily injury or occurs otherwise than by natural death within seven years of marriage. There is no straight jacket formula; only live link between the cruelty because of dowry demand and death must appear to exist. When the death of a victim was due to burn injuries in matrimonial home, circumstantial evidence showing drenched in kerosene and mouth gagged with a piece of cloth ruling out suicide or accidental death, presumption under this section arose.

The presumption of dowry death arises only in cases when the prosecution proves that before death the victim was subjected to cruelty or maltreatment or harassment for dowry demand. Hence, under this section when prosecution proves the case, it shall be presumed by the court that the death is a dowry death. Sections 113B which is relatable to dowry death places heavier onus on the accused than onus places under Section 113A. Husband being the direct beneficiary can be inferred to have caused life of wife so miserable that she was compelled to commit suicide.

**Essential conditions:**

The following essential conditions are to be fulfilled for raising presumption as to dowry death: 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, I.

P. C.). 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 death.”

**Presumption as to dowry death:**

When Section 113B is read with Section 304B of I. P. C. it proves that the death of the victim was due to subjection of cruelty and harassment. Where the prosecution does not allege demand of dowry against the accused Section 113B is not attracted. It shows that there has been persistent demand of dowry and because of non-fulfillment of said demand the victim was subjected to harassment, humiliation and continuous beating by the accused-husband and in-laws.

Poison was administered to deceased in Prasad. She died within seven years of marriage. Presumption under section 113B is attracted. In case of dowry death “ 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 stable enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. The presumption as to dowry death may be involved when the prosecution proves that “ soon before death” the victim was subjected to cruelty or harassment. The rule of evidence is to be prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was

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perpetrated by the husband, as then it would be the burden of the accused to rebut the presumption.

In absence of basic element of dowry demand, presumption under this section cannot be raised. The presumption under section 113B cannot be invoked against husband. On the other hand, where ingredients of section 304B of the Indian Penal Code are established by the prosecution the onus lies on the accused to rebut presumption under section 113B of the Evidence Act. Irrespective of fact whether the accused has any direct connection with the death or not shall be presumed to have committed dowry death provided the other requirements of the section are satisfied. Where evidence of witnesses established demand of dowry and ill treatment of deceased shortly before the date of occurrence, the offence of dowry death is made out. The statements made by mother and brother of the deceased that the deceased was taunted by the husband and in-laws for not bringing dowry is admissible in evidence. A comparative study of Sections 113A and 113B highlights that under Section 113A the court " may presume" having regard to all the other circumstances of the case, an abetment of suicide as visualized by Section 306, 1PC, but Section 113B which is relatable to Section 304B, the word " may" has been substituted by " shall" and there is no reference to the circumstances of the case.