1995 ALT CRI 1 25 . 1993 ILR KAR 3035 . 1994 DMC 1 356 . 1995 CRIMES 1 573 . 1994 KARLJ 3 335 . 1994 KANTLJ 3 335 . 1993 SCC ONLINE KAR 240 . 1994 KANT LJ 3 335 . 1993 HLR 2 672 .

Harikumar v. State Of Karnataka*

Karnataka High Court (22 Oct, 1993)

CASE NO.
Crl. Appeal No. 58 of 1992

ADVOCATES

JUDGES

S.B Majmudar, C.J

M. Ramakrishna

R.V Raveendran, JJ.

Summary

1. It is a well-known that in various Acts dealing with criminal offences, burden to prove certain facts rests on the shoulders of the accused.

2. The impugned provision is in no way unconstitutional.

3. Learned Advocates of respective parties have invited our attention to number of Judgments and relevant provisions of other Acts dealing with criminal offences, for supporting their respective contentions.

4. 2. It is proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective.

5. The Section, in substance, creates a Rule of Evidence and deals with casting of burden of proof in certain cases on the accused.

6. Learned Advocate for the appellant submitted that prosecution of the accused under Sections 3 or 4 of the Act, will have to be conducted I as per the provisions of the Criminal Procedure Code as laid down by Section 8 of the Act.

7. A Constitutional Bench of the Supreme Court had an occasion to consider the term 'prosecuted' as employed by Article 20(2) of the Constitution of India, while considering the question whether the proceeding before the Sea Customs Authorities under Section 167(8) of the Sea Customs Act, are in the nature of prosecution or not (See: THOMAS DANA v. STATE OF PUNJAB, .

8. It becomes obvious that once an accused is charge-sheeted for offence under Section 3 or Section 4 of the Act, he gets prosecuted before competent Criminal Court.

9. As per Section 232, if after taking the evidence for the prosecution, examining the accused the hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

10. That the procedure is seen to be given a complete go by, if Section 8A of the Act is read as it stands, and if it is held that the entire burden of proving all the ingredients of offences is on the accused..

11. The initial burden will rest on the prosecution to bring home the basic ingredients of the Sections and that will never shift on the accused under Section 8A of the Act.

12. 10. In C.I. EMDEN v. STATE OF U.P., , a Constitution Bench of the Supreme Court had to consider whether Section 4(1) of the Prevention of Corruption Act, 1947, was ultra vires Article 14 of the Constitution.

13. 14. We may next refer to the Decision of the Supreme Court in the case of BABULAL AMTHALAL MEHTA v. COLLECTOR OF CUSTOMS, CALCUTTA AND ORS., In that case, another Constitution Bench of the Supreme Court had to consider the validity of Section 178A of the Sea Customs Act, in the light of Article 14 of the Constitution.

14. The Constitution Bench of the Supreme Court, speaking through GOVINDA MENON, J., held that Section 178A of the Sea Customs Act does not offend Article 14 of the Constitution and that Section discloses the well defined classification of goods based on an intelligible differentia and it applies to only certain goods described in Sub-section (2) which are or can be easily smuggled.

15. 15. The aforesaid Decision of the Constitution Bench of the Supreme Court also supports our conclusion that Section 8A is not violative of Article 14 of the Constitution, as it also lays down a rule of evidence casting burden of proof on the accused only when the basic ingredients of the Section are proved by the prosecution.

16. The Court must be satisfied that (a) there is discrimination and (2) it is impermissible and is an unreasonable classification bearing no nexus to the object which laws seeks to achieve.

17. The inmates of the house have special knowledge regarding wilful conduct or the harassment or cruelty etc.., meted out to the married woman in a given situation, either the husband or the in-laws or the relative or relatives of the husband may be prime offenders or abettors or one or all of them may be jointly or individually responsible for commission of the crime.

18. They are treated as a class for the purpose of Section 498-A of the Code.

19. Section 498-A of the Code cannot be said to be an unreasonable classification, Thereby, it is not offensive of Article 14 of the Constitution.

20. It is obnoxious to right to life and fair procedure provided under Article 21 and Article 20 or compel him to be a witness violating Article 20(3) of the Constitution.

21. The legislature drew presumptive evidence in favour of the prosecution.

22. It was held that it is not offensive of equality clause.

23. It becomes intractable for the prosecution to place the entire material .

24. It has a reasonable and just relation to the object sought to be achieved, viz., prevention of crime in the marital home of the woman.

25. The presumption drawn under Section 113-A of the Evidence Act is not violative of Article 14 of the Constitution.

26. Considered we are of the view that Section 113-A of the Evidence Act does not offend Article 20(3) of the Constitution.

27. There is no substance in the challenge to the Section in the light of Article 20(3) of the

28. Placing reliance on Article 14 of the Human Rights Charter, he submitted that in all prosecutions the basic burden of proof is always on the prosecution and if that is not so, the human right of the accused gets violated.

29. The Referred Question is answered in the affirmative.

JUDGMENT

S.B Majmudar, C.J:

A Division Bench of this Court consisting of HIREMATH and SREENIVASA REDDY, JJ., by the Order dated 13th April 1993, has referred the following Point of Law for Decision of the Full Bench as per Section 7 of the Karnataka High Court Act, 1961. The said Point of Law reads as under:

Whether Section 8-A of the Dowry Prohibition Act, 1961 is Constitutionally and legally valid?

2. We have heard learned Advocate appearing for the appellant-accused and the learned Advocate General for respondent-State of Karnataka, as well as the learned Standing Counsel for the Central Government, who has waived service of notice issued to the Attorney General as the Constitutional validity of the provision of the Central Act, is under challenge.

3. Section 8-A of the Dowry Prohibition Act, 1961 (hereinafter referred to as the Act) reads as under:

8-A. Burden of proof in certain cases.- Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under those sections shall be on him.

The learned Advocate appearing for the appellant accused vehemently contended that on a mere look at the said provision, it becomes clear that once a charge-sheet is filed against the concerned accused on the allegation that they have committed an offence under Section 3 or Section 4 of the Act, the entire burden to prove innocence rests on the accused and it may be that the prosecution may not lead any evidence and straight away on the filing of such charge-sheet against the accused, the accused will be called upon to establish their innocence. That such a provision is highly arbitrary and unreasonable and it violates the fundamental rights of the accused guaranteed under Article 14, Article 20(3) and Article 21 of the Constitution of India. Learned Advocate General and the learned Standing Counsel for the Central

Government on the other hand contended that the Section refers to burden of proof and is a Rule of evidence. It is a procedural provision. It is a well-known that in various Acts dealing with criminal offences, burden to prove certain facts rests on the shoulders of the accused. But that does not make the provision unconstitutional and that once the prosecution proves basic facts for bringing home the offence with which the accused is charged, it is legally permissible for the Legislature to shift the burden for disproving remaining ingredients of the offence on the concerned accused. Consequently, the impugned provision is in no way unconstitutional. Learned Advocates of respective parties have invited our attention to number of Judgments and relevant provisions of other Acts dealing with criminal offences, for supporting their respective contentions.

4. For resolving the aforesaid controversy posed for our consideration, it will apposite in the first instance to look at the relevant provisions of the Act. The Act was enacted in 1961 by the Parliament. The Statement of Objects and Reasons underlying the said enactment, reads as under:

The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one or the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does enure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs. 2000. Such a provision appears to be necessary to make the law workable.

Section 2 of the Act defines the term dowry. It reads as under:

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

Then follow Sections 3 and 4, which are relevant for our present purpose. They are extracted as under:

3. Penalty for giving or taking dowry.-

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of not less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry. - If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and

with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

Section 5 of the Act, provides that any agreement for the giving or taking of dowry shall be void. Section 8 thereof provides that:

(1) the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under the Act as if they were cognizable offences-

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than-

(i) matters referred to in Section 42 of that Code; and

(ii) the arrest of person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be non-bailable and non-compoundable.

Then follows Section 8-A, which was inserted by Act 43 of 1986. The Statement of Objects and Reasons for the said amending Act, reads as under:

The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the Houses of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are:

The minimum punishment for taking or abetting the taking of dowry under Section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

(b) The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry.

(c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

(d) Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine upto fifteen thousand rupees.

(e) Offences under the Act are proposed to be made non-bailable.

(f) Provision has also been made for the appointment of Dowry Prohibition Officers by the State Governments for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

(g) A new offence of dowry death is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed.

3. The Bill seeks to achieve the aforesaid objects.

4. It is true that if Section 8-A of the Act, is read literally, an impression is gathered therefrom that once an accused is prosecuted and charged for the offences under Sections 3 and 4 of the Act, then the entire burden is on him to show that he had not committed any offence and the prosecution may not be required to prove anything else except placing implicit reliance on the contents of the charge framed against the accused. But, on a closer scrutiny, such first-hand impression about the Section gets dispelled. It has to be kept in view that Section deals with burden of proving innocence in given cases. Therefore the Section, in substance, creates a Rule of Evidence and deals with casting of burden of proof in certain cases on the accused. A close reading of the Section shows that merely because the accused is charged with offences under Section 3 or Section 4 of the Act, the initial burden which is always on the prosecution to prove

basic ingredients of the Sections for bringing home the charges to the accused will not get displaced or dispensed with. Section 8-A will have to be read with Section 2, which defines the term dowry. When so read, it becomes clear that when an accused is charged of an offence of giving or taking or abetting in giving or taking any dowry, under Section 3, the following ingredients of the offence will have to be established before a competent Criminal Court before which the accused is prosecuted.

i) any property or valuable security must be proved to have been given or taken by the accused pursuant to an agreement or otherwise; or

ii) the accused must be shown to have abetted such giving or taking of any property or valuable security;

iii) such giving or taking of any property or valuable security either directly or indirectly or its abetment must be done by any party to the marriage vis-a-vis the other party to the marriage; or;

iv) such giving or taking of any property or valuable security either directly or indirectly or its abetment is done by the parents of either party to a marriage or by any other person, for the benefit of either party to the marriage or any other person;

v) such property or valuable security is given or taken at or before or at any time after the marriage;

vi) such property or valuable security must be given in connection with the marriage of said parties.

5. Now it is obvious that before any offence can be brought home to the accused under Section 3 read with Section 2 of the Act, the aforesaid ingredients have to be established. So far as Section 8A is concerned, all that it mandates is that the burden of proof that he has not committed such an offence is on the accused. Meaning thereby, that it will be for the accused to show that he had not taken or given or abetted in giving or taking any property or valuable security in connection with the marriage of the said parties. He will have to show that last ingredient of the offence being ingredient No. (vi), is not established. The only burden cast on the accused is to prove that he had not committed offence of giving or taking or abetting the giving or taking of dowry as contemplated by Section 3 of the Act. It is not as if he has also to prove that he has not taken or given or abetted in giving or taking any property or valuable security or that he has not taken or given or abetted in giving or taking any property or valuable security or that he has to disprove all the ingredients (i) to (vi). As per Section 8A, once prosecution establishes beyond reasonable doubt the basic ingredients (i) to (v), burden shifts on the accused to prove that the last one is not

established viz., that he had not taken or given or abetted in giving or taking any property or valuable security in connection with the marriage of the said parties. The Section, of necessity, will have to be read down as aforesaid.

6. Similarly, for the purpose of proving an offence under Section 4, Section 8A will have to be read with Sections 4 and 2 of the Act. On a conjoint reading of these provisions, it becomes clear that before any offence under Section 4 is brought home to an accused, the following facts will have to be established:

(1) The accused must be shown to have demanded directly or indirectly from the parents or other relatives or guardian of a bride or bridegroom, as the case may be;

(2) Any property or valuable security to be given by one party to the marriage to the other party to the marriage; or

(3) Any property or valuable security to be given by parents of either party to the marriage or by any other person, to either party to the marriage or to any other person;

(4) Such demand should be made at or before or any time after the marriage;

(5) Such demand for any property or valuable security must be in connection with the marriage of the said parties.

Before any offence under Section 4 is brought home to the accused, all the aforesaid ingredients must be established. So far as the first four ingredients are concerned, they will have to be established as basic facts by the prosecution and only when the burden would shift to the accused to show that he had not demanded directly or indirectly any property or valuable security in connection with the marriage of the said parties. The burden of proving non-existence of last ingredient rests on the accused as per Section 8A of the Act. But the initial burden to establish beyond reasonable doubt the aforesaid ingredients (1) to (4) will rest on the prosecution. Once these basic ingredients are established by the prosecution, the burden would shift on the accused to show that such demand if any by him was not in connection with the marriage of the said parties. Meaning thereby, that he had not demanded any dowry from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. Thus burden will shift on him only to establish that the last ingredient is not proved. Section 8-A, in its operation, will have to be read down in the light of Sections 2, 3 and 4 of the Act. Once it is so read down, the challenge to the said

Section on the anvil of Articles 14, 20(3) and 21 of the Constitution of India, would not survive. However, as the learned Advocate for the appellant has sought to challenge the Constitutional validity of Section 8-A on the anvil of Articles 14, 20(3) and 21 of the Constitution, we may now deal with these challenges.

7. The challenge on the anvil of Article 14:

Learned Advocate for the appellant submitted that prosecution of the accused under Sections 3 or 4 of the Act, will have to be conducted as per the provisions of the Criminal Procedure Code as laid down by Section 8 of the Act. There cannot be any dispute on this aspect. In fact, Section 8A itself provides that where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, then the question of proving the commission of offence would arise. The word prosecution has been defined in Black's Law Dictionary, Fifth Edition, at page 1099, to mean, a criminal action, a proceeding instituted and carried on by due course of law, before a competent Tribunal for the purpose of determining the guilt or innocence of a person charged with crime. A Constitutional Bench of the Supreme Court had an occasion to consider the term prosecuted as employed by Article 20(2) of the Constitution of India, while considering the question whether the proceeding before the Sea Customs Authorities under Section 167(8) of the Sea Customs Act, are in the nature of prosecution or not (See: Thomas Dana Petitioner v. State Of Punjab . AIR 1959 SC 375.). In this connection, it was observed by the Supreme Court that prosecution means, a proceeding either by way of indictment or information in the criminal Courts in order to put an offender upon his trial. Therefore, it becomes obvious that once an accused is charge-sheeted for offence under Section 3 or Section 4 of the Act, he gets prosecuted before competent Criminal Court. At that stage, the relevant provisions of the Code of Criminal Procedure would squarely get attracted. When we turn to the provisions of Code of Criminal Procedure, we find the procedure laid down for trials under Sections 225 to 237 of the Code. These Sections are found in Chapter XVIII dealing with trial before a Court of Session. Section 228 provides for framing of charge. Section 229 deals with conviction on plea of guilty if the accused so pleads. Then Section 230 provides that if the accused refused to plead, or does not plead, or claims to be tried or is not convicted under Section 229, the Judge shall fix a date for examination of witnesses. Then follows Section 231, which states that on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. As per Section 232, if after taking the evidence for the prosecution, examining the accused the hearing the prosecution and the defence on the point, the Judge considers that there is

no evidence that the accused committed the offence, the Judge shall record an order of acquittal. Section 233(1) provides that where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

8. Relying on the aforesaid provisions, it is submitted that in all criminal trials, the initial burden is on the prosecution to prove its case beyond reasonable doubt. That this procedure is seen to be given a complete go by, if Section 8A of the Act is read as it stands, and if it is held that the entire burden of proving all the ingredients of offences is on the accused. As we have stated earlier, if Section is so literally read, then even framing of charge would be enough to put the accused to proof and the prosecution need not prove anything. If that happens, the Section would be rendered totally arbitrary and unreasonable and would be hit by Article 14 of the Constitution of India, as rightly submitted by the Advocate for the appellant.

9. As we have discussed earlier, if Section 8-A is read down as aforesaid, then there would remain no substance in what the learned Advocate submits. Once it is read down as indicated hereinabove, then the challenge to this Section on the anvil of Article 14 of the Constitution of India, would not survive. The prosecution will have to lead in the first instance evidence to prove the basic ingredients of the offences under Sections 3 and 4. Once the prosecution proves them beyond reasonable doubt, then only the burden is shifted on the accused under Section 8A of the Act. Thus, the initial burden will rest on the prosecution to bring home the basic ingredients of the Sections and that will never shift on the accused under Section 8A of the Act. The Section so read down, would represent only a rule of evidence and nothing more. Even the objects and reasons for introducing Section 8-A to which we have made reference earlier, clearly indicate the legislative intent that the Section is to serve only as a rule of evidence by casting on the accused the burden of proving that he had not taken or given or abetted in taking or giving of dowry or that he had not demanded either directly or indirectly any dowry.

9. It is now well settled by a series of Decisions of the Supreme Court, under the relevant statues which laid down such rules of evidence regarding the burden of proof being placed on the accused to prove one of the ingredients of the offence after the prosecution proved the other basic ingredients of the offence, that such provisions are not violative of Article 14 of the Constitution. We may, at this stage, usefully refer to some of the Decisions of the Supreme Court:

10. In Shri C.I Emden v. State Of U.P. . AIR 1960 SC 548., a Constitution Bench of the Supreme Court

had to consider whether Section 4(1) of the Prevention of Corruption Act, 1947, was ultra vires Article 14 of the Constitution. The said Section provides that where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain, that gratification or that valuable thing as the case may be as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate. Repelling the challenge to the aforesaid Section under Article 14, GAJENDRAGADKAR, J. (as he then was) speaking for the Constitution Bench of the Supreme Court, observed that Article 14 does not forbid reasonable classification for the purposes of legislation, no doubt it forbids class legislation; but if it appears that the impugned legislation is based on a reasonable classification founded on intelligible differentia and that the said differentia have a rational relation to the object sought to be achieved by it, its validity cannot be successfully challenged under Article 14. There can be no doubt that the basis adopted by the Legislature in classifying one class of public servants who are brought within the mischief of Section 4(1) is a perfectly rational basis. It is based on an 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. Legislature felt that the evil of corruption amongst public servants posed a serious problem and had to be effectively rooted out in the interest of clean and efficient administration. That is why the Legislature decided to enact the statutory presumption as soon as the condition precedent prescribed by it in that behalf is satisfied. The object which the Legislature thus wanted to achieve is the eradication of corruption from amongst public servants, and between the said object and the intelligible differentia on which the classification is based there is a rational and direct relation.

11. On the facts of the present case also, it is easy to visualise that the Legislature has carved out a separate classification for the accused concerned with the taking or receiving of dowry or demanding such dowry. They form a class by themselves and they stand apart from other accused. These are offences against marriage and against the society. They strike at the very root of an orderly and peaceful social life and involve very pernicious effects including resultant graver offences like bride burning and dowry death. For eradicating such menace from the society, so that the society can be put on a secure footing if a

special class of offenders dealt with by the Act, is carved out for a special treatment regarding a stringent burden of proof as per Section 8-A of the Act, it cannot be said that the said classification underlying the Section is not a reasonable classification or that it has no rational nexus to the object sought to be achieved, namely, eradication of such social evils from the society, which is the prime object underlying the Act.

12. It is easy to visualise that even under the Prevention of Corruption Act, once the basic ingredients of giving or taking of illegal gratification is established by the prosecution, of course, beyond reasonable doubt, then the burden can validly be shifted on the accused to prove that he had not accepted or obtained, nor had agreed to accept or attempted to obtain for himself or for any other person any gratification (other than legal remuneration) or any valuable thing from any person, as a motive or reward such as is mentioned in Section 161 I.P.C or as the case may be, without consideration or for a consideration which he knows to be inadequate.

13. Once it is held that Section 8A of the Act only lays down a rule of evidence, then it would fall in line with Section 4(1) of the Prevention of Corruption Act. On the same lines on which the Supreme Court in the aforesaid case upheld the latter on the touch-stone of Article 14, the challenge to the former on the anvil of the Article 14, has to be repelled.

14. We may next refer to the Decision of the Supreme Court in the case of Babulal Amthalal Mehta v. Collector of Customs, Calcutta . AIR 1957 SC 877. In that case, another Constitution Bench of the Supreme Court had to consider the validity of Section 178A of the Sea Customs Act, in the light of Article 14 of the Constitution. That Section, which is a fore-runner of pari materia Section 123 of the Customs Act, 1962, also sought to raise a presumption about the commission of offence by the accused, once the main ingredients of the Section were proved by the prosecution. Section 178A of the Sea Customs Act, laid down, as under:

178A(1) Where any goods to which this Section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.

(2) This section shall apply to gold, gold manufactures, diamonds and other precious stones, cigarettes and cosmetics and any other goods which the Central Government may, by notification in the official

Gazette, specify in this behalf.

The Constitution Bench of the Supreme Court, speaking through GOVINDA MENON, J., held that Section 178A of the Sea Customs Act does not offend Article 14 of the Constitution and that Section discloses the well defined classification of goods based on an intelligible differentia and it applies to only certain goods described in sub-section (2) which are or can be easily smuggled. The Section applies only to those goods of the specified kind which have been seized under the Act in the reasonable belief that they are smuggled goods. It is only those goods which answer the threefold description that come under the operation of the Section. The object of the Act is to prevent smuggling. The differentia on the basis of which the goods have been classified and the presumption raised by the Section obviously have a rational relation to the object sought to be achieved by the Act. The presumption only attaches to goods of the description mentioned in the Section and it directly furthers the object of the Act, namely, the prevention of smuggling, and that being the position, the impugned Section cannot be struck down on the infirmity either of discrimination or illegal classification, Confining as it does to certain classes of goods seized by the Customs authorities on the reasonable belief that they are smuggled goods, there is only a presumption which can be rebutted.

15. The aforesaid Decision of the Constitution Bench of the Supreme Court also supports our conclusion that Section 8A is not violative of Article 14 of the Constitution, as it also lays down a rule of evidence casting burden of proof on the accused only when the basic ingredients of the Section are proved by the prosecution. We may, in this connection also refer to similar provisions regarding Rule of evidence and burden of proof cast on the accused in other Acts. Section 21 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, deals with presumption as to offence under Sections 3(1) and Section 3(3) of the Act. Sections 3(1) and 3(3) read as under:

3. Punishment for terrorist acts. - (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or

disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act.

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(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Section 21 of the TADA Act, reads thus:

21. Presumption as to offence under Section 3.-

(1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved-

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence; or

(c) that a confession has been made by a co-accused that the accused had committed the offence; or

(d) that the accused had made a confession of the offence to any person other than a police officer, the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of or reasonably suspected of, an offence under that Section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.

Section 12 of the Protection of Civil Rights Act, 1955 also provides for such a presumption. It reads as

under:

12. Presumption by Courts in certain cases - Where any act constituting an offence under this Act, is committed in relation to a member of a Scheduled Caste, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of untouchability.

It is easy to visualise that Legislature has carved out several class of offenders for the purpose of special types of Acts which are meant to subserve the purpose underlying those Acts. When such rules of evidence have been indicated, it cannot be said that there is any basic infirmity in such classification of offenders for placing the burden of proof on them under certain circumstances contemplated by the relevant provisions. Once it is found that such classification has a reasonable nexus to the object sought to be achieved by the enactment in question, Article 14 recedes in the background.

16. We may also refer in this connection, to Section 113-A of the Evidence Act. The said provision reads 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 purpose of this Section, cruelty shall have to the same meaning as in Section 498-A of the Indian Penal Code (45 of 1980)

The aforesaid provision also provides for a rebuttable presumption. Once the prosecution establishes the material facts, a presumption arises as per the Section and then it will be for the accused to rebut that presumption in any trial which he may face before a Criminal Court. A Division Bench of the Andhra Pradesh High Court, had an occasion to consider the question whether the aforesaid provision of the Evidence Act was violative of Articles 14, 20(3) or 21 of the Constitution of India. Negativing the said challenge and upholding the validity of this provision, the Division Bench of the Andhra Pradesh High Court, speaking through K. RAMASWAMY, J. (as he then was) in Polavarapu Satyanarayana Alias Narayana v. Polavarapu Soundaryavalli & Two Others 4.

9. It is true that equality in law provided under Article 14 of the Constitution precludes discrimination of any kind, but equality by itself will not negate the power of the legislature but allows the legislature due to expediency to accord differential treatment to attain an object between persons situated in different situations. Therefore, the Court must be satisfied that (a) there is in fact discrimination and (2) it is impermissible and is an unreasonable classification bearing no nexus to the object which laws seeks to achieve. It is abhorrent to the conscience of every civilised individual to hear or witness bride-burnings or deaths. The crime is against the conscience of the civilised humanity. The statutory animation is not to revenge or retribution against them but a vindication of civilisation by lugging them as a class and bring them to book at a joint trial so that the persons involved in committing the crime of having proclivity to the crime or persons who abet the commission thereof must be dealt with and punished according to law. In Chiranjit Lal v. Union of India (AIR 1951 SC 41) at para 64:

..the legislation made to one individual or one family or a body corporate per se does not violate the guarantee of equal protection rule. There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character.

But the classification must rest upon the real and substantial distinction having a reasonable and just relation to the object which the law seeks to achieve. The classification is permissible if the individuals or the class of individuals possess real and substantial features different from the other individuals or class of individuals in relation to the object of the legislation in question. If the law is made applicable equally to a class of persons or things and the classification is based upon differentia having a rational relation to the object sought to be achieved, it cannot be assailed on the ground that its application is found to affect only one person or class of persons or things. As seen, the husband or relatives of the husband constitute a class for the purpose of offence of cruelty. It is common knowledge that these offences are committed within the confines of the family to which others normally have no access. The inmates of the house have special knowledge regarding wilful conduct or the harassment or cruelty etc.., meted out to the married woman, therefore, in a given situation, either the husband or the in-laws or the relative or relatives of the husband may be prime offenders or abettors or one or all of them may be jointly or individually responsible for commission of the crime. Therefore, they are treated as a class for the purpose of Section 498-A of the Code. Thus they constitute a class by themselves apart from the general offenders. The classification has reasonable nexus and bears just relation to the object to be achieved. Therefore,

Section 498-A of the Code cannot be said to be an unreasonable classification. Thereby, it is not offensive of Article 14 of the Constitution.

10. It is next contended that Section 113-A of the Evidence Act hits the offenders viz., husband and his relatives below their belt lifting them from the general body of offenders who have the right to keep their mouth shut but placing the burden on the prosecution to prove the offence beyond any shadow of doubt and if any reasonable doubt arises, the accused is entitled to the benefit thereof. This normal presumption of innocence is displaced by the statute and burden is cast on the husband or relatives of the husband under Section 113-A of the Evidence Act. Therefore, it is obnoxious to right to life and fair procedure provided under Article 21 and Article 20 or compel him to be a witness violating Article 20(3) of the Constitution. We find no difficulty to reject it. As stated, when there is commission of crime of suicide by a married woman or abetment thereof by her husband or any relative of the husband and when it is shown that she has committed suicide within a period of seven years from the date of marriage and her husband or relatives of the husband subjected her to cruelty, the Court is called upon to draw a presumption that having regard to all other circumstances of the case that such suicide has been abetted by her husband or the relatives of the husband. In this case practically the need to go into the question does not arise for the reason that it is not a case of suicide. But the learned Counsel for the appellant has pressed the question contending that cruelty is facet of it as per its explanation. So we are called upon to answer the question. The word cruelty under the explanation to Section 113-A of the Evidence Act, is the same as given in Section 498-A of the Code which also includes harassment. It is true that in criminal jurisprudence, the prosecution has to prove its case to the hilt and the burden is always on the prosecution. The question is whether Section 113-A is offensive of Article 14. This point too is no longer res integra. When the legislature indicates a statutory presumption in respect of certain act or acts or a burden of proof upon certain persons, the statute cannot be challenged as discriminatory if the rule of evidence has a rational relation to the object sought to be achieved by the Act (vide: Babulal v. Collector of Customs - AIR 1957 SC 877). This is only a rebuttable presumption and it is applicable to the husband of a married woman or his relative or relatives. As stated earlier, the offences are committed within the confines of marital home of woman. It is an intractable terrain to others but the exclusive domain accessible to the habitation of the named class of offenders. The inmates have special knowledge of the circumstances under which the offence of suicide is committed or cruelty or harassment is caused leading to the commission of suicide. Therefore, the legislature drew presumptive evidence in favour of the

prosecution. It does not relieve the prosecution to prove its case on the touch stone of proof beyond reasonable doubt. If some evidence is adduced by the husband or his relatives, it displaces the presumptive evidence; then the presumption is rebutted and the burden is always on the prosecution to establish the case beyond reasonable doubt. Evidence may be by oral or documentary during examination under Section 313 of the Code of Criminal Procedure, 1973. The validity of presumptive evidence was considered by a Constitution Bench of the Supreme Court in Emden v. State of U.P (AIR 1960 SC 548). In that case, under Section 4(1) of the Prevention of Corruption Act, 1947, the statute has drawn a presumption that a public servant accepted or agreed to accept or attempted to obtain gratification etc., as reward or motive as mentioned in Section 161 of the Code without consideration or for inadequate consideration. When its validity was assailed on the 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. It is 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. The object is eradication of corruption among public servants. Therefore, it was held that it is not offensive of equality clause. The same ratio applies with equal force to the facts in this case. As stated earlier, the husband or his relatives constitute a class. The offences are committed within the confines of the conjugal society or marital home of the woman. Therefore, it becomes intractable for the prosecution to place the entire material in that regard. In respect of offences of suicide by a married woman, under Section 113-A of the Evidence Act, rebuttable presumption was drawn against the husband or his relatives with a view to relieve partly the prosecution of its burden of proof. However, it is for the Court on totality of the facts and circumstances to find and hold whether the prosecution has proved its case beyond reasonable doubt. Therefore, it has a reasonable and just relation to the object sought to be achieved, viz., prevention of crime in the marital home of the woman. Therefore, the presumption drawn under Section 113-A of the Evidence Act is not violative of Article 14 of the Constitution. It does create no offence much less greater offence attracting Article 20(1). Equally it is a procedure as per the Evidence Act and Section 113-A is one of the facets of adduction of evidence in proof of a crime to meet a peculiar circumstance in intractable areas. So it is neither unfair nor unjust nor unreasonable - attracting either Article 14 or Article 21 of the Constitution, offending right to life. It is true that they are accused attracting Article 20(3). Article 20(3) accords an immunity from testimonial

compulsion or self-incrimination thus:

No person accused of an offence shall be compelled to be witness against himself.

This has its inspection from the Fifth Amendment of the American Constitution. The immunity against self-incrimination has been held to have its own limitations. It is always open to an accused to waive the privilege. There is no prohibition to make a voluntary confession or an admission as provided under Section 164 of the Code of Criminal Procedure. Equally if he volunteers to give evidence, he waives his privilege and gives testimony on any point and he has to speak to the whole truth. Section 315(1) of the Code of Criminal Procedure, 1973 expressly gives that right subject to the safeguard in the proviso thereto. Once he gives oral evidence, he comes within the teeth of Section 132 of the Evidence Act. If he enters into the box and gives evidence, he will be subject to cross-examination upon his evidence in chief with the same latitude as would be exercised in the case of an ordinary witness. Though an element of compulsion is implicit in Section 113-A, it is for the accused to exercise his privileges engrafted under Article 20(3). It is optional. As already held, adduction of evidence by the accused need not necessarily be by examining himself as a witness. He can also tender his evidence in his examination under Section 303 of the Code of Criminal Procedure, 1973. It is enough to raise a reasonable doubt. The presumptive evidence under Section 113-A of the Evidence Act has been drawn keeping in view of the paramount social interest than against the interest of a specified class of offenders, viz., husband or his relatives. Thus considered we are of the view that Section 113-A of the Evidence Act does not offend Article 20(3) of the Constitution. We make it clear that we are not expressing any opinion that Section 113-A applies to a case calling under explanation (b) to Section 498-A of the Code. It would appear that Section 113-A of the Evidence Act would apply to a case falling under explanation (a) to Section 498-A of the Code, that too for abetment of suicide.

We respectfully agree with the aforesaid observations of the Division Bench of the Andhra Pradesh High Court.

17. If in prosecution for offence of dowry death, such presumption under Section 113-A of the Evidence Act, can be veil idly raised and the burden can be shifted on the accused, then in prosecutions for demanding dowry or for taking or giving, dowry or for its abetment the shifting of burden of proof on the accused under Section 8A can equally validly be countenanced. Such Rules of Evidence dealing with matrimonial offences having grave consequences on social order cannot be faulted on the touch-stone of

Articles 14, 20(3) or 21 of the Constitution of India, as rightly held by the Division Bench of the Andhra Pradesh High Court in the aforesaid case.

18. Challenge to Section 8-A of the Act on the ground of Article 20(3):

This challenge has to be repelled for the same reasons which weighed with the Division Bench of the Andhra Pradesh High Court in the aforesaid case. It is easy to visualise that no one compels the accused charged with offences under Section 3 or Section 4 of the Act, to enter the box as a witness. He can discharge the burden resting on him without even offering himself as a witness, but if he volunteers to enter the box on his own sweet-will, then he waives the privilege available to him under Article 20(3) of the Constitution. Section 8A cannot be construed as imposing any compulsion on the accused to be a witness against himself. He can choose not to enter the box and still can discharge the burden cast on him under Section 8A by examining other witnesses or by stating his version under Section 313 Cr. P.C, All that he has to show is that his version is reasonably probable. Consequently, there is no substance in the challenge to the Section in the light of Article 20(3) of the Constitution.

19. Challenge under Article 21 of the Constitution:

It is difficult to appreciate how Article 21 gets attracted for sustaining such a challenge. Section 8A of the Act, when read down as aforesaid, cannot be said to be laying down any procedure which is unfair, unjust or contrary to Constitutional requirements. It cannot be said that Section 8A seeks to deprive the accused of personal liberty contrary to any procedure established by law. The procedure established by law is found from the relevant provisions of the Code of Criminal Procedure to which we have referred earlier. It is applicable to the prosecutions under the Act. Once Section 8A of the Act is found not to be suffering from any Constitutional infirmity on the touch-stone of Article 14 or Article 20(3), it would remain in the realm of a Constitutionally permissible procedure laying down a valid rule of evidence. Therefore, it cannot be said to be violative of Article 21 of the Constitution.

20. Before parting with this discussion, we may however mention that the prime burden of proof rests on the prosecution to establish the basic facts and ingredients for bringing home to the accused the offence, under Section 3 or Section 4 of the Act and the prosecution will have to establish its case in this connection beyond reasonable doubt. Once that happens, then only the burden will shift on the accused under Section 8A of the Act, to show that he has not given or taken or abetted any giving or taking of any

property or valuable security in connection with the marriage of parties or that he has not demanded directly or indirectly from the parents or the relatives of the bride or bridegroom as the case may be, any dowry, meaning thereby such demand if any is not in connection with the marriage of the said parties. The said burden of proof on the accused as contemplated in Section 8A of the Act can be discharged on preponderance of probabilities. In this connection, we may refer to the Decision of the Supreme Court in the case of Trilok Chand Jain v. State of Delhi . 1975 4 SCC 761, wherein the Supreme Court dealing with presumption under Section 4(1) of the Prevention of Corruption Act, 1947, has clearly held that the burden on the accused for rebutting the presumption can be discharged by showing mere preponderance of probabilities in his favour and that it is not necessary to establish his case beyond reasonable doubt.

21. It is also well settled that for proving his defence on the ground of general exceptions under the Indian Penal Code, the burden of proof on the accused is of a similar nature as is the burden in a civil action i.e, to establish the case by preponderance of probabilities and not by proof beyond reasonable doubt. On the same lines, it can be held that once the prosecution in trials for offences under Section 3 or Section 4 establishes the basic ingredients of the offences, as discussed earlier, the burden shifts on the accused under Section 8A of the Act to show by mere preponderance of probabilities that he had not committed the offence with which he is charged.

22. We may also mention one more submission canvassed by learned Counsel for the appellant. Placing reliance on Article 14 of the Human Rights Charter, he submitted that in all prosecutions the basic burden of proof is always on the prosecution and if that is not so, the human right of the accused gets violated. It is difficult to appreciate this contention in the light of what we have said regarding reading down of Section 8A. It has to be kept in view that Section 8A cannot be voided on the ground that it violates Article 14 of Human Rights Charter. But even that apart, once Section is so read down as indicated hereinabove, there would remain no occasion to submit that the Section violates the basic human rights of an alleged criminal.

23. As a result of the aforesaid discussion, it must be held that Section 8A of the Act as read down is Constitutionally and legally valid. The Referred Question is accordingly answered in the affirmative.

24. The office shall now place the papers of this case before the Hon'ble Chief Justice for getting the Criminal Appeal listed before an appropriate Division Bench for proceeding further in accordance with law and in the light of the answer to the Referred Question as aforesaid.