Supreme Court Judgements

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CASE NO.: Appeal (crl.) 756 of 1999

PETITIONER: Harjit Singh

RESPONDENT: State of Punjab

DATE OF JUDGMENT: 08/12/2005

BENCH: S.B. Sinha & P.P. Naolekar

JUDGMENT: J U D G M E N T

S.B. SINHA :

Jasbir Kaur, a young woman, in her prime age of 22-23 years, died on 26.7.1988. She died of poisoning. The poison is said to be aluminum phosphide which is a common pesticide. She was married with the respondent on 05.10.1986 in a village known as Maur Khurd. Her matrimonial home was at Bhatinda, which is at a distance of 40 k.m. from Maur Khurd. She delivered a male child at her parents house i.e. at Maur Khurd on 23.4.1988. The child, however, died on 25.4.1988. The mother of the deceased P.W.-3 (Mukhtiar Kaur) disclosed the said fact to her after about 20 days. The deceased came back to her matrimonial home soon thereafter. A day prior to the date of occurrence i.e. on 25.07.1988, her father Gurlal Singh (P.W.-2) came to see her at Bhatinda and found her to be hale and hearty. He received the information of her death on 26.07.1988 at about 1.00 PM at Maur Khurd. He took a bus and reached Bhatinda at about 2.00 PM. He allegedly found the appellant, his mother and brother sitting there. They allegedly slipped away from the house one by one. He sent for his other relatives and after they came he left the house for going to the Police Station. He on his way met the Inspector of Police at the bus stand at about 11.00 PM. His statement was recorded at the bus station.

The mother of the appellant at the relevant time was said to be residing with her husband at Ferozepur which is situated at a distance of 132 Km.

The defence of accused was that they were not present at the time of death of the deceased. According to the appellant, he was at his work place till 12.30 PM while according to his brother Jaspal Singh, he at the relevant time was at Ludhiana undergoing training. The defence of mother Mohinder Kaur was that she at the relevant time had been at Ferozepur.

The inquest of the dead body was held at about 11.45 PM on 26.07.1988 and the post mortem was held on 27.7.1988. P.W.1 (Dr. Balbir Singh) who conducted the post mortem could not ascertain the cause of death. The viscera of the deceased was preserved and later on sent for chemical examination. The chemical examiner submitted his report on 15.11.1988 opining that aluminum phosphide was found therein.

On the basis of the statements made by Gurlal Singh (P.W.-2) before the Investigating Officer Dharam Singh (P.W.7), a case under Section 304-B of the Indian Penal Code was registered against the appellant, his brother Jaspal Singh and mother Mohinder Kaur on the allegation that after solemnization of marriage of Sarabjit Singh, the younger brother of the appellant, the accused started taunting and harassing Jasbir Kaur for bringing less dowry as the wife of Sarabjit Singh had brought Refrigerator, Television and Cooler. Allegedly, to fulfil the said demand of the accused, the complainant paid a sum of Rs.3,000/- around Diwali on one occasion and Rs.1,000/- on two other occasions within two months therefrom. It was further alleged that in the month of March, 1988, when Gurlal Singh went to the house of in-laws to bring her to her house as she was in the family way, the accused refused to send her with him. It was further alleged that Raghbir Singh, the brother of the deceased came to Bhatinda when he was informed by his sister that his father should take her away to Maur Khurd otherwise the accused would kill her at the time of delivery. The appellant was arrested on 05.08.1988.

The learned Addl. District and Sessions Judge convicted the appellant herein as also his mother for commission of offence under Section 304-B of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for seven years. The learned Judge, however, recorded a judgment of

acquittal so far as Jaspal Singh is concerned . The learned Addl .District and Sessions Judge in his judgment relying upon or on the basis of the evidence of the prosecution witnesses arrived at a finding that the dowry was paid to the appellant and his mother Mohinder Kaur and, thus, they were guilty of the commission of offence.

The High Court, on the other hand, did not discuss the merit of the matter so far as the appellant is concerned but concentrated on the role played by his mother Mohinder Kaur and came to the finding that she did not accept any dowry. Curiously enough, the High Court propounded a theory which was not the prosecution case that the deceased must have consumed poison to finish herself allegedly on the ground that when P.W.-2 (Gurlal Singh) came to see her on 25.7.1988, he must have been insulted or hurt that his daughter is not happy in the house of her in-laws.

We would proceed on the basis that in this case the prosecution has established the case of payment of dowry to the extent of Rs.5,000/-. The question, however, would remain as to whether the demand of dowry was soon before the deceased was treated cruelly or harassed by the appellant. The brother of the deceased was not examined. It was, therefore, not proved that any apprehension was expressed by the deceased that she would be killed during delivery of the child. The fact remains that she delivered the child at her parents place. It is also accepted that she at the time of delivery had developed certain complications as a result of which she had to be shifted to a nursing home. There exists a dispute as who took her to the nursing home, the husband or her father. But the fact remains that the delivery of the child was premature, and the child expired within two days of its birth.

At this juncture, we may notice the deposition of the prosecution witnesses.

P.W.-1 (Dr. Balbir Singh) opined that the death was due to taking of poison. A contusion was also found on the dead body. The said witness, however, explained the presence thereof stating "Contusion in question on the right side of the neck which are faintly appears could be due to the irritation in the mouth and neck as a result of irritation."

P.W.-2 (Gurlal Singh), father of the deceased, merely stated "My daughter had died due to non-payment of dowry to the satisfaction of accused, by me."He did not say that any other demand was made or his daughter was subjected to any other form of cruelty or harassment. In cross-examination, he contended that he had stated before the Investigating Officer that the accused persons started taunting his daughter for not bringing Refrigerator, Cooler and Television but such a statement was not found to have been made before the Investigating Officer. He even did not make any statement before the police that the accused persons either in unison or individually demanded dowry.

His statement was also recorded by a Magistrate holding the post of D.O.R.G. It stands accepted that he did not make any statement before him in regard to the demand of or taking of Rs.3,000/- by Harjit Singh for purchase of Refrigerator, Cooler and Television although he made such a statement in court. It appears from the records that he also made a statement before the D.O.R.G. to the effect that his daughter and son-in-law collected Rs.3,000/- for purchasing a stereo and two months thereafter, his daughter took Rs.1,000/- for installation of hand-pump. He, thus, in a way contradicted himself as regard nature and purpose of demand. This belies the genesis of the prosecution case. Although Sarabjeet Singh's marriage and bringing of luxury items by his wife were said to be the ground for demand of dowry, as we have noticed hereinbefore, he contended that he paid Rs.3,000/- and Rs.1,000/- on two occasions as dowry within two months thereafter i.e. between October and December, 1987 whereas according to the defence, Sarabjeet Singh was married on 24.01.1988. Curiously enough, P.W.3 (Mukhtiar Kaur) categorically admitted that she had no grievance as against her son-in-law, nor did she ever make any complaint.

P.W.-4 (Ajaib Singh) is the brother of the complainant whose evidence is not material for our purpose. P.W.7 (Dharam Singh) is the Investigating Officer.

Concededly, there is no evidence on records to show that the deceased was subjected to any cruelty or harassment between April, 1988 and the date of his death. In the light of the above-mentioned evidence, the question which arises for consideration is as to whether a case under Section 304-B of the Indian Penal Code can be said to have been made out.

Section 304-B of the Indian Penal Code reads as under:-

"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."

A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

The Parliament has also inserted Section 113 B of the Indian Evidence Act by Act No.43 of 1986 with effect from 1.5.1986 which reads as under :-

"113.B- Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death", shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal Code.

The ingredients of the aforementioned provisions are :

(1) That the death of the woman caused by any burns or bodily injury or in some circumstances which is not normal; (2) Such death occurs within 7 years from the date of her marriage (3) That the victim was subjected or cruelty or harassment by her husband or any relative of her husband; (4) Such cruelty or harassment should be for or in connection with demand of dowry; and (5) is established that such cruelty and harassment was made soon before her death.

In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Section 302, Section 304-B and Section 306 of the Indian Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in Satvir Singh & Ors. v. State of Punjab and another, [(2001) 8 SCC 633], wherein it was held :

"Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. 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 perceptible nexus between her death and the dowry- related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is vide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death"."

Yet again in Hira Lal and Others v. State (Govt. of NCT) Delhi, [(2003) 8 SCC 80], this Curt observed that "The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". 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 cruelty or harassment concerned 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 death concerned. 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."

The same opinion was expressed by the same learned Judge in Kaliya Perumal and Another v. State of Tamil Nadu, [(2004) 9 SCC 157 Para 4] and Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar, [(2005) 2 SCC 388, Para 10] See also State of A.P. v. Raj Gopal Asawa and Another, [(2004) 4 SCC 470, Paras 10 and 11].

In the aforementioned situation, the presumption arising either under Section 304-B of the Indian Penal Code or Section 113-B of the Indian Evidence Act could not be invoked against the Appellant. The prosecution, therefore, must be held to have failed to establish any case against the Appellant herein.

Faced up with this situation, the learned counsel appearing on behalf of the State relies upon a Judgment of this Court in K.Prema S.Rao and Another v. Yadla Srinivasa Rao and others, [(2003) 1 SCC 217], wherein an observation was made in the peculiar facts and circumstances of that case that even if the accused is not found guilty for commission of an offence under Section 304 and 304-B of the Indian Penal Code, he can still be convicted under Section 306 IPC thereof.

Omission to frame charges under Section 306 in terms of Section 215 of the Code of Criminal Procedure may or may not result in failure of justice, or prejudice the accused.

It cannot, therefore, be said that in all cases, an accused may be held guilty of commission of an offence under Section 306 of the Indian Penal Code wherever the prosecution fails to establish the charge against him under Section 304-B thereof. Moreover, ordinarily such a plea should not be allowed to be raised for the first time before the court unless the materials on record are such which would establish the said charge against the accused. Before invoking the provisions of Section 306 IPC, it is necessary to establish that : (i) the deceased committed suicide, and (ii) she had been subjected to cruelty within the meaning of Section 498A IPC.

Only in the event those facts are established, a presumption in terms of Section 113A of the Indian Evidence Act could be raised. In the instant case, the prosecution has not been able to prove that the

deceased was subjected to cruelty within the meaning of Section 498A IPC. No case that the deceased committed suicide was also made out.

In K. Prema S. Rao (supra), it was found as of fact :

"Both the courts below have found the husband guilty of cruel treatment of his wife and as a result the wife committed suicide within seven years of their marriage. On such evidence the presumption which arises under Section 113-A of the Evidence Act is that the husband abetted the suicide. The word "cruelty" as mentioned in the Explanation below Section 113-A of the Evidence Act has been given the same meaning as contained in the Explanation below Section 498-A IPC. On the facts found, "the wilful" conduct of the husband in forcing the deceased to part with her land which she had received in marriage as "stridhana" and for that purpose concealing her postal mail was so cruel that she was driven to commit suicide. A case of conviction and sentence of Accused 1 under Section 306 IPC has thus clearly been made out even though his acquittal for commission of the offence of "dowry death" punishable under Section 304-B IPC is not found liable to be disturbed."

In Satvir Singh (supra), it was observed :

"Learned Senior Counsel submitted that since the word "cruelty" employed therein is a virtual importation of that word from Section 498-A IPC, the offence envisaged in Section 306 IPC is capable of enveloping all cases of suicide within its ambit, including dowry-related suicide. According to him, the second limb of the Explanation to Section 498-A which defines the word "cruelty" is sufficient to clarify the position. That limb reads thus:

"For the purposes of this section, 'cruelty' means• * * * (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." At the first blush we thought that there was force in the said contention but on a deeper analysis we found that the contention is unacceptable. Section 306 IPC when read with Section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498-A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused "soon before her death" or earlier. If it was caused "soon before her death" the special provision in Section 304-B IPC would be invocable, otherwise resort can be made to Section 306 IPC."

The ingredients of Section 306 and Section 304-B are different and distinct. In any event, no evidence has been brought on record to show that there has been any act of omission or commission on the part of the accused, before the death of the deceased to demonstrate that the appellant was responsible for the same. We have noticed hereinbefore that the High Court, for the first time, in its judgment on a hypothesis observed that when her father came to see her, he must have been insulted or felt hurt as she might have been subjected to harassment. Unfortunately, no evidence whatsoever has been brought to our notice to enable us to sustain the said finding and in that view of the matter we are unable to accept the submissions of the learned counsel appearing for the Respondent State.

For the reasons aforementioned, we are of the opinion that the impugned judgment of the High Court cannot be sustained which is set aside accordingly.

The appeal is allowed. The Appellant is on bail. He is discharged from his bail bonds.

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CASE NO.: Appeal (crl.) 1285 of 1999

PETITIONER: K.R.SOORACHARI

RESPONDENT: STATE OF KARNATAKA

DATE OF JUDGMENT: 13/04/2005

BENCH: B.P.SINGH & S.B.SINHA

JUDGMENT: J U D G M E N T

This appeal by special leave has been preferred by the appellant against the judgment and order of the High Court of Karnataka at Bangalore dated 16th April, 1999 whereby the appellant has been found guilty of the offences under Section 498A of the Indian Penal Code (I.P.C.) and Sections 3, 4 and 6 of the Dowry Prohibition Act. He has been sentenced to undergo one year rigorous imprisonment on each count and to pay a fine of Rs.10,000/- under the Dowry Prohibition Act. The sentences have been directed to run concurrently.

The brief facts of the case may be noticed :-

The appellant along with his wife and son was put up for trial before the Sessions Judge, Chikamagalur. They

-2-

were charged under Sections 302/34, 201, 203, 498A and 304B, I.P.C. as also under Sections 3, 4 and 6 of the Dowry Prohibition Act. The son of the appellant was accused No.1 (hereinafter referred to as A-1) while his wife was accused No.3 (hereinafter referred to as A-3). The case of the prosecution is that A-1 was married to the deceased on 27.5.1990. On 4.10.1990 her dead body was found near a river. The next morning at about 10.00 A.M. A-1 lodged a report at the police station to the effect that on the earlier night the deceased had gone out of the house to clean utencils but did not return, and since it was raining, the search did not yield any result. In the morning they found her dead body near a river. On the basis of the report lodged by A-1, the police ought to have swung into action, but it appears from the judgments of the Courts below that the police did not act with promptitude as a result of which much of the evidence was lost. However the autopsy on the dead body of the deceased revealed the following injuries :-

"1. Five irregular contusion injuries present on the left shoulder, each measuring 1-1/2 cm x 2 cm. 2. Contusion injury measuring 3" x 2" on the right hypothdrine region.

-3-

3. Heamotoma measuring 1" x 2" on the right frontal area present. 4. Sub durral heamotoma measuring 2" x 1" on the right frontal area of brain. 5. Intra corebral heamorrage on the right frontal lobe. 6. Haemoragic area found on the lower part of anterior part of liver."

As noticed earlier, A-1 the son, A-2 appellant and A-3 the wife of the appellant were put up for trial before the Sessions Court. By its judgment and order dated 14th February, 1995 the Trial Court found A-1 guilty of the offence under Section 498A, I.P.C. but acquitted him of all other charges. The appellant and A-3 were acquitted of all the charges levelled against them. The State of Karnataka preferred Criminal Appeal No.868 of 1995 against the acquittal of the three accused persons of the charges under Sections 302, 201 etc. while A-1 preferred Criminal Appeal No.125 of 1995 against his conviction for the offence under Section 498A IPC. Both the appeals were heard together and were disposed of by a common judgment Only the appellant (A-2) has impugned the judgment of the High Court convicting him for offences punishable under Section 498A IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act.

-4-

We may notice that the High Court allowed the State's appeal so far the appellant is concerned to the extent that it found him guilty of the offences under Sections 498A IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. The State's appeal as against A-3 was dismissed by the High Court, and the appeal against acquittal of A-1 on other charges was also dismissed. Both A-1 and A-2 preferred a special leave petition before this Court, but the special leave petition in so far as it related to A-1 was dismissed at the admission stage itself. Shri S.N.Bhat, learned counsel for the appellant submitted that there was no justification for the High Court to set aside the order of acquittal passed in favour of the appellant. He submitted that so far as the offence under Section 498A IPC is concerned, there is no material on record to support the aforesaid charge. The evidence only disclosed that A-1 husband of the deceased entertained a suspicion about her chastity and that was the reason why she was harassed by him. There is no evidence whatsoever to connect the appellant with the offence under Section 498A IPC. He also submitted that so far as the offences under Sections 3,4 and 6 of the Dowry Prohibition Act are concerned, the High Court was not justified in setting

-5-

aside the finding of fact recorded by the trial court in favour of the appellant. We have, therefore, considered the evidence on record placed before us by counsel for the parties. So far as charge under Section 498A IPC is concerned, we are inclined to agree with the learned counsel for the appellant that there is really no material to connect the appellant with that offence. In fact the High Court has not even noticed any such evidence which may justify the conviction of the appellant under Section 498A IPC. We are, therefore, of the view that the appellant is entitled to acquittal so far the charge under Section 498A IPC is concerned. This takes us to a consideration of the evidence with regard to the offences under the Dowry Prohibition Act. Four witnesses have deposed in support of the prosecution. Pws 1, 2, 4 and 7 are the four witnesses whose evidence was considered by the Trial Court as also by the High Court. The High Court has come to the conclusion that the evidence of these witnesses conclusively proves the offences under the Dowry Prohibition Act, and the Trial Court really gave no cogent reason for disbelieving these witnesses and acquitting the appellant. The Trial Court has considered the evidence on this aspect of the matter in paragraph 18 of its judgment. It has

-6-

noticed the evidence of PW-1, the step father of the deceased that there was a demand of Rs.20,000/- and some ornaments from the appellant at the time of marriage negotiations. He expressed his inability to pay such a big sum and therefore, the amount was reduced from Rs.20,000/- to Rs.10,000/-. As regards the ornaments, it was decided that only a kapali ring will be given to A-1 and a mangalsutra shall be given to the bride. In view of the agreement, PW-1 sent the amount to the appellant through his wife PW-2 and his nephew's wife Yashoda PW-7. They paid the amount to the appellant. PW-2, the wife of PW- 1 corroborated the testimony of PW-1 and stated that three days after the negotiations she had gone to pay Rs.10,000/- to the appellant along with PW-7 and paid the amount to the appellant. PW-4 has substantially corroborated the testimony of PW-1 and PW-2. PW-4 is the husband of PW-7. He has however, not stated that his wife PW-7 went with PW-2 to pay the sum of Rs.10,000/- to the appellant. PW-7 Yashoda however, deposed the fact that the demand of Rs.20,000/- by way of dowry was reduced to Rs.10,000/- but she has also not stated anything about her going with PW-2 to pay the amount to the appellant. On the basis of such evidence on record the Trial Court concluded that except the oral testimony of PW-1 and PW-2 there was no other evidence on record to show that three days

-7-

after the marriage negotiations PW-1 had sent Rs.10,000/- through his wife and PW-7 to be paid to the appellant. In view of these circumstances, the Trial Court came to the conclusion that neither there was any demand for dowry nor was any amount paid to the appellant by way of dowry. Thus the prosecution had failed to establish that PW-1 paid to the appellant a sum of Rs.10,000/- by way of dowry.

The High Court found that the reasoning of the Trial Court was unsustainable. We have also considered the evidence on record and we find that four witnesses have consistently deposed about the manner in which the negotiations were held and how the demand of Rs.20,000/- was reduced to Rs.10,000/- and

the further fact that the said amount of Rs.10,000/- was paid to the appellant through PW-2 and PW-7. The only deficiency in the evidence which the Trial Court found was that PW-7 did not state in her deposition that she had gone with PW-2 to hand over the amount to the appellant. In view of the other evidence on record this fact by itself did not justify the conclusion that the prosecution had failed to prove its case. The evidence on record is quite consistent and PW-2, in fact, stated that she had gone with PW-7 to pay the amount. It is not the case of the defence that PW-7 denied having gone to the appellant. Much was sought to be made of

-8-

the omission on her part to mention that she had gone with PW-7 to pay the amount to the appellant. The finding recorded by the Trial Court in our view completely ignores the cogent and reliable evidence on record which proves the case of the prosecution that dowry was demanded and paid. Such a finding ignoring relevant evidence can not be sustained even in an appeal against acquittal.

We, therefore, find that the conviction of the appellant under the Dowry Prohibition Act is fully justified. We, therefore, set aside the conviction of the appellant under Section 498A IPC but affirm his conviction and sentence under Sections 3,4 and 6 of the Dowry Prohibition Act.

The appeal is, accordingly, partly allowed, setting aside the conviction under Section 498A IPC, but upholding the conviction and sentence under Sections 3, 4 and 6 of the Dowry Prohibition Act.

The appellant is on bail. His bail bonds are cancelled. He shall forthwith surrender to his sentence

-9-

failing which the State shall take necessary steps to apprehend him to serve out the remainder of his sentence.

CASE NO.: Appeal (crl.) 219 of 2005

PETITIONER: M.P.Lohia

RESPONDENT: State of West Bengal & Anr.

DATE OF JUDGMENT: 04/02/2005

BENCH: N.Santosh Hegde & S.B.Sinha

JUDGMENT: J U D G M E N T (Arising out of SLP(Crl.)No.991 of 2004) (With Crl.A.Nos 220/05 @ SLP(Crl.) No.1302/04, & Crl.A.No 221/05 @ SLP(Crl.)No.1829/04)

SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

The appellants in these appeals have been charged for offences punishable under Sections 304B, 406 and 498A read with Section 34 of the IPC. Their applications for the grant of anticipatory bail have been rejected by the courts below. Daughter of the complainant Chandni (since deceased) was married to the appellant in the third appeal before us. Their marriage took place on 18th February, 2002. The appellants live in Ludhiana whereas the complainant and his family are residents of Calcutta. Chandni committed suicide on 28th of October, 2003 at her parents house in Calcutta. It is the case of the appellants herein that the deceased was a schizophrenic psychotic patient with cyclic depression and was under medical treatment. Though she was living in the matrimonial home often went to Calcutta to reside with her parents and she was also being treated by doctors there for the above- mentioned ailments.

While the complaint against the appellants is that they were not satisfied with the dowry given at the time of wedding and were harassing the deceased continuously, consequent to which she developed depression and even though the parents of the deceased tried to assure the appellants that they would try to meet their demand of the dowry, the deceased was being treated cruelly at her matrimonial home and her husband had no love and affection to her because of which she developed depression. It has also come on record that the deceased had tried to commit suicide at the residence of her parents sometime in July, 2002 i.e. about a year earlier than the actual date of her death. On behalf of the prosecution as well as on behalf of the defence, large number of documents have been produced to show that the appellants were demanding dowry because of which the deceased was depressed and ultimately committed suicide. Per contra the documents from the side of the defence show that the relationship between the husband, wife and the in-laws were cordial and it was only illness of the deceased that was the cause of her premature death. One thing is obvious that there has been an attempt on the part of both the sides to create documents either to establish the criminal case against the appellants or on the part of the appellants to create evidence to defend themselves from such criminal charges. Correctness or genuineness of this document can only be gone into in a full-fledged trial and it will not be safe to place reliance on any one of these documents at this stage. Therefore, we would venture not to comment on the genuineness of these documents at this stage. Suffice it to say that this is a matter to be considered at the trial. In this background the only question for our consideration at this stage is whether the appellants be granted anticipatory bail or not. As stated above, any expression of opinion on the merits of the case except to the extent of finding out prima facie whether the appellants are entitled for anticipatory bail or not, would likely to effect the trial. Therefore, taking into consideration the entire material available on record without expressing any opinion on the same, we think it appropriate that the appellants should be released on bail in the event of their arrest on their furnishing a bail bond of Rs. 1,00,000/- (Rupees One lakh) each and one surety for the like sum by each appellants to the satisfaction of the Court or the arresting authority as the case may be. We direct that the appellants shall abide by the conditions statutorily imposed under Section 438(2) of the Code of Criminal Procedure and further direct that in the event of the investigating agency requiring the presence of the appellants for the purpose of investigation they be given one week's notice and they shall appear before such investigating agency and their presence at such investigation shall not exceed

two days at a time but such interrogation shall not be a custodial interrogation. They shall be entitled to have their counsel present at the time of such interrogation. Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28th February, 2002 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13.2.2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called 'Saga' titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview of the family of the deceased. Giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that this type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who was responsible for the said article against indulging in such trial by media when the issue is subjudiced. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the other concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice. For the reasons stated above, these appeals succeed and the same are allowed.

CASE NO.: Appeal (crl.) 938-939 of 1998

PETITIONER: STATE OF ORISSA

RESPONDENT: NIRANJAN MOHAPATRA & ORS.

DATE OF JUDGMENT: 03/02/2005

BENCH: B.P. SINGH & B.N. SRIKRISHNA

JUDGMENT: J U D G M E N T

B.P.Singh,J.

We have heard counsel for the parties.

This is an appeal against the judgment and order of the High Court of Orissa, Cuttack in Criminal Appeal Nos.149 and 221 of 1994 dated 24th September, 1997. The High Court by its impugned judgment and order allowed both the appeals and acquitted the respondents of all the charges levelled against them. Earlier, the appellants had been convicted by the trial court under Sections 498A and 304B IPC and sentenced to undergo rigorous imprisonment for two years under Section 498A and 7 years under Section 304B IPC. However, the appellants in Criminal Appeal No.221/1994 who are respondent 3 and 4 before us were released on probation under Section 4 of the Probation of Offenders Act. As earlier noticed, the High Court by its impugned judgment and order has acquitted all of them of the charges leveled against them.

We have heard counsel for the parties and we have also perused the records placed before us. We find ourselves in agreement with the High Court that so far as the allegations relating to the offence under Section 498A is concerned, the prosecution has not been able to establish its case against the respondents. The High Court has considered the evidence on record and we find no reason to interfere with the finding of fact recorded by the High Court. So far as the offence under Section 304B is concerned, there is no evidence to suggest that soon before the occurrence the deceased was subjected to torture and harassment. In the absence of any such evidence, conviction under Section 304B cannot be sustained. Even the medical evidence on record is rather ambiguous.

We are, therefore, of the considered opinion that the High Court has recorded the order of acquittal based on the evidence on record and on proper appreciation of such evidence. We, therefore, find no merit in the appeals and the same are accordingly dismissed.

CASE NO.: Appeal (crl.) 1204 of 1999

PETITIONER: STATE OF KARNATAKA

RESPONDENT: K. GOPALAKRISHNA

DATE OF JUDGMENT: 18/01/2005

BENCH: B.P.SINGH & ARUN KUMAR

JUDGMENT: J U D G M E N T

B.P.SINGH, J. This appeal by special leave has been preferred by the State of Karnataka against the Judgment and Order of the High Court of Karnataka at Bangalore dated December 18, 1998 in Criminal Appeal No.640 of 1996 whereby the appeal preferred by the respondent herein was allowed and he was acquitted of all the charges levelled against him. The respondent was tried by the Principal Sessions Judge, Belgaum in Sessions Case No.62 of 1994 charged of offences under Sections 302, 201 and 498A IPC, and alternatively under Section 304B IPC. The learned Sessions Judge by his Judgment and Order dated 27.6.1996 found the respondent guilty of the offence under Section 302 IPC and sentenced him to undergo imprisonment for life. He also found him guilty of the offence under Section 201 IPC for which he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default to undergo six months' simple imprisonment. Under Section 498A IPC, the respondent was sentenced to undergo two years' rigorous imprisonment. As noticed earlier, the High Court set aside the aforesaid Judgment and Order of the Sessions Judge.

An occurrence is said to have taken place in the morning of 22nd November, 1993. The case of the prosecution is that the respondent strangulated to death his wife Veena and thereafter set her on fire along with her infant child aged a year and a half. The respondent himself reported the matter to the local police making it appear that the deceased and her child had died in an accidental fire, but the post mortem disclosed that Veena had died of throttling and not on account of burn injuries suffered by her.

The facts of the case may be briefly noticed.

The deceased Veena was the daughter of Laxmamma (PW1) and was married to the respondent on June 3, 1991. Laxmamma (PW1) is a resident of Shimoga while the respondent at the time of his marriage was a resident of Gundlupet. A male child was born to the couple on March 7, 1992. The case of the prosecution is that the respondent out of greed had been pressing his wife (deceased) to get money from her mother so that he could start a business. There is evidence on record to indicate that the respondent then was employed in a private firm and was looking for better opportunities in life. Ultimately with the help of one Mr. Umapathy who was then a Special Deputy Commissioner, and who was another son-in-law of PW1, the respondent was able to secure the job of a Lecturer in the Government Pre University College at Nesargi in the district of Belgaum. On 26th July, 1993 respondent joined as a lecturer in the aforesaid college and started living there. On or about 25.10.1993 he came to the house of his mother-in-law at Shimoga and took away his wife Veena to Nesargi. It appears that a sister of the deceased namely Vijaya (PW11) was to get married and the betrothal ceremony was to be held on 25.10.1993 at Bangalore. In that connection most of the family members had gone to Bangalore but some of them remained at Shimoga to look after the house. The case of the prosecution is that despite the request made to the respondent, he refused to attend the marriage ceremony of Vijaya (PW11). Ultimately, the marriage of Vijaya (PW11) took place on 18.11.1993 with PW24 at Bangalore. Four days thereafter, on 22.11.1993 the occurrence took place in which Veena as well as her child lost their lives. The evidence on record discloses that in the morning at about 9.30 A.M. the respondent made an oral report to the Station House Officer at Nesargi to the effect that his wife had been burnt along with her child in an accidental fire. Two Head Constables of police came to the place of occurrence and pushed the door open. They tried to extinguish the fire. It was then that they discovered that Veena and her child were both dead and their bodies were burnt. After returning to the police station the report of the respondent was recorded which is Exhibit P-13 and thereafter a case was registered as Crime No.120/93 under Section 302 IPC.

On receiving the news about the incident Laxmamma (PW1), the mother of the deceased along with her son (PW2), her daughter (PW11) and her son-in-law (PW24)and other relatives rushed to Nesargi by car and saw the dead bodies of Veena and her child. The investigating officer (PW26) held inquest over the dead bodies of Veena and her child. He also seized a plastic can lying nearby which contained some quantity of kerosene oil.

The post-mortem examination of the dead body of the deceased and the child was conducted by Dr. Munyyal (PW26) and another doctor namely Dr. Chavarad (not examined) on 23.11.1993 between 10.00 A.M. and 12.30 P.M. and 12.45 P.M. and 3.00 P.M. respectively. The post-mortem reports are Exhibit P-5

and P-6. According to the post-mortem report of Veena (deceased) Exhibit P-5, her body was burnt completely except back and buttocks and both the lower limbs below knee joints. On internal examination, it was found that the cornue of hyoid bone was fractured. The

-7-

examination of the Larynx and Trachea disclosed that in the lumen of the trachea and bronchus carbon particles were not present. Both the lungs were shrunken and pale. The time of the death was estimated to be between 16 and 36 hours. The doctor further certified that after careful examination both external and internal of the dead body the cause of death was found to be asphyxia due to throttling.

In the case of her child the cause of death was found to be shock due to burns.

The prosecution examined a large number of witnesses to prove that the respondent used to illtreat Veena and used to pressurise her to get money from her mother. On this aspect of the matter, the witnesses examined by the prosecution are Pws 1, 2, 3, 4, 5, 11, 12, 13 and 21. The prosecution also examined evidence to prove that only an hour before the

-8-

occurrence there was a quarrel between the deceased and the respondent and soon thereafter the occurrence took place. Such evidence was examined to bely the assertion of the respondent that he was not present in his house when the occurrence took place. The prosecution also relied upon the medical evidence to establish that the deceased had died on account of strangulation and was not the victim of accidental fire.

The Trial Court relying upon the evidence of prosecution witnesses came to the conclusion that the respondent was ill treating his wife and was making demands of money and had the motive to commit the offence. It further held that medical evidence on record clearly establish that the deceased had not died of burns but the cause of death was asphyxia caused by strangulation. It, therefore, held the

-9-

appellant guilty of the offence of murder and other offences and convicted and sentenced him as earlier noticed.

The High Court has considered the evidence on record and reached the conclusion that the prosecution witnesses who deposed to the existence of motive were not reliable and their evidence was inconsistent. PW1, the mother of the deceased deposed that the respondent had been making demands for payment of Rs.10,000/- to Rs.15,000/- which after two years of the marriage was increased to Rs.1,00,000/-. PW2, the brother of the deceased has also deposed that the respondent had been pressing the deceased for bringing Rs.50,000/- from her mother. According to him, at Shimoga, just before he left for Nesargi, he had demanded a sum of Rs.10,000/-. PW3, Kamalamma is a maid servant of PW1 serving her family for the last 20 years. Pws 4, 5 and 12 are the neighbours and family friends. They have

-10-

also deposed that whenever Veena came to her mother's house she used to tell them about the demands being made by the respondent as also about the ill treatment meted out by him. PW4 stated that the respondent had demanded a sum of Rs.1,00,000/- for starting a business, as was told to him by the deceased herself. PW5 also deposed that he was told by the deceased that she was being ill treated by the respondent and that he was asking her to get Rs.10,000/- from her mother. Later on, he was pressing the deceased to bring a sum of Rs.1,00,000/-. PW11, the younger sister of the deceased namely Vijaya, stated that few months before the occurrence when she was in Bangalore, the respondent had made a telephone call and had demanded Rs.25,000/-. PW12 deposed that he did not know exactly what amount was demanded, but the deceased had complained to him about the harrasement meted out to her by her husband and the constant demand of money made by her husband. PW13 deposed that when the

-11-

respondent and the deceased were going to Nesargi, PW2, brother of the deceased went to see them off at the bus stand. At that time a request was made to the Respondent to attend the marriage of Vijaya (PW11) but in reply he retorted that he will send the dead body of the deceased. No doubt, PW2 does not narrate these facts, but has stated that on that occasion the respondent had demanded a sum of Rs.10,000/-. In fact, he was also told by his sister Veena (deceased) that the respondent had told her that if his demands were not met, her photograph will also be kept next to the photograph of her father, meaning thereby that she will also be dead and her photograph kept next to the photograph of her deceased father. PW21 also deposed that whenever the deceased came to Shimoga, she complained about her ill treatment and demand of Rs.1,00,000/- made by the respondent.

Noticing the evidence on record, the High Court opined that there was no consistency as to the exact

-12-

demand made by the respondent. The High Court, therefore, found the evidence of all these witnesses to be unreliable. We find this approach to be wholly unreasonable. Apart from the fact that the respondent used to press the deceased to get money from her mother, there is also clear evidence on record to establish the fact that she was being ill treated by the respondent. The evidence in that regard is consistent and has been deposed to by a large number of witnesses, some of whom were family members and others were the residents of Shimoga and were family friends. Even as to the amount demanded, there could be no consistency because if the respondent demanded different amounts at different times, the witnesses could not have deposed otherwise. The evidence on record clearly establishes the fact that the respondent had been making demands and the quantum differed from time to time. On some occasion he had demanded Rs.10,000/- and on other occasions Rs.15,000/- or Rs.1,00,000/-. It appears to us wholly

-13-

unreasonable to reject the evidence of such witnesses merely on the ground that there is no consistency as to the exact amount demanded by the respondent.

There is yet another reason given by the High Court for rejecting this part of the prosecution's case. The High Court observed that no neighbour from Gundlepet was examined to prove the fact that the deceased was being ill treated by her husband. The High Court completely lost sight of the fact that the matrimonial home of the deceased was at Gundlepet and therefore, it was not possible for the prosecution to get witnesses from Gundlepet who would have supported the case of the prosecution. Moreover, the deceased had gone to Gundlepet as a newly married daughter-in- law and it was not expected, even if she was ill treated, to go about in the neighbourhood complaining against her husband. In any event this is not a good enough reason to reject the testimony of such a large

-14-

number of witnesses who have deposed on this aspect of the case.

Another reason given by the High Court is that in Exhibit D- 3 a letter written by the deceased to her husband quite sometime back, there is no mention of any ill treatment meted out to her by the respondent, and that no other letter has been produced to show that she had even mentioned in any such letter that she was being ill treated. This approach of the High Court is again highly unreasonable. Merely because in one of the letters written to her husband she had not complained about ill treatment, is no ground to hold that she was never ill treated. We have read that letter from which it appears that it was one of those letters written by her in which there is no reference to bitterness in their marital life. However, it is not expected that in every letter that a wife writes to her husband, she must complain to him about his ill

-15-

treatment. Merely because in one solitary letter there is no reference to ill treatment by the respondent, would be no ground to arrive at the conclusion that she was never ill treated by her husband, particularly in the face of evidence of a large number of witnesses. We, therefore, find no justification for the finding of the High Court that the deceased was not ill treated by the respondent, or that there was no motive to commit the offence.

As far as medical evidence is concerned, the High Court rejected the evidence of the doctor (PW6) who had conducted the post mortem examination of the dead bodies of the deceased and her child. The reasoning of the the High Court appears to us to be rather strange. The High Court noticed the fact that in the post mortem report the cause of death was mentioned to be asphyxia due to throttling. While deposing in Court PW6 supported his post morterm

-16-

report. He asserted that the cause of death was asphyxia due to throttling, and the burns seen were post mortem burns. He further deposed that the throttling of the neck could have been done by using a rope or by any forceful action on the neck, like pressing. He further deposed that he found the burn injuries to be post mortem since (i) burnt blebs were present filled with air (ii) in the lumen of the trachea and bronchus carbon particles were not present and the lumen was pale. He also asserted that on account of fracture of the cornue of hyoid bone and absence of carbon particles and fumes in the trachea and bronchus, he was of the opinion that death of the deceased Veena was due to throttling.

If the evidence of the doctor (PW6) is fairly read, it will appear that in his opinion the death was on account of asphyxia caused by throttling. This conclusion was supported by the fact that there was

-17-

fracture of the cornue of the hyoid bone. It is well accepted in medical jurisprudence that hyoid bone can be fractured only if it is pressed with great force or hit by hard substance with great force. Otherwise the hyoid bone is not a bone which can be easily fractured. Moreover, the absence of carbon particles and fumes in the trachea and bronchus lead to the irresistible conclusion that the deceased must have died before she was set on fire. Some amount of carbon particles and fumes would have certainly been found in the trachea and bronchus if she were alive when set on fire. The High Court, in our view, has completely misread the evidence of the doctor. Rather than considering the reasons given by the doctor for reaching the conclusion that the deceased had died of asphyxia caused by throttling, the High Court over emphasised that one part of a statement made by the doctor that the throttling of the neck could have been done by using a rope, or by any forceful action on the

-18-

neck like pressing. The High Court completely ignored the latter part of the opinion, and proceeded to examine the evidence as if in the opinion of the doctor throttling could be caused only with the aid of a rope. The High Court referred to the evidence on record and found that there was no evidence to prove that the deceased had been strangulated with a rope. There is no evidence to prove that a rope was found anywhere near the place of occurrence. It rejected the evidence of PW2, the brother of the deceased who had stated that he had seen a nylon rope lying nearby. It, therefore, reached the conclusion that the prosecution case was not consistent with the medical evidence on record, because no rope was found which could substantiate the prosecution case that she had been strangulated with a rope. The High Court lost sight of the fact that there was no eye-witness of the occurrence. The medical evidence on record disclosed that there was a fracture of the hyoid bone of the

-19-

deceased and there was complete absence of carbon particles or fumes in the trachea or bronchus. No doubt, the doctor stated that a person may be strangulated with the help of a rope or by pressing the neck. The doctor did not depose that this was a case where the deceased must have been strangulated with the aid of a rope, because admittedly it is not the prosecution case that any ligature mark was

found. On the contrary the case of the prosecution was that she had been throttled by forceful pressing of her neck by the respondent. We are surprised that the High Court has not cared to even discuss the latter part of the doctor's opinion namely, that strangulation may result if the neck is pressed with considerable force. The High Court has not even cared to notice the fact that the hyoid bone was found to be fractured and there was complete absence of carbon particles or fumes in the trachea and the bronchus. This was the most crucial finding of the doctor (PW6) but

-20-

unfortunately this has been completely ignored. There is not a word in the judgment of the High Court to satisfy us that the High Court was concious of the fact that the injuries found on the person of the deceased were consistent only with the hypothesis that she must have died before she was burnt. The High Court has considered several authorities on medical jurisprudence and has come to the conclusion that some of the features which are found in the case of death by strangulation were not found in this case. It is not always possible to find all the features in a given case particularly in a case where the body is burnt after killing. PW6, the doctor who conducted the post mortem examination was categoric in stating that the fracture of the hyoid bone and the absence of carbon particles and fumes in the trachea and bronchus did establish the fact that she must have died of asphyxia caused by strangulation before she was burnt. There is no reason recorded in the judgment of the

-21-

High Court to reject this assertion. We are of the view that these findings of the doctor are consistent only with the fact that the deceased was dead before she was burnt. In the facts of the case, the respondent having been seen in the house only little before the house was put on fire, the evidence implicating him in the commission of the offence is conclusive. The High Court rejected the evidence of the doctor observing that there was no corroboration from surrounding circumstances, completely ignoring the findings of the doctor which we have discussed above.

The High Court then discussed some discrepancy about two types of reports having been recorded in the police station. We have considered the material on record and we find that there may have been some confusion about the recording of the case in the police station because earlier an oral report had been

-22-

made and later a written report was made and therefore, initially a case was registered as UDR 27/93 and another Case being Cr.No.120/93 was registered later when it came to light that it was not a case of accidental fire but a case of murder, and only to destroy the evidence the deceased was set on fire.

The High Court has also made much of the fact that one of the daughters of Laxmamma (PW1) who was residing at Bangalore and who was the person who had telephonically informed her friends and relatives about the death of the deceased, was not examined as a witness in this case. It does appear from the evidence that she had made calls to her family members and told them that the deceased and her child had sustained burn injuries due to kerosene stove bursting. We do not attach much importance to this evidence because Indu, the second daughter of PW1 who was residing at

-23-

Bangalore was not an eye-witness. She had come to learn about burn injuries suffered by the deceased and her child and she immediately passed on that information to her mother and others. The mere fact that she had mentioned about injuries sustained by bursting of kerosene stove does not help the case of the defence because Indu passed on such information as she may have received. Initially, the incident was sought to be made out as a case of accidental fire, but it was later revealed that it was a case of murder. In this view of the matter, we do not attach any significance to the so called discrepancy found by the High Court. Moreover, the adverse inference drawn by the High court on account of non examination of Indu, in our view, is not warranted. The prosecution relied upon an extra judicial confession said to have been made by the respondent before PW7. The High Court rejected the said evidence and we also do not attach much weight to the alleged extra judicial confessional

statement made by the respondent. Nor do we attach much significance to the fact that, according to the prosecution, the respondent was absconding. Even if the evidence in this regard is ignored, the remaining evidence on record clearly proves the complicity of the respondent in the murder of his wife Veena. We are concious of the fact that we are dealing with an appeal against an order of acquittal. In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the ccused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality

including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal. We find this case to fall under the latter category. We find no rational justification for the conclusion reached by the High Court. The High Court has misread the evidence on record and has completely ignored the relevant evidence on record which was accepted by the Trial Court. We, therefore, allow the appeal, set aside the impugned judgment and order of the High Court and restore the judgment and order of the Trial Court. The respondent shall be taken into custody forthwith to serve out the remainder of the sentence. His bail bonds are cancelled.

CASE NO.: Appeal (crl.) 616 of 1998

PETITIONER: STATE OF A P

RESPONDENT: PATNAM ANANDAM

DATE OF JUDGMENT: 14/12/2004

BENCH: B.P. SINGH & ARUN KUMAR

JUDGMENT: J U D G M E N T

B.P.Singh,J.

The respondent herein was put up for trial before the Sessions Judge, Rangareddy District, Hyderabad in Session Case No.99/93 charged of the offence under Section 302 IPC. It is the case of the prosecution that some time between 4.00 P.M. and 7.00 P.M. on 7.11.1992 the respondent killed his wife in the agricultural field belonging to him. It is undisputed that there is no eye witness of the crime and the case rests on circumstantial evidence. The trial court accepted the evidence adduced by the prosecution and convicted the respondent of the offence under Section 302 IPC and sentenced him to imprisonment for life, but acquitted him of the charge under Section 498A IPC by his judgment and order of 6th February, 1995.

The respondent preferred an appeal before the High Court of Judicature, Andhra Pradesh at Hyderabad being Criminal Appeal No.169/95. The High Court by its impugned judgment and order allowed his appeal and acquitted him. The order of acquittal passed by the High Court has been challenged before us by the State of Andhra Pradesh. The facts of the case in so far as they are relevant for the disposal of this appeal may be succinctly stated. According to the prosecution, the respondent was married to the deceased Shankaramma about six months before the occurrence. The relationship between the respondent and his wife was not cordial on account of the fact that the deceased wife was not an educated woman. The case of the prosecution is that the respondent used to ill-treat his wife. PW-3 mother of the deceased claims to have come to the village where the deceased was residing with her husband with a view to take her to her house for 'Jatara' (village fair) but respondent and his parents did not send the deceased with her on the pretext that some agricultural work has to be attended to and pesticides had to be sprayed in the fields. She was with them till about 4.00 p.m. on that day and accompanied them to their field. Thereafter, she left for Marpally village where another daughter of her's was residing. Next morning when she was preparing to go back to her village, she came to learn at the bus stand that her daughter had died. On receiving the message, she immediately came to the place of occurrence and found the dead body of the deceased in the field of the accused with injuries on her chest and face. The case of the prosecution is that at about 7.00 p.m. the father of the accused PW-1 reported to the Sarpanch of the village PW-11 that he had come to know that the deceased had consumed poison and when he met his son (respondent herein) some time later he informed him that his wife had consumed poison and died. On such report being made the Sarpanch informed the police on telephone about the occurrence. Next morning at 6.30 A.M. the police officer PW-13 came to the place of occurrence and started investigation. From the first information report, it appears that the village where the occurrence took place is at a distance of 4 kms. from the police station. The first information report was lodged by the Sarpanch PW-11 at 6.30 A.M. on 8.11.1992. The report is Exhibit P-6 in which he stated that PW-1 and his elder son had come to him and reported to him that the deceased had gone with the respondent to his field between 1100 and 1200 hrs. and that in the evening his daughter-in-law died in the field after consuming pesticide. He further stated in the report that at 7.00 P.M. he informed the police at Peddamual police station. He also received information from the villagers that the respondent and the deceased had disputes and the villagers suspected that the respondent may have killed her. It is, therefore, apparent that the first information report is by a person who is not an eye witness and who lodged the report on the basis of what he came to learn at the place of occurrence. It appears that on the request of the investigating officer PW-10 prepared the inquest report Exh.P-2. The case of the prosecution is that a panchanama of the scene of occurrence Exh.P-3 and a sketch Exh.P-4 was prepared in the presence of two witnesses, including PW-8, by the investigating officer. The case of the prosecution is that in Exh.P-3 it is noticed that a piece of cloth and two white

buttons were found near the dead body very near the hand of the deceased. The case of the prosecution further is that the respondent was arrested on 8.11.1992 and on 22nd November, 1992 he made a disclosure statement admitting his guilt and volunteered to get recovered his shirt which was recovered under a panchnama which is Exhibit P/7. The panchnama shows that the respondent handed over a polyester shirt with full sleeves having red flower pattern. Pocket of the shirt was torn and it also had two missing buttons. As noticed earlier, there is no eye witness to support the case of the prosecution which rests purely on circumstantial evidence. The trial court found the following circumstances which according to it conclusively proved the case of the prosecution:-

"1.The motive of the accused his dissatisfaction and cruel treatment of his wife on the ground that she was an "illiterate animal".

2.The accused gave a false statement to his father that she died of poisoning whereas she died of injuries.

3.Accused was not seen in the village by P.W.3 after death of his wife.

4.The accused was last seen in the company of the deceased by the mother of the deceased.

5.The shirt piece and buttons found at the scene of offence match with the shirt MO1 of the accused seized from his house.

6.The accused himself made a statement that he kept the torn shirt MO.1 in his house."

The High Court, however, found that there was considerable delay in recording the first information report because though the Sarpanch came to know of the occurrence at about 7.00 p.m. on 7.11.1992 the report was given only at 6.30 A.M. on 8.11.1992. Secondly, the High Court suspected the truthfulness of the prosecution case because of absence of blood at the scene of occurrence. Thirdly, it found that no stone was recovered from the scene of occurrence except a small stone. Lastly, it held that the two buttons and a torn polyester shirt pocket which are said to have been recovered from the scene of offence on 8.11.1992 were produced only on 27.11.1992, 20 days after the occurrence. We are not impressed by the reasons given by the High Court for setting aside the conviction of the respondent, but in view of the fact that this is an appeal against acquittal, we have ourselves carefully scrutinised the evidence on record. There are three circumstances noticed by the trial court which are of considerable significance and they are - firstly, that the accused was last seen in the company of the deceased by the mother of the deceased, secondly, that a torn piece of a shirt and buttons found at the scene of offence matched with the shirt MO1 seized from the house of the accused and lastly, that the accused gave a false statement that his wife had died of poisoning, whereas the medical evidence disclosed that she had been brutally assaulted with some blunt object resulting in the fracture of several ribs and causing other injuries which ultimately resulted in her death. We shall first examine the evidence led by the prosecution to the effect that PW-1 reported the matter to the Sarpanch PW-11 at 7.00 P.M. on 7.11.1992 and that the Sarpanch made a report to the police telephonically at 11.00 p.m. and also sent a report. The police came to the place of occurrence at 6.30 A.M. on the following day. On a careful scrutiny of the evidence on record, this part of the prosecution case does not appear to be true. In this connection, we have examined the evidence of PW-1, the father of the respondent. According to him he had come to know from his son that the deceased had consumed pesticide which resulted in her death and he had informed the Sarpanch about the death of the deceased. The deposition of PW-1 does not disclose the approximate time when he reported the matter to the Sarpanch PW-11, but we proceed on the basis that he informed the Sarpanch some time in the evening. Sarpanch PW-11 stated that in the evening PW-1 had come to him and informed him about the death of his daughter-in-law and that her dead body was lying in the fields. He thereafter stated:

"I telephoned to the police station and also sent a written report to the police. Subsequently, I went to the place where the dead body of the deceased was found. Since people stated that the accused killed the deceased I wrote in the report that the accused killed the deceased. Exh.P-6 is the report given by me to the police." The statement of Sarpanch is somewhat ambiguous. He claimed to have telephoned the police and also "sent a written report" to the police. The investigating officer has also stated in the course of his deposition that he received a telephonic report from PW-11 at about 11.00 P.M. in which he

had stated that the deceased had been killed by the respondent. The investigating officer has not produced any evidence to show that such a telephonic message was received by him at any time. If such information had been given to the police officer on telephone, he would have certainly not missed to record a report on the basis of the said information, since the report made to him clearly disclosed the commission of a cognizable offence by the respondent. The name of the person making the report was also known to him. Assuming that he did not consider it necessary to draw up a first information report on the basis of such telephonic information, he would have certainly made a note of it in the station diary. There is no evidence to show that any station diary entry was made. PW-11 claimed that he had also sent a report to the police. That report has not been produced before the Court. Thus, neither the oral report made to the investigating officer by PW-11, nor the written report said to have been sent to the police by PW-11 has been proved by evidence brought on record. Therefore, the court is deprived of the initial reports said to have been made by PW-11. One also fails to understand why the investigating officer did not immediately proceed to the place of occurrence, having come to know that the respondent had committed the murder of his wife. The village of occurrence was hardly 4 kms. from the police station, and yet the admitted case is that he came to the village at 6.30 A.M. It was at the place of occurrence that PW-11 is said to have made a report to him on the basis of which a formal first information report was drawn up. These facts lead us to doubt the case of the prosecution that any report was made at 7.00 P.M. by PW-1 to the Sarpanch of the village, and that he had reported the matter to the police at 11.00 P.M. The fact that the police arrived at the spot at about 6.30 A.M. when a report was lodged by PW-11 for the first time, leads one to suspect that the death of the deceased came to light some time early in the morning of 8th November, 1992, and only thereafter the investigative machinery was put into motion. This finding of ours reduces the significance of the incriminating circumstance that the respondent was last seen in the company of the deceased at 4.00 P.M. on the earlier day. The next significant circumstance is the fact that the respondent had given a wrong information about the cause of death of the deceased. It is no doubt true that the medial evidence conclusively establishes the fact that the deceased was battered by a hard and blunt object and her neck was pressed with such force that even the hyoid bone was fractured. However, the statement made by PW-1 to the Sarpanch PW-11 that his son had informed him that the deceased had died after consuming pesticide, is not admissible in evidence, being hit by the rule against hearsay. This circumstance cannot, therefore, be relied upon by the prosecution to prove that the respondent had given a false explanation for the death of the deceased. The most crucial circumstance which could have linked the respondent with the murder of the deceased is the finding of a cloth piece and two buttons near the body of the deceased, which according to the prosecution were parts of the shirt worn by the respondent on the date of occurrence. It was urged before us that the respondent made a disclosure statement on 22.11.1992 and produced a shirt from his house voluntarily which was worn by him on the date of occurrence. The case of the prosecution is that while resisting the assault on her, the deceased may have caught hold of the pocket of the shirt and in the struggle that ensued, the pocket was torn off and two buttons also fell off near the place of occurrence. Unfortunately, the prosecution has led no evidence to connect the shirt with the piece of cloth found near the place of occurrence. Counsel for the respondent submitted that the respondent was arrested on 8th November, 1992 and the alleged disclosure statement is said to have made on 22nd November, 1992. The disclosure statement made after such delay has no value. We will assume in favour of the prosecution that a disclosure statement was made on 22nd November, 1992 and pursuant thereto the respondent produced before the police a shirt, which according to the prosecution, was worn by him on the date of occurrence. The seizure memo of the shirt shows that the shirt was a white shirt with red patterns of flower it appeared that the pocket of the shirt was torn apart. Two buttons were also missing from the shirt. The site plan Exhibit P-3 discloses that near the dead body was found a torn shirt pocket and two white buttons. The colour of the shirt pocket found has not been disclosed in the panchnama. It is, therefore, difficult to connect the torn shirt pocket with the shirt which was recovered at the instance of the respondent. This apart, we find that no evidence has been adduced by the prosecution to establish that the piece of cloth found at the place of occurrence was really a part of the shirt which was recovered at the instance of the respondent. No witness has said so. Moreover, the circumstance that the pocket of the shirt worn by the accused at the time of committing the offence was found at the scene of occurrence, was not even put to the respondent in his examination under Section 313 Cr.P.C. It is, therefore, difficult to rely upon, as an incriminating circumstance, the recovery of two buttons and a piece of cloth, said to be the pocket of a shirt, from the place of occurrence, in the absence of any evidence to connect the said piece of cloth with the shirt of the accused. In this state of the evidence on record, we are of the view that the respondent is entitled to an acquittal by giving to him the benefit of doubt, though for reasons different

from the reasons recorded by the High Court.

In the result, this appeal is dismissed.

CASE NO.: Appeal (crl.) 1331 of 2004

PETITIONER: Satyajit Banerjee and others

RESPONDENT: State of West Bengal and others

DATE OF JUDGMENT: 23/11/2004

BENCH: Y K. SABHARWAL & D.M. DHARMADHIKARI

JUDGMENT: J U D G M E N T

(@ out of Special Leave Petition (Crl.) No. 676 of 2003)

Dharmadhikari J.

Leave to appeal, as prayed for, is granted.

Counsel for the parties are heard at length.

The appellants are accused of commission of offence of alleged cruel treatment meted out to deceased • Kana Banerjee, punishable under Section 498A of the Indian Penal Code and abetting her suicidal death punishable under Section 306, IPC. On the evidence produced by the prosecution, the trial court acquitted them. But in revision, preferred by mother of the deceased, the High Court by the impugned order has set aside the acquittal and directed a de novo trial. The necessary facts leading to the trial and eventual remand by the High Court for fresh trial are as under:

Appellant No.1 was married to the deceased in the year 1990. She was employed in Railways and was regularly attending to her duties. Her parents also lived not far away from her matrimonial home. On 25.10.1995 she was found dead. The accused-husband had informed her parents of her death. It is the case of her mother that soon after the incident, a First Information Report was lodged with the police alleging harassment and cruel treatment to her by the accused. The said FIR has not been produced. The FIR which was produced was lodged on 22.12.1995 which led to the prosecution, and acquittal of the accused by the trial court.

In the course of investigation a suicide note was seized from the mother-in-law of the deceased. The contents of the suicide note read that the deceased had developed illicit relationship with some other person and it was no longer possible for her to deceive her husband. It was further written in the suicide note that she was lucky to get such a husband and her father should treat him well and arrange for his second marriage after her death.

In his post-mortem report the Autopsy Surgeon opined that the cause of death was poisoning and also hanging as ligature marks were found on her neck.

The prosecution examined mother of the deceased as PW8and three other witnesses living in the neighbourhood. The mother in her deposition stated that in her frequent visits to the house of the accused the deceased used to complain about her physical and mental torture by the accused but had asked her mother not to disclose this fact to her father who was a heart-patient. The mother also deposed that the deceased was medically examined by Doctor Baidyanath Chakroborty who had opined that there was no possibility of her bearing child in her womb and she should opt for test tube baby. She further deposed that after one and a half years of her marriage, the deceased did conceive but in the fallopian tube and that conception was terminated in a hospital at Aliduar. The allegation of the mother is that for the aforesaid reason, the accused got annoyed and increased their torture on her. She stated that immediately after her daughter's death, an FIR was lodged by father of the deceased and subsequently she also lodged an FIR in writing. The delay in second FIR was explained saying that for a few months she was mentally disturbed. In the cross-examination she admitted to have derived knowledge that her daughter had left a suicide note containing the writings abovementioned. When cross- examined she did not dispute that the suicide note was not in the writing of the deceased. The

other three witnesses PW2, PW3 and PW4 examined by the prosecution to prove the alleged cruel treatment of the deceased by the accused did not support the prosecution case and were declared hostile. The opinion of the hand-writing expert, on the suicide note, was filed but he was not examined in proof of his opinion.

The trial court, by appreciating and weighing the evidence on record did not accept the case of the prosecution. The First Information Report alleged to have been lodged soon after the incident was not proved. The second FIR was lodged after a delay of two months. There was no convincing explanation for the same. The learned trial judge observed that conduct of mother of the deceased showed that she had tried to develop the prosecution case by introducing new stories step- by-step. The trial judge has also observed thus:

"This suicidal note has come from the side of prosecution and as such, this Court cannot rule out the contents of the same. Taking together the contents of suicidal note and belated FIR I have reasons to hold that this FIR was lodged after two months by some wrong advice. Moreover, the explanation given in the FIR does not appear to be convincing. It is the settled principle that there is every possibility of concoction, embellishment, motivation in a belated FIR I have already observed that PW 8 has tried to develop the prosecution case by introducing some new stories which is far away from the prosecution case and, as such, she cannot be considered to be faithful witness. Moreover she has failed to explain by convincing reason about inordinate delay in lodging the FIR. Her evidence has not been corroborated by a single prosecution witness even."

On the medical evidence, the trial court observes thus:

"That the Autopsy Surgeon had recorded that there was a ligature mark on her neck and the cause of death was indosulfan-poison in her body."

On the evidence produced, the trial court has recorded his conclusion that evidence of cruel treatment to the deceased is not reliable and the accused cannot be held guilty of the suicidal death.

The trial acquitted all of them. The mother of the deceased preferred a revision to the High Court. The High Court did take note of the various infirmities in the prosecution case, such as seizure of suicide note by the investigating agency 125 days after the incident, non-examination of Hand-Writing Expert, belated FIR and single testimony of the mother of the deceased on the allegation of cruelty. The High Court also took note of the fact that the post-mortem reported presence of ligature mark on the neck of the deceased indicating hanging. Presence of poison in the body was also found. Even after noticing the above serious infirmities in the prosecution case, the High Court observes:

"The learned trial court ought to have been more, without meaning any disrespect, dynamic and to have taken active truth instead of resigning to the fate as ordained by the prosecution."

The High Court then went on to observe that where prosecution lacks in bringing necessary evidence, the trial court ought to have invoked its powers under Section 311 of the Cr.P.C. and summoned for examining the father of deceased and other additional witnesses whom it considered necessary. The High Court by observing thus set aside the order of acquittal passed by the trial court and directed remand of the case 'for fresh decision from stage one.' In the concluding part of the its judgement, the High Court made the following observation:

"Lest it may even unconsciously influence the mind of the learned trial court, while on remand it is made absolutely clear that by way of guiding formula the observations here-in-above have been made but it cannot be said to have a binding effect on the learned trial court which would be free to arrive at its independent conclusion in accordance with law and in the suggested formula here-in-above."

[Emphasis supplied]

Learned counsel appearing for the accused assails the order of remand made by the High Court and the above mentioned observations made therein. It is submitted that sub-section (3) of Section 401 prohibits the High Court in its revisional jurisdiction to convert acquittal into conviction. By directing

examination of additional witnesses under Section 311 and making observations mentioned above it has indirectly suggested the trial court to record a conviction on retrial.

Strong exception has been taken on behalf of the accused to the course adopted by the High Court of directing a retrial. Reliance has been placed on K.Chinnaswamy Reddy vs. State of Andhra Pradesh [1963 (3) SCR 412 at 413] and particularly on the following observations mentioned therein on the scope of identical provisions of revision in the old Code of Criminal Procedure.

"That it was open to a High Court in revision and at the instance of a private party to set aside an order of acquittal though the State might not have appealed. But such jurisdiction should be exercised only in exceptional cases, as where a glaring defect in the procedure or a manifest error of law leading to a flagrant miscarriage of justice has taken place. When Section 439(4) of the Code forbids the High Court from converting a finding of acquittal into one of conviction, it is not proper that the High Court should do the same indirectly by ordering a retrial. It was not possible to lay down the criteria for by which to judge such exceptional cases. It was, however, clear that the High Court would be justified in interfering in cases such as (1) where the trial court had wrongly shut out evidence sought to be adduced by the prosecution (2) where the appeal court had wrongly held evidence admitted by the trial court to be inadmissible (3) where material evidence has been overlooked either by the trial court or the court of appeal or, (4) where the acquittal was based on a compounding of the offence not permitted by law and cases similar to the above."

It is further argued for the accused that merely because a different view of the evidence is possible, the High Court, in exercise of revisional powers ought not to have directed a retrial. Reliance is placed on Bansi Lal vs. Laxman Singh [1986 (3) SCC 444].

Lastly, it is submitted on behalf of the accused that direction of the High Court to the trial court to record further evidence and take a 'fresh decision from stage one' is totally without jurisdiction as it suggests that the evidence already recorded in the initial trial should be given no consideration.

On the other side learned counsel appearing for the respondent-complainant made streneous efforts to support the impugned order for retrial passed by the High Court. It is submitted that prosecution has left lacunae in the case which should not go in favour of the accused. Reliance is placed on Ram Bihari Yadav vs. State of Bihar [1998 (4) SCC 517].

On behalf of the complainant very strong reliance has been placed on the landmark decision of this Court in the case of Zahira Habibulla Sheikh vs. State of Gujarat [2004 (4) SCC 158] which arise from mass killings during Gujarat riots, commonly known to the public as "Best Bakery Case." It is submitted that the above decision of this Court fully supports the course adopted by the High Court in remanding the case for retrial. It is also submitted that where prosecution has left an inherent weakness in the case, it was not only expected but incumbent on the trial judge to invoke his power under Section 311 Cr.P.C. and summon all relevant witnesses and evidence. As the trial court failed to discharge its duty to hold a fair trial to discover the truth, the High Court was fully justified in directing a retrial and 'a fresh decision from stage one.'

In the course of hearing of this case, we are informed that before this Court stayed operation of the impugned judgment, the retrial as directed by the High Court had already commenced. The trial judge has recorded the statement of father of the deceased and only remaining part of the evidence is to be recorded.

In exercise of the discretionary jurisdiction under Article 136 of the Constitution and keeping in view the stage of retrial we refrain from upsetting the whole judgment of the High Court. We however consider it necessary to set right some of the uncalled for observations made by the High Court in the impugned judgment directing retrial.

The cases cited by the learned counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice.

The State has chosen not to prefer any appeal against acquittal. In the present appeal by the complainant it has filed a counter-affidavit and tried to support the order of remand passed by the High Court.

Without going into the correctness of all the observations made by the High Court in the impugned judgment, we find it necessary to clarify that the High Court ought not to have directed the trial court to hold a de novo trial and take decision on the basis of so called 'suggested formula.' The High Court in its concluding part of the judgment does state that any observation in its judgment should not influence the mind of the trial court but, at the same time, the High Court directs the trial court to take 'a fresh decision from stage one' and on the basis of the 'suggested formula.' Learned counsel for the accused is justified in his grievance and apprehension that the aforesaid observations and directions are likely to be mistaken by the trial court as if there is a mandate to it to record the verdict of conviction against the accused regardless of the worth and weight of the evidence before it.

Since strong reliance has been placed on the Best Bakery Case (Gujarat Riots Case- supra) it is necessary to record a note of caution. That was an extraordinary case in which this Court wasconvinced that the entire prosecution machinery was trying to shield the accused i.e. the rioters. It was also found that the entire trial was a farce. The witnesses were terrified and intimidated to keep them away from the court. It is in the aforesaid extraordinary circumstances that the court not only directed a de novo trial of the whole case but made further directions for appointment of the new prosecutor with due consultation of the victims. Retrial was directed to be held out of the State of Gujarat.

The law laid down in the 'Best Bakery Case' in the aforesaid extraordinary circumstances, cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. In Best Bakery case, the first trial was found to be a farce and is described as 'mock trial.' Therefore, the direction for retrial was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by this Court in the Best Bakery Case (supra).

So far as the position of law is concerned we are very clear that even if a retrial is directed in exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.

With the above clarification, we decline to interfere in the order of remand. To put the matter beyond any shadow of doubt we further clarify and reiterate that the trial judge, after retrial, shall take a decision on the basis of the entire evidence on record and strictly in accordance with law, without in any manner, being influenced or inhibited by anything said on the evidence in the judgment of the High Court or this Court.

CASE NO.: Appeal (crl.) 633 of 1999

PETITIONER: STATE OF PUNJAB

RESPONDENT: PARVEEN KUMAR

DATE OF JUDGMENT: 18/11/2004

BENCH: B.P. SINGH & ARUN KUMAR

JUDGMENT: J U D G M E N T

B.P.Singh, J.

This appeal by special leave is preferred by the State of Punjab against the judgment and order of the

High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.481-DB/95 dated 11th December, 1998 whereby the High Court allowed the appeal of the respondent herein and set aside his conviction under Section 302 and alternatively under Section 304-B IPC and the sentence of life imprisonment passed against him. We have heard counsel for the parties at length and perused the evidence on record. Apart from the appellant, Praveen Kumar, who was the husband of Geeta Rani, deceased, his father and mother as well as his younger sister were put up for trial before the Sessions Judge, Bhatinda. They were charged of offences under Sections 302, 304B and 498A IPC. The learned sessions judge disbelieving the case of the prosecution as against the remaining accused acquitted them of the charges levelled against them, but convicted only the respondent herein under Section 302 IPC as well as under Section 304B IPC and sentenced the respondent to undergo imprisonment for life under Section 302 IPC without passing a sentence under Section 304-B IPC. The deceased Geeta Rani was married to the respondent one year and three months before the occurrence. The occurrence giving rise to this appeal took place on January 4, 1994 at 5.00 A.M. in which it was alleged that Geeta Rani was set on fire by the respondent herein and the other members of the family, who were the co-accused, had acted in concert with the respondent. It is not in dispute that after the deceased had suffered burn injuries, she was removed to the local hospital at Jaitu by the respondent and his father and was being treated there by the attending physician. On the next day, her uncle Kulwant Kumar, PW-5 who had come to visit her, on coming to know about the occurrence rushed to the local hospital and arranged for shifting Geeta Rani from the hospital at Jaitu to the civil hospital at Bhatinda for better treatment. Accordingly, Geeta Rani was shifted to the civil hospital, Bhatinda where she was admitted on 5th January, 1994. It is the case of the prosecution that while being shifted to the civil hospital at Bhatinda, deceased had made a dying declaration to her uncle, Kulwant Kumar, PW-5 disclosing the complicity of the respondent and the aforesaid family members. On information being sent by the hospital authorities, sub-inspector, Kewal Singh, PW-7 came to the hospital and recorded the statement of Geeta Rani. Even before her statement was recorded by the police, the tehsildar, an executive magistrate, PW-4 Harjit Singh, was requested to record the dying declaration of Geeta Rani and he had accordingly recorded the dying declaration of Geeta Rani Ex.PD between 5.30 and 5.55 p.m. Subsequently, at 8.35 p.m. the statement of Geeta Rani was recorded by sub-inspector, Kewal Singh (PW-7) in the hospital, on the basis of which a formal first information report was drawn up. Ultimately, the respondent and the aforesaid 3 members of his family were put up for trial, in which except for the respondent, the others were acquitted. The High Court on appeal has set aside the conviction of the respondent as well. Admittedly, there is no eye witnesses to the occurrence and, therefore, the case rests entirely on the alleged 3 dying declarations. The High Court has rejected the first dying declaration made to Kulwant Kumar, PW-5. The reason given by the High Court is that Kulwant Kumar for the first time stated about the alleged dying declaration made to him at the stage of trial. In his statement under Section 161 Cr.P.C. made in the course of investigation, he had not stated that Geeta Rani had made a dying declaration to him. We find no fault with the reasoning of the High Court so far as rejection of the dying declaration made to PW-5 is concerned. Left with two other dying declarations, the High Court found that these two dying declarations are inconsistent with each other, since the versions disclosed in these two dying declarations are quite different and the role of the accused is also differently described. In the first dying declaration Ext.PD made to the Executive Magistrate, it is stated that on 4.1.1994 her husband came home at about 5.00 A.M. after delivering milk to his customers and questioned the deceased as to why the scooter and furniture, etc. promised to him by her parents had not been supplied. Thereafter, he sprinkled half bottle of kerosene oil on her and lit fire with a match stick. On her alarm all collected and her father-in-law extinguished the fire. None else had asked her anything.

It, therefore, appears that so far as this dying declaration is concerned, the allegation is solely against her husband, the respondent herein, and it is alleged that he sprinkled kerosene oil and set her on fire. The second aspect of the matter is that so far as the father-in-law is concerned, she has completely exonerated him by stating that he rushed and extinguished the fire. If we now turn to the report made to the sub-inspector, Kewal Singh (PW-7) on the basis of which the formal first information report was drawn up, which has also been treated as dying declaration Ext.PD, we find that the version given there is quite different. It is stated that on 4.1.1994 her husband and her mother-in-law complained to her that her parents have not kept their promise of supplying some articles and, therefore, they will finish her once and for all. At 5.00 A.M. her mother-in-law sprinkled a bottle of kerosene oil on her while her husband, respondent herein, set her on fire with a match stick. Her father-in-law and sister-in-law exhorted them to do away with her by setting her on fire. It was only when she raised hue and cry that her father-in-law extinguished the fire and she was brought to the local private hospital at Jaitu by her

husband and father-in-law. It will thus, appear that so far the first dying declaration is concerned, there is no allegation against either the mother-in-law, father-in-law or the sister-in-law and the allegation is solely against the respondent, who is said to have sprinkled kerosene oil on her and set her on fire. In the second dying declaration, the allegation is that the mother-in-law sprinkled the kerosene oil and the husband set her on fire with a match stick. While they were doing so, her father-in-law and sister-in-law were exhorting them to do away with her by setting her on fire. These two versions are quite different and not consistent with each other, except that so far as the respondent is concerned, the act of lighting the fire is ascribed to him in both the dying declarations.

Counsel for the State submitted that since the respondent has been named in both the dying declarations, his conviction could be sustained. We are afraid we cannot accede to his request. In the first place, in appeal against acquittal, this Court will not set aside the findings of fact and the order of acquittal recorded by the High Court unless it is satisfied that the findings recorded are wholly unreasonable, perverse, not based on evidence on record, or suffer from serious legal infirmity. The mere fact that on the basis of the same evidence another view is possible, is not a ground for setting aside an order of acquittal. We find that the view taken by the High Court is a possible reasonable view on the evidence on record and, therefore, we will not be justified in setting aside the order of acquittal. While appreciating the credibility of the evidence produced before the Court, the Court must view evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named person. The court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declaration. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence. The High Court while considering the evidence on record has rightly applied the principles laid down by this Court in Thurukanni Pompiah and another Vs. State of Mysore, AIR 1965 SC 939, and Khusal Rao Vs. State of Bombay, 1958 SCR 552. The High Court having subjected the dying declarations to close scrutiny, has reached the conclusion that they are not reliable. We entirely agree. We, therefore, find no merit in the appeal and the same is accordingly dismissed.

It appears that during the pendency of this appeal, bailable warrants were issued against the respondent. His bail bonds are discharged.

CASE NO.: Appeal (crl.) 1274 of 2004

PETITIONER: Ruchi Agarwal

RESPONDENT: Amit Kumar Agrawal & Ors.

DATE OF JUDGMENT: 05/11/2004

BENCH: N.Santosh Hegde & S.B.Sinha

JUDGMENT: J U D G M E N T

(Arising out of SLP(Crl.)No. 3769 of 2003)

SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

By the impugned order, the High Court of Uttaranchal quashed a criminal complaint filed by the appellant against the respondents. The complaint was made by the appellant alleging offences under sections 498A, 323 and 506 IPC, and Sections 3 and 4 of the Dowry Prohibition Act. The High Court by the impugned judgment came to the conclusion that the alleged offences having taken place within the jurisdiction of Ram Nagar Police Station of Bilaspur district, the court at Rampur district did not have the territorial jurisdiction to entertain a complaint, hence, while quashing the chargesheet and the summoning order of the Chief Judicial Magistrate, Nainital, transferred the investigation of the case to Police Station Bilaspur, district Rampur. It is the above order of the High Court that is under challenge before us in this appeal. During the pendency of the proceedings before the courts below and in this Court, certain developments have taken place which have a material bearing on the merits of this appeal. The complaint which the appellant herein filed is dated 10.4.2002. Thereafter, a divorce petition was filed by the appellant-wife before the Family Court at Nainital. In the said divorce petition a compromise was arrived between the parties in which it was stated that the first respondent-husband was willing for a consent divorce and that the appellant-wife had received all her Stridhan and maintenance in lump sum. She also declared in the said compromise deed that she is not entitled to any maintenance in future. It is also stated in the said compromise deed that the parties to the proceedings would withdraw all criminal and civil complaints filed against each other which includes the criminal complaint filed by the appellant which is the subject matter of this appeal. The said compromise deed contains annexures with the particulars of the items given to the appellant at the time of marriage and which were returned. The said compromise deed is signed by the appellant. But before any order could be passed on the basis of the said compromise petition, the appellant herein wrote a letter to the Family Court at Nainital which was received by the Family Court on 3.10.2003 wherein it was stated that she was withdrawing the compromise petition because she had not received the agreed amount. But subsequently when her statement was recorded by the Family Court, she withdrew the said letter of 3.10.2003 and stated before the court in her statement that she wanted a divorce and that there is no dispute in relation to any amount pending. The Court, after recording the said statement, granted a divorce under Section 13-B of the Hindu Marriage Act, dissolving the marriage by mutual consent by its order dated 3.3.2004.

In the compromise petition, referred to herein above, both the parties had agreed to withdraw all the civil and criminal cases filed by each against the other. It is pursuant to this compromise, the above divorce as sought for by the appellant was granted by the husband and pursuant to the said compromise deed the appellant also withdrew Criminal Case No.63 of 2002 on the file of the Family Court, Nainital which was a complaint filed under Section 125 of the Criminal Procedure Code for maintenance. It is on the basis of the submission made on behalf of the appellant and on the basis of the terms of the compromise, said case came to be dismissed. However, so far as the complaint under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act is concerned, which is the subject matter of this appeal, the appellant did not take any steps to withdraw the same. It

is in those circumstances, a quashing petition was filed before the High Court which came to be partially allowed on the ground of the territorial jurisdiction, against the said order the appellant has preferred this appeal.

From the above narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received Stridhan and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings civil and criminal filed and initiated by her against the respondents within one month of the compromise deed which included the complaint under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent-husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13(B) of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Cr.P.C. proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No.Cr.No.224/2003 registered in Police Station, Bilaspur, (Distt.Rampur) filed under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly.

The appeal is disposed of.

CASE NO.: Appeal (crl.) 289-290 of 2004

PETITIONER: Arun Garg

RESPONDENT: State of Punjab & Anr.

DATE OF JUDGMENT: 29/09/2004

BENCH: K.G. Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT: J U D G M E N T

Dr. AR. Lakshmanan, J.

These appeals are directed against the impugned judgment and order dated 30.05.2003 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 161-SB of 2001. The High Court dismissed the said appeal of the appellant and confirmed the sentence of ten years rigorous imprisonment awarded by the Sessions Judge, Ludhiana but enhanced the fine from Rs.2000/- to Rs.2,00,000/- in Criminal Revision No. 1251 of 2001 filed by the complainant against the appellant.

Briefly stated, the case of the prosecution is as follows:

The marriage between Seema, daughter of Ramesh Chander Bansal, PW-1 and the appellant-accused, Arun Garg took place on 25.02.1996. According to the prosecution, she died under very tragic circumstances on 30.03.1999, that is, within three years of her marriage with the appellant. The appellant was alleged to have administered aluminium phosphide causing unnatural death of the daughter of the respondent and thus the appellant was liable for the offence under Section 304B of the Indian Penal Code. At the time of marriage, household articles, clothes, gold etc. and cash amount of Rs.2,00,000/- was also given in dowry. However, few days after the marriage, 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. It was further submitted that on 10.04.1996, Seema telephoned the respondent herein that her father-in-law and mother-in-law were making a demand for Rs.40,000/- and thereupon the respondent accompanied by Parkash Chand and Sohan Lal who had arranged the marriage of Seema with Arun Garg went to the house of Arun Garg. Thereupon, on the insistence of Parkash Chand and Sohan Lal, the respondent purchased household articles worth Rs.20,000/- and supplied the same to the family of Arun Garg. It is the case of the prosecution that since February 1997, the appellant and his parents did not allow Seema to see her parents and had not allowed her to visit their house. When the parents went to see Seema at the house of her in-laws on the eve of Teej festival, Seema told them that her husband, father-in-law, mother-in-law and sister-in-law Neena used to ill-treat her and often made a demand for more cash. There are other instances on 22.02.1999 and on 26.03.1999 of demanding dowry. On 26.03.1999, Seema telephoned the respondent herein that her husband, father-in-law, mother-in-law and sister-in-law were planning to kill her. The respondent, who is a government servant, could not, however, obtain leave from the office and go to see Seema at the house of her in-laws.

On 28.03.1999, at about 6.00 p.m., the respondent received information that her daughter Seema had been administered some poisonous substance by her husband and in-laws and sister-in-law Neena and that she had been admitted in the Dayanand Medical College, Ludhiana. The respondent accompanied by his wife immediately rushed to the hospital and found that Seema was unconscious and her condition was found to be serious. The respondent thereafter went to the police station and lodged an FIR on the same day which was registered as FIR No. 139 of 1999 under Section 307 read with Section 34 of the Indian Penal Code, against Arun Garg, his father, Sham Lal Garg, mother Shimla Garg and sister Neena. On the same day, i.e., 28.03.1999, police made an application for recording the statement of Seema, which was declined as she was declared medically unfit to make the statement. Police again made an application for recording the statement of Seema on 29.03.1999 which was also declined as Seema was not medically fit to make the statement. Unfortunately, Seema died in the hospital on 30.03.1999. On the death of Seema, the case was converted into one under Section 304B of the Indian Penal Code and all the three accused, namely, Arun Garg, Sham Lal Garg and Shimla Garg were arrested in the case on 31.03.1999. After the death of Seema, the dead body was sent for post mortem examination. The findings of the Medical Board are as under:

"Eyes and mouth were closed. Post Mortem staining was present on the left, lateral side of body. Cyanosis of nails, lips and tongue was present. Face was congested. Multiple needle prick marks were present on the body. Larynx, trachea and both lungs were congested. The right side of the heart contained blood and blood sample was sealed in jar No.4. Both the ends of the stomach were ligated and were sent to the Chemical Examiner in Jar No.1. Small and large intestines were congested and a portion of each was sent to the Chemical Examiner in Jar No.2. Liver, Spleen and Kidney were congested

and portion of each was sent to the Chemical Examiner in Jar No.3. Urinary bladder was healthy and empty. The genitalia was healthy and uterus contained Copper T."

On receipt of the report of the Chemical Examiner, the pesticide aluminium phosphide was detected in the stomach and large and small intestines. While phosphide, a constituent of aluminium phosphate was detected in liver, spleen, kidney and blood. Thereafter, the doctors opined that death of Seema had caused due to intake of aluminium phosphide poisoning which was sufficient to cause death in the ordinary course of nature. The challan was presented by the police in the Court of Sessions Judge, Ludhiana against the appellant, his father and mother. The Sessions Judge, by his judgment dated 22.01.2001, acquitted Sham Lal Garg and Shimla Garg giving them benefit of doubt and convicted the appellant, Arun Garg, under Section 304B IPC in connection with the death of his wife Seema Garg and sentenced him to undergo R.I. for a period of ten years and to pay a fine of Rs.2000/- or in default of payment of fine to undergo further R.I. for a period of two months.

Aggrieved by the said judgment, the appellant filed Criminal Appeal No. 161- SB of 2001 before the High Court along with the application for bail. The State of Punjab also filed Criminal Appeal No.489-DBA of 2001. The respondent herein filed two separate revision petitions being Revision Petition No.1245 of 2001 challenging the acquittal of Sham Lal Garg and Shimla Garg and Revision Petition No. 1251 of 2001 seeking enhancement of the sentence imposed upon the appellant.

The High Court, by its order dated 14.02.2001, admitted the appeal filed by the appellant and stayed the recovery of fine, however, declined the prayer for bail.

The High Court, by a common order dated 30.05.2003, while upholding the conviction made by the trial Court, dismissed Criminal Appeal No.161-SB filed by the appellant herein and partly allowed the Revision Petition No.1251 of 2001 filed by the respondent herein. The High Court, by the impugned judgment, enhanced the fine from Rs.2,000/- to Rs.2,00000/-. By the said order, the High Court also dismissed Criminal Appeal No.489-DBA of 2001 filed by the State of Punjab and Criminal Revision No.1245 of 2001 filed by the respondent herein.

Against the said order, the appellant has approached this Court by way of special leave petition. Leave was granted by this Court on 23.02.2004.

We heard Mr. K.G. Bhagat, learned counsel appearing for the appellant and Mr. Arun K. Sinha, learned counsel appearing for the contesting respondent and Mr. Sudhir Walia, learned counsel appearing for the State of Punjab.

Learned counsel appearing for the appellant took us through the judgments of both the Courts and documents filed in the Court. He made the following submissions:

1) that in the FIR dated 28.3.1999, there was no imputation by the complainant that 'soon before death' the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, and in connection with any demand of dowry. In this regard, he invited our attention to the relevant portions of the FIR.

2) That no independent witness came in the witness box to corroborate the interested version of PW-3 and PW-4, the parents of the deceased. Elaborating the submission, learned counsel for the appellant submitted that the complainant had emphatically alleged that he had gone to the house of the appellant along with middleman Parkash Chand and Sohan Lal but they were never associated during the investigation nor were they produced in the Court, which fact itself is sufficient to disbelieve the witness of the complainant.

3) The ingredients of demand of dowry soon before the death of the deceased and the harassment thereon under Section 304B has not been proved beyond reasonable doubt.

4) The complainant has nowhere proved the payment of Rs.2,00,000/- to the appellant at the time of marriage or proved spending Rs.20,000/- worth of items given to the appellant. No withdrawal from any Bank is shown, no loan is taken, no receipt of any sort is produced.

5) The appellant has proved withdrawal of large sums of monies from their different bank accounts to prove that they had advanced Rs.2,00,000/- to the complainant to help him to settle his son and when the same was demanded back by the appellant, the complainant felt offended and had that grudge in his mind.

6) Had the appellant been responsible of administering aluminium phosphide to the deceased, he would not have taken the deceased to a most reputed hospital of Dayanand Medical College of Ludhiana to save her.

7) The demand of dowry or harassment of the deceased is not proved by any independent evidence except the bald statement of parents of the deceased as PW-1 and PW-3, and though the appellant had led sufficient independent evidence especially of the neighbours and others as DW-1 to DW-11 especially DW-4, DW- 10 and DW-11 who sufficiently elaborated that nothing happened at the house of the appellant and in fact, everybody including Seema was happy and on 27.03.1999, she attended Jagrata in the neighbourhood and attended Kanjak ceremony in the morning on 28.3.1999 at the same house along with her daughter and thereafter she went to the house of her mother.

8) There is hardly any evidence to prove the offence under Section 304B and 498A IPC against the accused. Even from the evidence on record, no offence is made out under Section 304B of IPC. There is no material on record to support the conclusion of cruelty or harassment.

9) The enhancement of fine from Rs.2000/- to Rs.2,00,000/- in revisional jurisdiction is all the more uncalled for and unwarranted and not permissible under law. Learned counsel appearing for the State of Punjab submitted that the investigation revealed that the accused was responsible for causing the death of the deceased, Seema and also subjected her to cruelty for and in connection with the demand of dowry articles. He would further submit that due to harassment, as proved in the evidence, which was caused by the appellant to his wife apparently due to demand of more dowry, a precious human life was lost. Such type of social crime should be viewed seriously and suitable punishment is called for so as to serve as deterrent to others and that the appellant is guilty of forcibly administering poison to his wife, Seema, and is responsible for causing her unnatural death within seven years of her marriage and thus such person cannot be allowed to remain at liberty in the society.

Concluding his submission, it was submitted that keeping in view the facts and circumstances of the case and the gravity of the offence committed by the appellant, the present appeals deserve to be dismissed.

Learned counsel appearing for the contesting respondent (father of the deceased) submitted that the contents of various grounds are not correct. It was submitted by the appellant that it is nowhere proved that payment of Rs.2,00,000/- was made to the appellant and that no withdrawal from any Bank is shown, no loan is taken and no receipt of any sort is produced. In regard to this, it was submitted by the learned counsel for the respondent that the respondent had withdrawn Rs.1,23,000/- from his GPF account and his wife Pushpa Rani, who is also a government servant had withdrawn Rs.94,000/- from her GPF account. It was further submitted that no documentary evidence has been put forth by the appellant regarding advancement of any money by the parents of the appellant to the respondent herein.

Before considering the rival contentions, it will be appropriate to note the relevant provisions of Section 304B of the Indian Penal Code. Section 304B reads thus:

"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 subject 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." (emphasis supplied)

The ingredients necessary for the application of Section 304B I.P.C. are:

i) that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances; ii) within seven years of her marriage; iii) it must be shown that before the death she was subject to cruelty or harassment by her husband or any relative of the husband or in connection with the demand of dowry.

In the light of these ingredients, the evidence of the prosecution is to be scanned.

The appellant was married with the deceased in the year 1996. The deceased died on 30.03.1999. So she died within seven years of the marriage. It is also not disputed that the deceased had not died a natural death. The only controversy between the parties is with regard to the third ingredient as to whether soon before the death the deceased was harassed and was subjected to cruelty on account of demand of dowry.

In the instant case, the prosecution had examined the complainant, PW-1, Ramesh Chander Bansal, Dr. Dhiraj Bhatia, PW-2, Pushpa Bansal, PW-3, Dr. U.S. Sooch, PW-4, Harminder Singh, PW-5, Inspector Gurinderjit Singh, PW-6, HC Kuldip Singh, PW-7, ASI Amrik Singh, PW-8, Constable Prithi Pal Singh, PW-9, Dr. N. Siridhar Rao, PW-10, Constable Gursharanvir Singh, PW-11 and constable Kamaljit Singh,PW-12. Since Parkash Chand and Pt. Sohan Lal died on 19.6.1999 and 9.5.2000 respectively, they could not be examined.

The Courts below have carefully gone through the facts of the case and the evidence on record and have found that the appellant is liable for the offence under Section 304B IPC. The courts below, after appreciation of the facts and evidence recorded have reached the conclusion that Seema Garg died an unnatural death at the house of her in laws within a period of seven years of her marriage with the appellant due to intake of poisonous substance.

It was argued on behalf of the appellant that there are contradictions in the statements of PW-6, Gurinderjit Singh and the complainant, respondent herein. In fact, two site plans of the place of occurrence were prepared one being Ex.PL prepared on 29.3.1999 by the Investigating Officer, PW-6, and the other being Ex. PG prepared on 22.6.1999 by Harminder Singh, Draftsman, PW-5. This site plan was prepared at the instance of the respondent herein.

It was argued on behalf of the appellant that in the FIR, there was no imputation by the complainant that 'soon before death' the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for and in connection with, any demand of dowry. We have perused the FIR in this connection. PW-1 deposed that on 26.3.1999 Seema informed him on telephone that her father- in-law, mother-in-law, sister-in-law and her husband had been conspiring to kill her and this fact had mentioned in his first information statement. The High Court had dealt with this in detail and reached the conclusion that the most vital circumstances of an offence under Section 304B IPC that the demand for dowry had been made soon before the death had been proved beyond doubt. According to PW-1, the appellant had been demanding more dowry after the marriage and that he had accepted further dowry of Rs.20,000/- on 10.4.1996 when they, in fact, had demanded Rs.40,000/-. PW-1 further deposed that in July, 1998, at the time of Teej, they had demanded more dowry but they were made to understand not to harm Seema. This demand of more dowry remain unfulfilled because of which the appellant and his family members continued to harass Seema and ultimately they killed Seema by administering poison on 28.3.1999.

In reply to the argument advanced by the counsel for the appellant, it was submitted that Seema made a telephone call on 10.4.1996 to the respondent herein saying that the appellant had demanded more dowry. Thereafter, the respondent along with Parkash Chand and Sohan Lal went to the house of the appellant on 21.4.1996 and gave them articles wroth Rs.20,000/- to the appellant. It is pertinent to mention here that the trial Court had rightly observed that even if the accused be away, there is no

reason why the telephonic call could not be made from outside.

It was further reiterated by the respondent that the deceased made a telephone call to the respondent herein on 26.3.1999 alleging that her husband and parents-in-law were conspiring to kill her. It has come in cross-examination of the respondent herein/complainant that as Vidhan Sabha Sessions was going on, therefore, leave could not be granted to him for 27.3.1999, although it was a Saturday but he was put on duty due to Session of Vidhan Sabha. As already stated, Parkash Chand died on 19.6.1999 and Sohan Lal died on 9.5.2000. It is pertinent to note here that examination for PW-1, the respondent herein, was made on 22.5.2000. As both the above said persons died before the said date, they could not be examined as witnesses.

There is no substance in the argument of the learned counsel appearing the appellant that the interested evidence of the parents of the deceased has not been supported by independent evidence or witness of the locality while the stand of the defence has been that the deceased Seema was never harassed or tortured by the appellant or by any of his family members for demand of dowry. Likewise, there is no substance in the submission of the learned counsel appearing for the appellant that there is no demand of dowry by the appellant or by any of his family members soon before the death of Seema. The evidence discussed, as in paragraphs supra, would clearly go to show that this submission has no force.

Section 304B was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. By the same Amendment Act, Section 113B has been added in the Evidence Act, 1872 for raising a presumption. It reads thus: "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 purpose of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."

Once the three essentials under Section 304B as referred to in paragraphs supra (page 10) are satisfied the presumption under Section 113-B would follow. This rule of evidence is added in the Statute by amendment to obviate the difficulty of the prosecution to prove as to who caused the death of the victim. Of course, this is a rebuttable presumption and the accused by satisfactory evidence can rebut the presumption. In the instant case, the appellant could not rebut the presumption, and the prosecution, even without the aid of this presumption under Section 113-B proved that the appellant was responsible for the death of the deceased Seema. Hence, the conviction of the appellant for the offence under Section 304B I.P.C. is only to be confirmed.

Our attention was also drawn to Section 498A. In our view, Sections 304B and 498A are not mutually exclusive. They deal with different and distinct offences. In both the sections, 'cruelty' is a common element. Under Section 498A, however, cruelty by itself amounts to an offence and is punishable. Under Section 304B, it is the dowry death that is punishable and such death must have occurred within seven years of the marriage. No such period is mentioned in Section 498A. Moreover, a person charged and acquitted under Section 304B can be convicted under Section 498A without a specific charge being there, if such a case is made out.

In the instant case, the Trial Court convicted the appellant for the offence punishable under Section 304 B and sentenced him to undergo imprisonment for a period of 10 years and to pay a fine of Rs. 2,000/- or in default to undergo further rigorous imprisonment for a period of three months. But unfortunately, 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. The punitive clause of Section 304 B Dowry Death has already been extracted in paragraph supra.

Section 304 B 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 wholly illegal.

The learned Counsel for the respondent contended that no fine could be imposed as part of the punishment, the direction to pay a fine of Rs. 2 lakhs is in accordance with the Section 357(c) of the Cr. P.C. Section 357 is an enabling provision by which the Court can give direction to the effect that when passing judgment, sentence imposed for payment of fine can be recovered and applied either for defraying the expenses properly incurred in the prosecution or in payment to any person as compensation for any loss or injury caused by the offence, when compensation can be recoverable by such person in a Civil Court. Section 357(1) is applicable in cases where fine forms the part of the sentence whereas under Section357(3), the Court can direct the convicted person to pay compensation even in cases where the fine does not form part of the sentence. Section 357(3) reads as follows:- " When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

The learned Counsel for the respondent contended that even if the Court is not competent to impose fine as a punishment, the Court can still order compensation under Section 357(3) of the Cr. P.C. and the direction of the High Court to pay Rs. 2 lakhs to the complainant is to be treated as the direction given under Section 357(3). The contention of the respondent's learned Counsel cannot be accepted. Hear the Trial Court had imposed a sentence of fine of Rs. 2,000/- as fine and the High Court enhanced the quantum of fine without there being any further discussion on the matter. Therefore, the direction to the appellant to pay a fine of Rs. 2 lakhs could only be treated as enhancement of fine already imposed by the Sessions Judge. Moreover, Section 357(3) contemplates a situation where the complainant has suffered any loss or injury and for which the accused person has been found prima facie responsible. There is no such finding or observation by the High Court. Of course, the daughter of the complainant passed away but the direction of the High Court to pay Rs. 2 lakhs was on the assumption that the complainant had paid Rs. 2 lakhs as part of the dowry to the appellant. There is no evidence to show that such an amount was given to the appellant. On the other hand, the appellant's learned Counsel contended that it was a love marriage between the appellant and the deceased and no dowry passed between the parties. It is also pertinent to note that Section 357(5) of the Cr.P.C. says that at the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section. The direction to pay compensation under Section 357(3) is on the assumption of basic civil liability on the part of person who committed the offence to redress the victim or his dependents by payment of compensation. The complainant could not have filed a civil suit for recovery of the dowry amount, if any, as the payment itself was illegal and prohibited under law. In any view of the matter, the direction of the High Court to pay a sum of Rs. 2 lakhs as fine was not warranted by law and we set aside the same and also further direction that the appellant to undergo default sentence.

In the result, the appeals are partly allowed confirming the sentence of imprisonment for a period of 10 years. The direction to pay a fine of Rs. 2 lakhs is set aside.

CASE NO.: Appeal (crl.) 120 of 2004

PETITIONER: Rajkumar

RESPONDENT: State of M.P.

DATE OF JUDGMENT: 14/09/2004

BENCH: P. VENKATARAMA REDDI & B.P. SINGH

JUDGMENT: JUDGMENT

P. Venkatarama Reddi, J.

The appellant herein was convicted under Section 304 Part II IPC and sentenced to suffer imprisonment for ten years and to pay a fine of Rs.10,000/-. The High Court reversed the order of acquittal of the Additional Sessions Judge, Shivpuri in Sessions Case No. 90 of 1986 in which charges were framed against the appellant under Sections 302 and 498A of IPC. The appellant was charged of committing the murder of his wife Kalpana on 23.5.1986 at about 2.00 p.m. at his house. The appellant married Kalpana in May, 1985. At the time of the incident which took place a year later, she was in the advanced stage of pregnancy.

The accused Rajkumar and his brother Shyamlal (PW15) were residing in the same building. Adjacent to this building, their elder brother Keshav Prasad Agrawal (PW17) was residing. The accused Rajkumar was occupying the third floor. It was in the bed-room of the accused that his wife was brutally attacked.

PW15•the brother of the accused invited Suresh Kumar Chokse (PW2), Gopal Krishna Dandatiya (PW5) and Mahesh Prasad Pandey (PW13) for lunch on that crucial day. At about 2.00 p.m., after hearing some noise and cries they went to the upper floor of the building and found the wife of the accused lying almost naked with face down in a pool of blood in the bed room with injuries all over the body. PW15 went inside the room and asked her as to what happened. She replied "Ve Mar Gaye" (the literal translation of 'Ve' being 'they'). The mother of the accused, who was in the 2nd floor, told PW13 while weeping that some altercation was going on upstairs.

The victim succumbed to the injuries even before she reached the hospital. The postmortem examination of the body was done by PW3 at Shivpuri District Hospital at about 4.00 p.m. on the date of incident. He noticed two incised wounds•one 'L' shaped over parietal region of scalp, the vertical limb of wound measuring 4 cm. x 5 cm. x scalp deep and horizontal limb being 2 cm. x = cm x scalp deep. Two adjacent incised wounds were present over posterior and middle part of frontal region of scalp. Contusions over many parts viz., right shoulder, left eyebrow, left arm, right and left thighs, dorsum of left hand extending upto left shoulder and a railway track contusion of 6 cm. x 2 cm. over lateral aspect of right thigh were found. Horizontal abrasion of 4=" x =" over left side of chest just below rest of left clavicle and another abrasion of 3 cm. x 1 cm. over right anterior auxiliary line at 7th and 8th rib level were also found. Dark red fresh clotted blood was present around the wounds. The examination of uterus showed a well grown foetus with fully developed male baby which was found destroyed. PW3 expressed the view that the cause of death was shock due to hemorrhage from various injuries sustained by her. In cross examination, he clarified that hemorrhage due to injuries 1 & 2 resulted in death and that no fracture of skull has been found and no injury to the brain was noticed. However, immediate unconsciousness could be caused due to injuries 1 & 2. They were not of such a nature that would cause immediate death. He opined that injuries 1 & 2 would have been caused with a sharp-edged weapon and it cannot be caused by a hammer or by article 'O' (iron pipe/rod). PW4, another Medical Officer also stated that the cut wounds mentioned as injuries 1 & 2 could be caused with a sharp-edged weapon.

The brother of the deceased (PW1) lodged the report to the police at 3.00 p.m. and the FIR was registered on that basis. In the report, he stated that at about 2.00 p.m. he got information from PW2, with whom he was employed, that his brother-in-law Rajkumar had beaten his sister and her condition was serious and that she was taken to hospital. He added that at the hospital also he came to know through others that the accused had beaten his sister. Thus, he clearly incriminated the accused in the

report given to the police. Then the investigation was started by PW21. He had called PW10•the Scientific Assistant, who prepared site plan and inspection notes, according to which there were extensive blood-stains on walls, clothes, table and mongri. PW21 seized the wooden mongri and the other blood-stained articles found inside the room which was the scene of offence. As seen from Ext.P.8, the wooden piece ('mongri', used while washing clothes) is of the length of one foot and width of three inches. PW21 arrested the accused on the next day i.e. on 24.5.1986 and at the instance of the accused an iron pipe of the length of two feet, round in shape at one side and flat at another side was seized from the bath room. It was noted in the seizure memo (Ext. P.19) that blood was present at the flat side of the seized iron pipe. Though PW21 stated in his deposition that iron rod and wooden piece were seized at the same time, it is clear from Ext. P.19 & P.8•seizure memos, that only the iron pipe was seized after the arrest of the accused. On the same day, the I.O.(PW21) having found traces of blood on the body of the accused, took the accused to Forensic Science Laboratory's mobile unit and the dry blood scrapings were collected by the in-charge of the mobile unit (PW10). It may be mentioned at this stage that the reports of F.S.L. in regard to seized articles etc., have not been produced for reasons best known to the prosecution. The Investigating Officer also recorded the statements of various witnesses including PW17•Keshav Prasad (the elder brother of the accused) and PWs 2, 5, 13, 15 and others. Surprisingly, the younger sister of the deceased(PW8), who allegedly came to the house in the morning of 23.5.1986 and met the deceased and accused, and her mother were examined about ten days later. In fact, PW8 denied that she ever gave the statement to police. The accused, in the course of his examination under Section 313 either answered the questions in the negative or made bare denial. There was no eye-witness to the incident.

All the witnesses who were produced for unfolding the prosecution case, in particular PWs 2, 13, 15 and 17 were declared as hostile witnesses by the prosecution after their chief examination in part. The trial Court, on an elaborate consideration of the circumstantial evidence including the medical evidence, held that the participation of the accused in the crime was not established beyond reasonable doubt. The learned Sessions Judge found no evidentiary basis for the prosecution case in regard to harassment or ill-treatment of the deceased for dowry or otherwise. No other motive was found against the accused. The trial Court held that the alleged dying declaration made before the hostile witnesses was doubtful. The recoveries on the basis of disclosure statements were not satisfactorily established. The circumstances proved by the prosecution were not at all sufficient to fix the guilt on the accused. Therefore, the trial Court gave the benefit of doubt to the appellant.

The High Court disagreed with the findings of the trial Court and found that the circumstantial evidence was complete enough to unmistakably point the hand of the accused in the crime. The High Court while affirming the view of the trial Court that there was no previous animosity or motive to kill the wife, gave the following reasons for holding that the circumstances established by the prosecution formed a complete chain to prove beyond doubt the involvement of the accused:

The deceased was seriously injured within the room in which she used to live with her husband. The accused was last seen with the deceased by PW8•the sister of the deceased, at about 9.00 a.m. The elder brothers of the accused•PWs15 and 17 claimed that the accused was at the saw mill at the time the incident took place and on being informed he came home and wept embracing the dead- body. No independent witness was examined by the accused to show his presence at the saw mill. The accused himself did not come forward with any such version. The accused said nothing in his reply under Section 313 Cr.P.C. as to how the deceased was injured inside their room. The accused had maintained silence on this crucial aspect. No explanation was given for the presence of dried up blood on his chest and arm which was scrapped out by PW10 for examination. A false theory of robbery and fatal assault by some stranger was sought to be set up by PWs 15 & 17, but it was totally unbelievable. There were many circumstances to indicate that it could not have been a case of robbery. PW2 deposed that the deceased had stated that "he had beaten me" and that PW2 was definite that the deceased had not referred to any stranger but to her husband only. The same thing was said by PW5.

Coming to the last observation in the above para, we must say that it is contrary to the evidence on record. In making such observation, the High Court had either referred to the statement under Section 161 recorded by the police or the High Court evidently misread the deposition. What was stated by PWs 2 & 5 was that Kalpana, on being questioned by Shyamlal (PW15), stated that "they have given beatings" (ve mar gaye). It is true that the plural expression "Ve" is often used by ladies as a respectful term while

referring to the husband. But it is not possible to say definitely that the said expression was used not in the normal plural sense but with reference to her husband. In this context, it is to be noted that there is no evidence to the effect that the deceased Kalpana used to refer to her husband in that manner. The High Court, on a wrong reading of the depositions of PWs 2 & 5, construed the utterance of the deceased referred to above, virtually as a dying declaration made by the deceased within the hearing of PWs 2 & 5 implicating the appellant.

The second factor that weighed with the High Court was the 'last seen' evidence of PW8 coupled with the non- explanation of the injuries on the wife while in bed-room. PW8, as already stated, was allegedly examined long after the incident and no explanation was given for such belated examination, as pointed out by the trial Judge. In fact, she denied having made any statement to the police earlier. Be that as it may, the evidence of PW8 does not advance the prosecution case much. During the long gap of 4= hours in the day time, there was a reasonable possibility of the accused leaving the house to attend to his work or for any other purpose. In fact, PW15•the brother of the accused who was declared as hostile witness, set up the version that the accused was working at the saw mill at the crucial time but it was not substantiated further. The accused did not, in the course of his examination under Section 313 Cr.P.C., clarify whether he was at the house or elsewhere. He just denied the knowledge of the incident. Though it is not safe to act upon the version given by PW15, yet it was the duty of the prosecution to establish that the accused had or necessarily would have remained at the house around the time when the attack took place. The 'last seen' evidence of PW8, even if believed, cannot be pressed into service by the prosecution on account of the long time gap, that too during day time. Barring the evidence of PW8 who claimed to have seen the accused at 9.00 a.m. at his house, there is no other evidence to establish the presence of the accused in the house proximate to the time of occurrence. Therefore, the vital link in this behalf is missing in the case.

The High Court harped on the fact that the theory of robbery sought to be set up by PW15 was inconsistent with all probabilities and therefore it was apparently a false plea. But it does not absolve the prosecution of the burden to connect the accused with the crime. The circumstantial evidence should be so overwhelming as to exclude the hypothesis of the innocence of the accused. Unfortunately, such circumstantial links are lacking in the present case. Moreover, the prosecution even failed to adduce evidence as to the subsequent conduct of the appellant, which could have provided one of the links in the chain of circumstantial evidence. It is not the case of the prosecution that the appellant was not seen in the house or in the hospital soon after the incident.

One of the circumstances relied upon by the High Court was the presence of the dried up blood traces on the chest and arm of the accused. Though the scrapping of blood was done by PW10 on the day of appellant's arrest, the laboratory report has not been produced. It is contended by the learned counsel for the appellant that finding the blood traces a day after the incident seems to be wholly unrealistic. However, it is not necessary to examine this aspect further in the absence of the blood analysis report.

Amongst the main prosecution witnesses, PW5 was one witness who was not treated hostile by the prosecution. His evidence has been referred to in another context, supra. None of the facts stated by him in the deposition would lead to an inference that the accused had committed the crime. On the other hand, his evidence as well as the evidence of the Investigation Officer reveals that any outsider had easy access to the third-floor of the building where the accused and his wife are living. Above all, no motive has been proved or seriously suggested for inflicting fatal injuries on the pregnant wife whom the accused married a year back. In a case based on circumstantial evidence, this factor also should be kept in view.

In this state of evidence, the High Court should not have disturbed the findings reached by the trial Court on an elaborate consideration of the evidence adduced by the prosecution. It is not a case in which it could be safely said that the view taken by the trial Court was clearly unreasonable or perverse and against the settled principles of standard of proof and evaluation of evidence in a criminal case.

We are, therefore, of the view that the conviction of the appellant on the charge under Section 302 I.P.C. cannot be sustained though suspicion looms large against the accused. The material witnesses turning hostile and deficient investigation•the common maladies afflicting the criminal justice system have irretrievably shattered the prosecution case leaving the Court with no option but to acquit the accused.

We therefore allow the appeal affirming the verdict of acquittal given by the trial Court. The appellant shall be released from prison forthwith.

CASE NO.: Appeal (crl.) 978 of 2004

PETITIONER: Nirmal Jeet Kaur

RESPONDENT: The State of Madhya Pradesh and Anr.

DATE OF JUDGMENT: 01/09/2004

BENCH: ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT: J U D G M E N T (Arising Out of S.L.P. (Crl.) No. 3917 of 2003

ARIJIT PASAYAT,J.

Leave granted.

Protection to the respondent no.2 Dr. Harminder Singh Bhawara under Section 438 of the Code of Criminal Procedure 1973 (in short the 'Code') is assailed by the appellant.

A brief reference to the factual aspects would suffice.

Appellant and respondent no.2 entered into a wedlock on 11.5.1997. Alleging that she has been subjected to physical and mental torture for not satisfying the demand for dowry, a complaint was lodged at Women Police Station, Jabalpur (Madhya Pradesh) on 24.2.2003 by the appellant. She alleged commission of offences punishable under Sections 498A and 506 read with Section 34 of the Indian Penal Code 1860 (for short the 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (in short the 'Dowry Act') against respondent no.2 and some of his relatives. On 29.4.2003 respondent no.2 filed an application for protection in terms of Section 438 of the Code before the High Court of Madhya Pradesh, Jabalpur Bench, which was registered as Misc. Crl. Case No. 2890/2003. By order dated 15.5.2003 the High Court disposed of the application to the following directions:

"(i) That the petitioner shall make himself available to the police for investigation in connection with the above offences as and when required in this behalf;

(ii) That the petitioner shall not, directly or indirectly, tamper with the prosecution evidence.

(iii) The petitioner may approach the appropriate court within the period of four weeks for regular bail."

It appears that respondent no.2 applied for regular bail before the Judicial Magistrate, First Class, Jabalpur, which was rejected. On 5.6.2003 prayer for bail was made before the Sessions Court, Jabalpur, but that also was rejected. On 7.6.2003 respondent no.2 filed an application in terms of Section 439 of the Code before the High Court. On 12.6.2003 the matter was listed before the vacation Judge. The matter was adjourned to 16.6.2003 when the impugned order was passed.

The same reads as follows:

"This Court on 15.5.2003 in M. Cr. C.No. 2890/2003 allowed the application for bail for a period of four weeks. Looking to the nature of the case, the application of ad-interim anticipatory bail is hereby allowed on the condition of furnishing a personal bond of Rs.20,000/- with one surety of the like amount to the satisfaction of the station Officer In-charge concerned."

According to the appellant M. Cr. C no.3697/2003 which was filed in terms of Section 439 of the Code is still pending. The case diary was called for and in M.(Crl.)P. No.2734/2003 the order as quoted above has been passed.

According to the learned counsel for the appellant the impugned order is clearly at variance with the earlier order dated 15.5.2003. By the said order the application in terms of Section 438 of the Code was disposed of and four weeks time was granted to respondent no.2 for making application in terms of

Section 439 of the Code. The period was over by the time the High Court passed the subsequent order. It is a blanket order extending the ad-interim arrangement indicated in the earlier order. Since the period indicated in the earlier order was over and the respondent no.2 is not in custody in terms of Section 439of the Code, the order is clearly not maintainable. Learned counsel for the State of Madhya Pradesh supported the stand of the appellant.

Per contra, learned counsel for the respondent No. 2 submitted that in view of what has been stated in K.L. Verma v. State and Another (1996 (7) SCALE 20), protection given by the High Court is clearly in order. It was submitted that for the purpose of making an application in terms of Section 439 of the Code, when the same is pursuant to an order passed on application under Section 438 of the Code, it is not necessary that the applicant should be in custody.

Sections 438 and 439 operate in different fields. Section 439 of the Code reads as follows:

"439. (1) A High Court or Court of Session may direct –

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section; (b) that any condition imposed by the Magistrate when releasing any person on bail be set aside or modified." (underlined for emphasis)

It is clear from a bare reading of the provisions that for making an application in terms of Section 439 of the Code a person has to be in custody. Section 438 of the Code deals with "Direction for grant of bail to person apprehending arrest". In Bal Chand Jain v. State of M.P. (1976) 4 SCC 572) it was observed that the expression "anticipatory bail" is really a misnomer because what Section 438 contemplates is not an anticipator bail, but merely an order directing the release of an accused on bail on the event of his arrest. It is, therefore, manifest that there is no question of bail unless a person is arrested in connection with a non-bailable offence by the police. The distinction between an order in terms of Section 438 and that in terms of Section 439 is that the latter is passed after arrest whereas former is passed in anticipation of arrest and become effective at the very moment of arrest. (See Gur Baksh Singh v. State of Punjab (1980) 2 SCC 565).

In Salauddin Abdulsamad Shaikh v. State of Maharashtra (AIR 1996 SC 1042) it was observed as follows:

"Anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed and that is the reason why the High Court very rightly fixed the outer date for the continuance of the bail and on the date of its expiry directed the petitioner to move the regular court for bail. That is the correct procedure to follow because it must be realised that when the Court of Sessions or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted". (Emphasis supplied)

In K.L. Verma's case (supra) this Court observed as follows:

"This Court further observed that anticipatory bail is granted in anticipation of arrest in non- bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed. It was, therefore, pointed out that it was necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. By this, what the Court desired to convey was that an order of anticipatory bail does not enure till the end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to

determine the bail application. In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. To put it differently, anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire." (Emphasis supplied)

The reference to this Court's observation as quoted above was to Salauddin's case (supra).

The grey area according to us is the following part of the judgment in K.L. Verma's case (supra) "or even a few days thereafter to enable the accused persons to move the Higher Court, if they so desire".

Obviously, the requirement of Section 439 of the Code is not wiped out by the above observations. Section 439 comes into operation only when a person is "in custody". In K.L. Verma's case (supra) reference was made to Salauddin's case (supra). In the said case there was no such indication as given in K.L. Verma's case (supra), that a few days can be granted to the accused to move the higher Court if they so desire. The statutory requirement of Section 439 of the Code cannot be said to have been rendered totally inoperative by the said observation.

In view of the clear language of Section 439 and in view of the decision of this Court in Niranjan Singh and Anr. v. Prabhakar Rajaram Kharote and Ors. (AIR 1980 SC 785), there cannot be any doubt that unless a person is in custody, an application for bail under Section 439 of the Code would not be maintainable. The question when a person can be said to be in custody within the meaning of Section 439 of the Code came up for consideration before this Court in the aforesaid decision.

The crucial question is when a person is in custody, within the meaning of Section 439 Criminal Procedure Code? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold to an officer with coercive power is in custody for the purpose of Section 439. The word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law.

Since the expression "custody" though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in setting in which it is used and the provisions contained in Section 437 which relates to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterized as "in custody" in a generic sense. The expression "custody" as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the Court of the Magistrate.

In Black's Law Dictionary by Henry Campbell Black, M.A. (Sixth Edn.), the expression "custody" has been explained in the following manner:

".....The term is very elastic and may mean actual imprisonment or physical detention....within statute requiring that petitioner be 'in custody' to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty....Accordingly, persons on probation or parole or released on bail or on own recognizance have been held to be 'in custody' for purposes of habeas corpus proceeding."

It is to be noted that in K.L. Verma's case (supra) the Court only indicated that time may be extended to "move" the higher court. In Black's Law Dictionary the said expression has been explained as follows:

"Move: to make an application to a Court for a rule or order, or to take action in any matter. The term comprehends all things necessary to be done by a litigant to obtain an order of the Court directing the relief sought."

In Salauddin's case (supra) also this Court observed that the regular Court has to be moved for bail. Obviously, an application under Section 439 of the Code must be in a manner in accordance with law and accused seeking remedy under Section 439 must ensure that it would be lawful for the Court to deal with the application. Unless the applicant is in custody his making application only under Section 439 of the Code will not confer jurisdiction on the Court to which the application is made. The view regarding extension of time to "move" the higher Court as culled out from the decision in K.L. Verma's case (supra) shall have to be treated as having been rendered per incuriam, as no reference was made to the prescription in Section 439 requiring the accused to be in custody. In State through S.P. New Delhi v. Ratan Lal Arora (2004) 4 SCC 590) it was held that where in a case the decision has been rendered without reference to statutory bars, the same cannot have any precedent value and shall have to be treated as having been rendered per incuriam. The present case stands at par, if not, on a better footing. The provisions of Section 439 do not appear to have been taken note of.

"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All E.R. 293, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 (in short the 'Constitution') which embodies the doctrine of precedents as a matter of law. The above position was highlighted in State of U.P. and another v. Synthetics and Chemicals Ltd. and another (1991) 4 SCC 139). To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.

For making an application under Section 439 the fundamental requirement is that the accused should be in custody. As observed in Salauddin's case (supra) the protection in terms of Section 438 is for a limited duration during which the regular Court has to be moved for bail. Obviously, such bail is bail in terms of Section 439 of the Code, mandating the applicant to be in custody. Otherwise, the distinction between orders under Sections 438 and 439 shall be rendered meaningless and redundant.

If the protective umbrella of Section 438 is extended beyond what was laid down in Salauddin's case (supra) the result would be clear bypassing of what is mandated in Section 439 regarding custody. In other words, till the applicant avails remedies upto higher Courts, the requirements of Section 439 become dead letter. No part of a statute can be rendered redundant in that manner.

In the aforesaid background, the protection given to the respondent no.2 by the High Court while the application under Section 439 of the Code is pending is clearly unsustainable. Respondent no.2 would surrender to custody as required in law so that his application under Section 439 of the Code can be taken for disposal. We are very sure that the High Court will take up the matter for disposal in accordance with law immediately after the respondent no.2 is in custody as required under Section 439 of the Code. We make it clear that we are not expressing any opinion on the merits of the matter.

The appeal is allowed to the extent indicated.

CASE NO.: Appeal (crl.) 904 of 2004

PETITIONER: Y. Abraham Ajith & Ors.

RESPONDENT: Inspector of Police, Chennai & Anr.

DATE OF JUDGMENT: 17/08/2004

BENCH: ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT: J U D G M E N T (Arising out of SLP(Crl.)No. 4573/2003)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Madras High Court whereby the appellants' prayer for quashing proceedings in CC 3532 of 2001 on the file of the Court of XVIII Metropolitan Magistrate Saidapet, Chennai, by exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') was rejected. Background facts sans unnecessary details are as follows :

Respondent no.2 as complainant filed complaint in the Court of the concerned magistrate alleging commission of offences punishable under Sections 498A and 406 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 4 of the Dowry Prohibition Act, 1961 (in short the 'Dowry Act'). The magistrate directed the police to investigate and after investigation charge-sheet was filed by the police. When the matter stood thus, the appellants filed an application under Section 482 of the Code before the High Court alleging that the concerned magistrate has no jurisdiction even to entertain the complaint even if the allegations contained therein are accepted in toto. According to them, no part of the cause of action arose within the jurisdiction of the concerned Court. The complaint itself disclosed that after 15.4.1997, the respondent left Nagercoil and came to Chennai and was staying there. All the allegations which are per se without any basis took place according to the complainant at Nagercoil, and therefore, the Courts at Chennai did not have the jurisdiction to deal with the matter. It was further submitted that earlier a complaint was lodged by the complainant before the concerned police officials having jurisdiction; but after inquiry no action was deemed necessary.

In response, learned counsel submitted that some of the offences were continuing offences. The appellant no.1 had initiated proceedings for judicial separation, the notice for which was received by her at Chennai and, therefore, the cause of action existed.

The High Court unfortunately did not consider rival stands and even did not record any finding on the question of law raised regarding lack of jurisdiction. It felt that legal parameters were to be considered after a thorough trial after due opportunity to the parties and, therefore, the factual points raised by parties were not to be adjudicated under Section 484 of the Code.

In support of the appeal Mr. T.L. Viswanatha Iyer, learned senior counsel, submitted that the approach of the High Court is clearly erroneous. A bare reading of the complaint would go to show that no part of the cause of action arose within the jurisdiction of the Court where the complaint was filed. Therefore, the entire proceedings had no foundation.

In response, learned counsel for respondent no.2-complainant submitted that the offences were continuing in terms of Section 178(c) of the Code, and therefore The Court had the jurisdiction to deal

with the matter.

Section 177 of the Code deals with the ordinary place of inquiry and trial, and reads as follows:

"Section 177 : ORDINARY PLACE OF INQUIRY AND TRIAL:

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common law rule referred to in Halsbury's Laws of England (Vol. IX para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which read as follows:

"Section 178 PLACE OF INQUIRY OR TRIAL

(a) When it is uncertain in which of several local areas an offence was committed, or (b) where an offence is committed partly in one local area and partly in another, or (c) where an offence is continuing one, and continues to be committed in more local areas than one, or (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

"All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in Purushottamdas Dalmia v. State of West Bengal (AIR 1961 SC 1589), L.N.Mukherjee V. State of Madras (AIR 1961 SC 1601), Banwarilal Jhunjhunwalla and Ors. v. Union of India and Anr. (AIR 1963 SC 1620) and Mohan Baitha and Ors. v. State of Bihar and Anr. (2001 (4) SCC 350), exception implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same Court. No such exception is applicable to the case at hand.

As observed by this Court in State of Bihar v. Deokaran Nenshi and Anr. (AIR 1973 SC 908), continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee (1997 (5) SCC 30). There the allegations related to commission of alleged offences punishable under Section 498A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.

The crucial question is whether any part of the cause of action arose within the jurisdiction of the concerned Court. In terms of Section 177 of the Code it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is therefore not a stranger to criminal cases.

It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned magistrate had no jurisdiction to deal with the matter. The proceedings are quashed. The complaint be returned to respondent No.2 who, if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law. The appeal is accordingly allowed.

CASE NO.: Appeal (crl.) 554 of 2004

PETITIONER: Raj Kumar Jain & Anr.

RESPONDENT: Kundan Jain & Anr.

DATE OF JUDGMENT: 29/04/2004

BENCH: N Santosh Hegde & B P Singh.

JUDGMENT: J U D G M E N T

(Arising out of SLP (Crl.) No. 5035/2003)

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

This appeal arises out of an order made by the High Court of Judicature at Madras whereby the High Court allowed the criminal miscellaneous petition filed by the first respondent herein and cancelled the anticipatory bail granted to the appellants herein. Brief facts necessary for disposal of this appeal are as follows :

The first appellant herein was married to the daughter of the first respondent on 17.4.2000. Second appellant is the father of the first appellant. Both are residents of Bombay. The said marriage lasted hardly for 14 days and the estranged wife Dimple Jain started living separately. While the first appellant being a doctor was stationed in Bombay, after separation his wife, came to Chennai to her parents' house and started living there. The relationship between the two parties deteriorated with the first appellant filing a case against the first respondent alleging an offence under section 307 IPC on 22.8.2001 at Tirunelveli. Immediately thereafter on 11.9.2001 Dimple Jain left for London for further studies and started residing there. On 13.11.2002 the first appellant filed a divorce petition which is now pending. A month later i.e. on 13.12.2002 the first respondent herein filed a complaint in Chennai alleging offences under section 498A IPC and section 4 of the Dowry Prohibition Act even though at that point of time his daughter Dimple Jain was in London. On coming to know of the said complaint the appellants moved an application for grant of anticipatory bail before the High Court of Judicature at Madras, which came to be allowed by an order made by the said court on 3.2.2003. One of the terms and conditions of the grant of said anticipatory bail was that the first appellant Raj Kumar Jain should stay at Chennai and report to the Police at C-5, All Woman Police Station, Kothawalchawady, Chennai, everyday at 10 a.m. barring Sundays for a week, and other petitioners including the second appellant herein should report to the said Police as and when required. It is stated pursuant to the said order, the appellants herein and other persons who sought the anticipatory bail surrendered before the concerned court and obtained bail as directed by the High Court. It is also contended by the appellants that as required in the said order granting bail by the High Court, the appellants herein reported to the Police everyday between 12.2.2002 and 18.2.2002. Since it was the direction of the High Court that the first appellant should remain in Chennai for a week, per force, he had to be at Chennai during this period, therefore, his father, the 2nd appellant also stayed in Chennai. It is further alleged that on 17.2.2003 an application for cancellation of bail was filed under section 439(2) of the Criminal Procedure Code before the High Court, alleging that the appellants herein had gone to the house of one Harish Bhuva on 15.2.2003 and abused and threatened the said person not to give evidence in the case in which he happened to be a witness. On this application for cancellation of bail, the High Court, accepting the allegations made by the first respondent, by the impugned order, cancelled the anticipatory bail granted in favour of the two appellants. As stated above, it is against the said order the appellants have preferred this appeal. The High Court in the impugned order while cancelling the anticipatory bail observed thus :

"After careful consideration of the rival submissions, this Court is of the considered view that it is a fit case, where the anticipatory bail granted in favour of respondents 1 and 2 has to be cancelled. It is

contended by the learned counsel for State that a complaint was lodged by one of the witnesses stating that these respondents 1 and 2 threatened him on 17.02.2003 not to depose against them and it is also further pertinent to note that they have not cooperated with the respondent No.3/police to investigate the case properly and file a charge sheet. I am of the considered view it would be suffice to cancel the anticipatory bail granted in favour of respondents 1 and 2. Accordingly, the anticipatory bail granted in favour of respondents 1 and 2 in Crl.O.P. No.3066 of 2003 on 3.2.2003 is hereby cancelled. This petition is ordered accordingly."

It is seen as per the said observations of the High Court in the impugned order, it accepted the allegation made by Harish Bhuva that the appellants had approached him on 15.2.2003 and had administered the threat. Mr. Sanjay Parikh, learned counsel for the appellants, contended the relationship between the parties having been strained so much and the appellants having obtained anticipatory bail on the condition that they would remain in Chennai for a week and during that period report to the concerned Police Station everyday, would never have dared to violate the conditions of bail. He contended that it was with the sole intention of seeing that the appellants were arrested and kept in jail at least for a few days, the application for cancellation of bail was filed within 6 days of the grant of anticipatory bail. He submitted a careful perusal of the sequence of allegations made against the appellants would show that the said complaint of administering threat to said Harish Bhuva is wholly false. He submitted the court while making the impugned order did not bear in mind the legal principles applicable for cancellation of bail and blindly accepted the allegations made by the respondent relying on the affidavits filed by said Harish Bhuva and the investigating officer though in the counter affidavit filed by the appellants they had clearly established that these allegations cannot be true. Mr. Sidharth Dave, learned counsel appearing for the respondents-complainant, contended that it is clear from the fact that Mr. Harish Bhuva with the first respondent had lodged an oral complaint on 16.2.2003 itself which was followed by a written complaint sent through post on 17.2.2003 that such a threat was administered. He also pointed out from the affidavit filed by the investigating Police Inspector that a complaint as alleged by the first respondent herein was made to her and she had administered a strong warning to the appellants. Having heard learned counsel for the parties and perused the records, we are convinced that the impugned order of the High Court cancelling the anticipatory bail granted to the appellants cannot be sustained in law. It is an admitted fact that within 14 days of the marriage of the first appellant to Dimple Jain daughter of the first respondent herein, disputes had arisen between them and they had started living separately. There were complaints and counter- complaints between the parties which had compelled the appellants herein and 2 others to obtain anticipatory bail from the High Court. It is also an admitted fact that pursuant to the directions issued by the High Court in the said bail order, the persons who sought bail from the High Court including these 2 appellants, had surrendered before the court and offered bailbonds which was accepted by the court concerned and in furtherance of the directions issued by the High Court though appellant No.2 was not required to attend the Police Station without being summoned, he along with appellant No.1, was attending the Police Station everyday. In this background, if really a threat as alleged by Harish Bhuva was administered to him on 15.2.2003 a complaint in this regard would have certainly been lodged either on that day itself or on the next day. On the contrary, as could be seen from the records, a complaint was posted only on 17.2.2003 at about 1956 hours through speed post. Of course, there is an allegation that on 16th evening, an oral complaint was lodged but there is no record substantiating the same, except the ipse dixit of Harish Bhuva. Then again, if we read the affidavit filed by the Inspector of Police, which was 8 months after the alleged threat, it is seen that this Officer makes a complaint for the first time that the second appellant has not complied with the conditions imposed by the High Court while granting bail of appearing before the Police. This is a fact, in our opinion, far from truth. As a matter of fact, as per the order granting anticipatory bail to the appellants and two others, there was a direction only with regard to the first appellant herein to stay in Chennai for a week, others were not even required to be in Chennai but they had to report to the Police as and when required by the Police. If really the second appellant had disobeyed this direction, we would not have expected the Police Officer to condone this default and wait for nearly 10 months before making an issue of it in an application filed for cancellation of bail by the first respondent. It is further seen from the said affidavit of the Police Inspector that Harish Bhuva lodged the complaint as to the threat administered to him only on 17.2.2003. She has not stated anything about the oral complaint that is allegedly lodged by said Harish Bhuva on 16.2.2003. If we notice the allegation made in the affidavit filed by Harish Bhuva in this regard, it could be seen that he informed the first respondent about the visit of the appellant to his house and the first respondent promised him that his interest would be protected in a manner known to law but he does not state in that affidavit that he

tried to lodge an oral complaint on 16.2.2003. As notice above, in the background of the facts of this case, we find it difficult to believe that this witness would have failed to inform the first respondent of the visit of the appellants on 15.2.2003 itself and first respondent or said Harish Bhuva would have failed to lodge a complaint with the concerned Police immediately thereafter either on 15.2.2003 or 16.2.2003. The actual complaint lodged as stated above, was only on 17.2.2003 and that too was only posted at 1956 hours. This delay in lodging a complaint itself creates a doubt in our mind as to the authenticity of this complaint. In this factual background, we are of the opinion that the High Court was not justified in cancelling the bail granted. We make it clear that any expression of opinion made in this order is for the limited purpose of the disposal of this appeal only and shall not be considered as an expression of final opinion on the questions involved in the main petition. For the reasons stated above, this appeal is allowed. The impugned order of the High Court is set aside.

CASE NO.: Appeal (crl.) 81 of 1998

PETITIONER: Sakatar Singh & Ors.

RESPONDENT: State of Haryana

DATE OF JUDGMENT: 13/04/2004

BENCH: N.Santosh Hegde & B.P.Singh.

JUDGMENT: J U D G M E N T

SANTOSH HEGDE,J.

The first appellant before us is the father of the second appellant and the third appellant is the wife of the first appellant. These appellants and three others who are sisters of second appellant herein were charged for offences punishable under Sections 306 and 498A read with Section 34 IPC before the Additional Sessions Judge, Ambala who after trial acquitted accused Nos. 4 to 6 while convicted the appellants herein for offences punishable under Sections 306 and 498A of the IPC read with Section 34 IPC. The first appellant Sakatar Singh was sentenced for offence punishable under Section 306 for four years RI and a fine of Rs.500/- and in default in payment of fine to undergo further RI for three months, while he was sentenced for an offence punishable under Section 498A for two years RI and a fine of Rs.200/- and in default in payment of fine to undergo further RI for one month. The second appellant Kirpal Singh was sentenced for seven years RI for offence punishable under Section 306 IPC and a fine of Rs.500/- and in default of payment of fine to undergo further RI for three months, he was also sentenced to two years RI under Section 498A IPC and a fine of Rs. 200/- and in default in payment of fine to undergo further RI for one month. The third appellant Smt. Joginder Kaur was sentenced to undergo three years RI for offence under Section 306 and a fine of Rs.200/- and in default in payment of fine to undergo further RI for one month. While for offence under Section 498A IPC, she was sentenced to undergo RI for two years and a fine of Rs.100/- and in default in payment of fine to undergo RI for one month. The appellants herein preferred an appeal before the High Court of Punjab and Haryana at Chandigarh against the judgment and conviction of the learned Addl. Sessions Judge, Ambala being Criminal Appeal No. 322-SB/87 and the said appeal having been dismissed confirming the conviction and sentence awarded on the appellants by the Sessions Court the appellants are now before us in this appeal. The prosecution case briefly stated is as follows:-

Deceased Devinder Kaur was married to second appellant Kirpal Singh in the year 1982 and they had two issues from the said marriage a girl by name Gurdip Kaur who was two years old and a boy named Bablu aged nine months on the date of incident. The accused persons with their unmarried daughters and said Devinder Kaur with her children were living at Layalpur Basti in Ambala City. The prosecution alleges within two months of the marriage of the second appellant to said Devinder Kaur the appellants and their daughters started making unlawful demand for TV, scooter and fridge which was not fulfilled by the parents of said Devinder Kaur. It is also stated that after the birth of the second child none from the family of her in-laws i.e. family of the accused had come to see her at her maternal home situated at Landran because they were not happy with the family of Devinder Kaur for not satisfying their demands. The prosecution further alleges about nine months prior to the date of incident which happened to be on 21.5.1986 father of said Devinder Kaur died and on his death the appellants were forcing said Devinder Kaur to make a demand for share in the family property and this having not acceeded to by said Devinder Kaur she was subjected to harassment and cruelty. It is the further case of the prosecution that mother of said Devinder Kaur (PW-7) had visited the house of the appellants on 18.5.1986 when she found said Devinder Kaur in tears and during her said visit she did not seak to PW-7 since her mother-in-law would not allow her to do so. The further case of the prosecution is that on 21.5.1986 between 9 and 10 a.m. in the house of the appellants said Devinder Kaur committed suicide along with her two minor children by pouring kerosene and burning herself and the children. The prosecution alleges that A-1 took the burnt bodies of the deceased to the hospital and information in regard to this incident was conveyed to the family of Devinder Kaur through PW-12 (Ajmer Singh). On hearing the said news, PW-7 and other members of the family rushed to Ambala and on coming to know that her daughter and grand children were murdered by the appellants, the mother of the deceased

(PW-7) lodged a complaint at about 4.00 p.m. on 21.5.1986. The bodies in question were then taken to Landran the village of PW-7 and cremated there. It is also alleged that no member of the appellants family attended the last rites of the deceased. Based on the complaint lodged by PW-7 though originally a crime under Section 302 IPC was registered against the appellants, after investigation a chargesheet was filed for offences under Sections 306 and 498A read with Section 34 IPC and during the course of the trial the prosecution examined as many as 16 witnesses out of whom it relied on the evidence of PW-7 mother of the deceased, PW-8 the brother of the deceased, PW-12 a family friend of the deceased and PW-14 the maternal uncle of the deceased to establish the case of cruelty and harassment meted out to said Devinder Kaur because of which she was forced to commit suicide by burning herself along with her minor children. The trial court accepting the evidence of the said prosecution witnesses found the appellants guilty as charged while it acquitted accused Nos. 4 to 6 who were the daughters of appellant No.1 on the ground that the prosecution had not established its case as against these appellants. In appeal as stated above the High Court has agreed with the findings of the trial court. Shri Jaspal Singh, learned senior counsel appearing for the appellants contended that the trial court has proceeded on the mere ipse dixit of the four witnesses examined by the prosecution to establish the case of alleged cruelty and harassment meted out by the appellants to the deceased without really there being any legal material to prove the guilt of the appellants. He pointed out as per explanation to Section 498A of the Indian Penal Code, 'cruelty' has been defined which definition also holds good for establishing the guilt under Section 306 IPC and in the instant case except the fact that these witnesses have orally stated that there was some demand for TV, scooter and fridge as also demand for share in the property of the deceased father, no acceptable material whatsoever has been produced by the prosecution to either establish those facts or to prove that pursuant to the said demand the appellants in any manner committed any act which would have driven the deceased to commit suicide or harassed the deceased in any manner with a view to coerce her to meet the unlawful demand of the appellants. He submitted that the trial court did not look into the necessary ingredients of Section 498A and 306 IPC while coming to the conclusion that the appellants were guilty of the offence charged. It was the argument of the learned counsel for the appellants that the trial court obviously was under an impression that even a legal demand, by itself without anything more would constitute cruelty which the learned counsel submits is wholly erroneous. The learned counsel also pointed out that whatever evidence was produced by the prosecution to establish the so-called illegal demand was merely hear say and not even admissible under Section 32 of the Evidence Act, and none of the witnesses who spoke as to the demand made by the appellants had any personal knowledge about the said demand. Therefore, even in regard to the alleged demand accepted by the trial court the learned counsel submitted the same cannot be sustained because the same is based on inadmissible evidence. Coming to the judgment of the High Court which has confirmed the conviction and sentence awarded by the trial court, the learned counsel submitted that there has been no application of mind whatsoever by the High Court which is the first appellate forum and which is duty bound to re-appreciate the evidence. He pointed out that a bare reading of the judgment of the High Court would show that the same is nothing but a copy of the judgment of the trial court both in regard to the narration of facts as also in regard to the findings. Shri Vinay Kumar Garg, learned counsel appearing for the State however contended that it is clear from the evidence of PWs 7, 8, 12 and 14 that the appellants had made certain unlawful demands because of which the deceased committed suicide. It is the contention of the learned counsel that once an unlawful demand is established nothing more is required to be proved that pursuant to the demand there was any other action or overt act of cruelty. On the said basis, learned counsel submitted that the findings of the courts below being concurrent this appeal is liable to be dismissed. Having heard the learned counsel and perusing the records, we notice that since it is the contention of the appellants that the High Court being the first court of appeal on facts, has not applied its mind independently to the facts of the case and it has blindly copied the findings of the trial court, the appellants have lost the benefit of right of appeal because of which their case is prejudiced, we assuming for the time being it to be so, think at this belated stage a remand is not an appropriate remedy. Therefore, we will consider the material on record ourselves to re-appreciate the evidence adduced in this case and determine the guilt or innocence of the appellants.

The allegations against the appellants of cruelty is primarily based on the following facts :

(1) That the accused started harassing and ill treating Devinder Kaur two or three months after the marriage by demanding Television, Scooter and Fridge; (2) The family of the deceased has been paying money to the deceased in instalments to satisfy the demands of the appellants. Sometime Rs.2000/- and

sometimes Rs.3000/- were paid for this purpose; (3) After the death of the father of the deceased, the family of the deceased were compelling the deceased to make a demand for her share in the family property. (4) That after the birth of the second child the appellants did not take back the deceased and the children from her maternal home for nearly 7 months. (5) The appellants were not permitting the deceased to talk to her family members. (6) When PW-8 brother of the deceased visited her, the deceased had asked him to arrange funds to meet the demands of her in-laws and that they were harassing her because of which she was sad. In law, the prosecution has to prove the fact that the victim was subjected to cruelty or harassment, and such cruelty should be one which comes within the explanation to Section 498A which defines "cruelty".

In the above background, we will now consider the evidence led by the prosecution to establish the charge leveled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20.5.1986 which is evident from the postal seal found on the envelope which would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicates what transpired during her mother's visit to her in-laws house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit. The letter also indicates that while the deceased did not wish that her mother should visit her in-laws' place, her brother could do so which is clear from the following statement in the said letter : "Mother do not worry about me. I have make up my will power. When I go angry then I also utter a few things. Mother send brother here, you need not come because they are after your blood." In the said letter she also complained against her brother's wife accepting a Shagun of Rs.20/- from her mother-in-law and says that the same should be returned. A reading of the above letter does indicate that her relationship with her mother-in-law was not good but at the same time she herself was prone to get angry at times and was prepared to retort. In our considered opinion, this letter does not, in any manner, indicate either there was any unlawful demand from her in-laws or pursuant to such demand there was any harassment leading to cruelty. In this context, it will be appropriate for us to consider the contents of two other letters brought on record by the defence. One such latter is dated 10.3.1986 marked at Ext.DA written by PW-8 to the husband of the deceased (A-2). Of course, this is a letter written about two months before the death of the deceased. At this stage, we must note the fact that PW-8 has denied having written this letter but PW-7 the mother admits the letter being that of her son PW-8. This letter refers to the arrangement of the marriage of deceased's brother and requests the appellants to attend the marriage function. The relevant portion of the letter reads thus: "You will glad to know that the marriage of Paramjit has been fixed for 23.3.1986, Sunday. You may keep ready. We will drop letter. Pay my respect to Maserji and Massiji." It also asked A-2 to bring his sister (the deceased) and her children. This letter indicates two facts that as on 10.3.1986 the relationship between the parties was still cordial and as on that date deceased and her children were in her in-laws house. The next letter which is also relied upon by the defence is marked Ex.DB dated 20.2.1986 is from the deceased to her husband (A-2) written about three months prior to the date of incident. The contents of this letter show that A-2 was corresponding with her and she was replying his letter though belatedly because of the illness of her daughter. She also requested him to reply and indicates that she was eagerly waiting for his reply. She also indicates in the said letter that she was planning to come back on Wednesday or Thursday next. The said letter further indicates that A-2 wanted her to come back within 4 or 5 days but she had overstayed in her paternal home. Ex.DA and DB prove one other fact that between 20.2.1986 and 10.3.1986 the deceased and her children had returned to the matrimonial home and the prosecution case that for 7 months after the birth of the second child, the deceased was not brought to her matrimonial home is wholly false. That apart none of these letters indicate that there was any demand from the appellants for TV, scooter or fridge. It is in this background, the prosecution primarily relies on the evidence of PWs.7 and 9, that is, the mother and brother to establish the prosecution case. We will now examine whether such allegations stand proved by the evidence of these two witnesses. PW-7 the mother in her evidence states that her daughter was married to A-2 about 4 years prior to the date of her evidence and the accused started harassing and ill treating the deceased two to three months after the marriage by demanding TV, scooter and fridge. She also says that the deceased was asked by the accused to arrange for funds and pursuant to such demand she had been sending money in instalments of Rs.2000/- sometimes and some other time Rs.3000/-. She further says that when her elder son PW-8 visited the house of the accused he had to assure them that he would arrange for their every demand item by item after the crop matured for harvesting. She then makes an omnibus statement that

Devinder Kaur (the deceased) was being harassed by her husband Kirpal Singh accused, by father-in- law Sakatar Singh, by mother-in-law Joginder Kaur and by her sister's-in- law, namely, Palvinder, Jasvinder and Kulvinder. She also makes a statement that the accused person had demanded the deceased to stake a claim for a share in her father's property which the deceased refused to do. In the cross-examination when she was asked how she came to know of these demands of the appellants for TV, scooter, fridge and money, she stated that she came to know the same from the letters written by her daughter but she failed to produce those letters because of which an adverse inference will have to be drawn. Further nowhere in her entire evidence she has stated that the deceased at any point of time had personally told her about these demands. In the absence of such material, more so because of the fact this witness herself does not say that the deceased told her orally about these demands, and the alleged letters having not been produced, this part of her evidence will have to be treated as not based on personal knowledge but as an opinion of hers, and as such the same is inadmissible in evidence.

Therefore, the prosecution cannot rely upon such evidence to base a conviction. Even the demand of the in-laws in deceased's father's property was not told to PW-7 by the deceased but PW-7 was allegedly told about this by Ajmer Singh PW-12, but PW-12 does not support PW-7 in this regard. That apart in the cross- examination when it was pointed out to her that she had not mentioned in her previous statement about this demand for inheritance in deceased father's property, she stated that she had told the Investigating Agency, but the same was not found in the said statement of hers. It is also clear from her evidence in the cross-examination that she had not even told the Investigating Agency about the demand for money in instalments as spoken to by her in her examination-in- chief. It is to be noticed further that even though she in her examination-in-chief stated that when PW-8 visited the deceased a few days before the incident in question and the deceased had complained to PW-8 about the demand by her in-laws, PW-8 in his evidence does not support PW-7 in this regard. From the above it is clear that the evidence of PW-7 is of no assistance to the prosecution to establish the fact that there was any demand, much less an unlawful demand at all by the appellants on the deceased. The trial court, in our opinion, seriously erred in placing reliance on inadmissible part of PW-7's evidence and ignoring the omissions and improvements established by the defence in the course of cross examination of PW-7.

We will now consider the evidence of PW-8 who is the brother of the deceased who in his evidence has stated that the accused had started harassing and mal-treating the deceased for more dowry and that they were complaining that she had not brought anything significant in the dowry and they expected TV, scooter and fridge in the dowry. While considering this part of his evidence, it is necessary to note that he in the latter part of his evidence has stated that these demands were made by the accused persons after his father died which was on 21.7.1985 (20 days before the birth of second child of the deceased Devinder Kaur which was on 10.8.1985). Whereas PW-7 in her evidence had stated that the demands for TV, Scooter and Fridge was made two months after the marriage of the deceased. We have noticed that the marriage of the deceased took place sometime in the year 1982 and the deceased died on 21.5.1986 and father of the deceased had died 9 months prior to the death of the Devinder Kaur which was on 21.7.1985. If the statement of PW-7 in regard to these demands for TV, Scooter and Fridge is true the same was sometime in the year 1982 itself, whereas as per PW-8 the said demand was after August, 1985, that is, after the death of the father. This contradiction in regard to the timing of the demand is a material contradiction which goes to the root of the prosecution case and the same is not considered by the trial court. This witness then states that none of the appellants, including A-2 the husband of the deceased, visited the deceased for nearly 7 months after the birth of her second child. This allegation which indicates neglect or a mental torture of the deceased by the indifferent attitude of A-2, in our opinion, is per se unbelievable because of the letter Ex.DA to which we have already referred wherein this witness himself wrote to A-2 requesting him and other members of the family to attend the wedding of his brother Paramjit. This letter was addressed on 10.3.1986 and in the said letter he specifically says to convey his respect and love to his sister and children and to bring them to the wedding which means by that time the deceased was already in her in-laws house and the allegation of PW-8 that the deceased was not taken back from her maternal home for 7 months after the delivery of the second child by A-2 stands falsified. Then again this witness is not very sure whether various demands made by the appellants were towards dowry or towards the birth of a male child because in one part of his examination he states : "The reason for their in-difference was that on the birth of the male child, they should be given something by the parents of Devinder Kaur. We asked the accused party to have patience and that we would give something after the crop ripens and the harvests done". From this part of the evidence of PW-8, we get an impression that demand for TV, scooter and fridge was

because of the birth of a male child and not as a part of dowry. This discrepancy between the evidence of PW-7 and PW-8 is also not considered by the courts below. It is to be seen from the evidence of this witness that he was on regular visiting terms with his sister and practically every Sunday or alternate Sunday he used to visit her. We find it extremely difficult to accept the post death allegation of these witnesses for the unlawful demands when the relationship between them was such that the appellants were invited for every function in the house of PW-7 and they attended those functions. PW-8 was a regular visitor to the house of the accused and inspite of all that the appellants would indulge in such activity of cruelty and harassment which would compel the deceased to commit suicide. From the above discussion of the evidence of this witness, we are unable to come to the conclusion that the prosecution has established the allegation of demand made by these appellants. The next witness whose evidence requires consideration by us is PW-13, Kulwant Singh, a family friend. He in his evidence stated that during his life time the father of the deceased used to tell him that the deceased Devinder Kaur was sad and unhappy after the marriage and she was being harassed and ill-treated on account of bringing insufficient dowry. He also stated before the court that the deceased's father used to tell him that the accused were demanding more dowry that is TV, scooter, fridge etc. The defence had objected to this answer of the witness on the ground that this witness was trying to prove the statement of a deceased person. This objection was overruled by the Court on the ground that the witness was deposing about the fact from his knowledge which he had acquired in his routine life. We do not agree with the trial court that what was being spoken to by this witness in regard to harassment and ill treatment on account of insufficient dowry by the witness was a fact which he had known personally, because he was actually referring to the statement of the deceased father of Devinder Kaur and not to a fact based on his personally acquired knowledge. After the said objection was raised, this witness tried to import some personal knowledge by stating that he had an occasion to meet the deceased Devinder Kaur at Banur in Rajpura Tehsil of Patiala Distt. where per chance he met the deceased when deceased mentioned to him that she was on way to her in-laws but was not sure what was in store for her there. This witness also says that the deceased further mentioned that after the death of her father and after mutation of her father's property was sanctioned, the bitterness between the sides had increased. We have no doubt that this is a statement made by the witness only to improve upon his earlier inadmissible statement. This is clear from the answer given by this witness in the cross- examination when he states that the police did not enquire from him in the hospital at the time of death of Devinder Kaur nor he had volunteered to mention any of the above facts stated by him in his examination-in-chief to the police at that time. It is also relevant to note that his statement was recorded by the police for the first time on 25.7.1986 nearly two months after the incident. He also admits in the cross-examination that he does not remember the day, date or the month when father of the deceased mentioned to him about the ill treatment of his daughter. Even the fact of the deceased Devinder Kaur meeting this witness at Banur in Rajpura Tehsil is also highly doubtful because in the cross- examination he states that at the time when he met the deceased at the said place she was accompanied by her brother Jaspal Singh PW-8, but PW-8 does not corroborate this fact. Therefore, in our opinion, to base a conviction on the evidence of this witness would be highly dangerous.The next witness relied upon by the prosecution to establish its case is PW-14 Gurbux Singh who is the maternal uncle of the deceased. He in his evidence states that after two or three months of the solemnization of the marriage, Devinder Kaur started complaining that she was being harassed. This was confirmed to him by his brother-in-law, who was the father of the deceased Devinder Kaur. This statement again in our opinion is not admissible because he has no personal knowledge about the harassment meted out to the deceased Devinder Kaur but he was only repeated what his brother-in-law had stated to him. Then again there is a contradiction in regard to the timing of the demand which according to the information of this witness was two months of the marriage, while PW-8 specifically stated such demands started coming in after the death of his father about which we have already expressed our view herein above. PW-14 also states in his evidence that with the passage of time he learnt that the accused had asserted for a share also in the property of his brother-in-law which again is mere hear say notice of which cannot be taken for basing a conviction. In the cross-examination this witness stated that he had mentioned in his statement to the police about the aforesaid three demands made by the accused, but when confronted with his previous statement, it was noticed by the court that no such statement was made. He also admits in the cross-examination that he had no occasion to visit the in-laws of Devinder Kaur in Ambala after her marriage and he did not receive any letter or other message from Devinder Kaur or from her father or her mother or any other relation of the deceased intimating that Devinder Kaur was being harassed on account of demand for more dowry. This admission clearly goes to show that whatever he spoke in the examination-in-chief about the demand made by the accused was not based on his personal knowledge but on what he heard

from others. He further admits in his cross-examination that in the statement before the police he did not say that Devinder Kaur committed suicide under pressure of the accused because of the demand of dowry. In our opinion, such evidence which is not based on personal knowledge of the witness cannot be the foundation for basing a conviction. Having discussed the oral evidence led by the prosecution, we will now consider certain circumstances relied by the trial court to hold the appellants guilty of the offences charged. These circumstances have already been discussed briefly by us hereinabove but since the trial court has placed considerable reliance on these circumstances, we think it appropriate to deal with the circumstances once again somewhat elaborately. One such circumstance taken note of by the trial court is based on an allegation made by PWs.7 and 8 that A-2 did not go to the parental house of the deceased Devinder Kaur after her second delivery for nearly 7 months which circumstance according to the trial court, indicated the indifference of A-2 towards the deceased because of the fact that the family of the deceased did not fulfil his and his family's demands. In our opinion, a perusal of the evidence led by the prosecution in this regard itself shows that this is a non-existent circumstance. The second child was born on 10.8.1985. According to the evidence of PWs.7 and 8, A-2 did not come to their house for 7 months after the birth of this child which would mean that till about March, 1986 A-2 did not visit his in-laws nor did he take his wife and children to his own house. This statement is clearly disproved by the documentary and other oral evidence found in the record. Ex. P.28, a letter written by deceased Devinder Kaur to A-2 which itself shows that A-2 wanted her and the children to come back to the house of A- 2 at the earliest but she could not come because of the illness of her first child. She indicated in the said letter that she would come as soon as the child gets well. Thus a reading of this letter Ex.P.28 shows that it is not because of A-2 that her stay was prolonged in her mother's house. Ex. DA a letter written on 10.3.1986 by PW-8 to A-2 shows that by then deceased and her children were already in the house of A-2 and PW-8 wanted A-2 and his family along with the deceased and her children to attend the wedding of his younger brother which was fixed for 23.3.1986. If really deceased Devinder Kaur and their children were still in the house of her mother the question of PW-8 requesting A-2 to bring them for the wedding and conveying his love and respect to them would not have arisen. As a matter of fact it has come in evidence that the entire family of A-2 along with the deceased had attended the wedding of the younger brother of PW-8. Thus it is clear from the prosecution case itself that the allegation of neglect as made out in the evidence of PWs.7 and 8 is wholly incorrect. Next circumstance relied by the trial court as noted hereinabove is that the accused had made a demand for a share in the property of deceased Devinder Kaur's father. Like the earlier circumstance we have dealt with this somewhat briefly while discussing the oral evidence but at the cost of repetition we think it necessary to further discuss this aspect once again. The material in support of this allegation is found in the evidence of PWs.7, 8, 13 and 14. While discussing their evidence we have noted that even according to the prosecution none of these witnesses except PWs.8 and 12, had ever been told by Devinder Kaur personally about this demand. So far as PW-7 is concerned she stated that she came to know of this demand through PW-12 Ajmer Singh but Ajmer Singh has not supported PW-7 in this regard. PW-7 had not stated to the Police also in her previous statement about this part of the demand. Therefore it is clear that this witness is trying to improve her case for the first time in the court. Similar is the evidence of PW-14 Gurbax Singh, the uncle of the deceased who also makes a reference to this demand which he allegedly came to know from the father of the deceased. This witness too has not stated before the Police that such a demand was made by the accused when his statement was recorded by the Police. Therefore, even this witness has unabashedly tried to improve his evidence before the court. So far as PW-13 Kulwant Singh is concerned he too did not have any personal knowledge of this demand and says in his evidence that he came to know of this demand through deceased Devinder Kaur herself at Banur in Rajpura Tehsil when he met her during a chance meeting there. This witness says that at that point of time PW-8 the brother of the deceased was also present but PW-8 does not support this evidence of PW-13. That apart this witness was present at the time when the dead bodies were brought to the hospital and when the Police arrived and registered a case but did not volunteer any statement to the Police. His statement was recorded only on 25.7.1986 nearly 2 months after the incident hence in our opinion it is not safe to place any reliance on his evidence also. It is of some importance to note here PW-8 the brother of the deceased in his evidence does not state anything about this demand for a share in his father's property. Therefore in our opinion this allegation of pressurising the deceased into demanding a share in her father's property, the prosecution has failed to establish. Hence this circumstance also does not support the prosecution case. The next circumstance relied by the trial court is the fact that these accused persons did not attend the funeral of the deceased after their bodies were released from the hospital. From their absence at the time of the funeral, the trial court has drawn an inference against the appellants which according to the court indicated the guilty conscience of the appellants. The trial court

herein failed to take note of the fact that in the first information report lodged with the police by the family of the deceased the appellants and other members of the family who have since been acquitted, were accused of murdering the deceased and her children. A case in this regard was also sought to be registered. PW-14 who is the maternal uncle of the deceased and also a retired senior IAS Officer in his evidence stated : "My statement before the police then was that Devinder Kaur and her two children had been murdered by the accused by setting fire to them. This was the information which was given to me that day." In such a situation when a murder charge is levelled against an accused, it is hardly possible to expect the accused to be present at such funeral. Therefore, this circumstance also cannot be taken as an incriminating circumstance or a circumstance which corroborates the other evidence led by the prosecution against the accused. It is based on these erroneous inferences drawn on unproved facts and placing reliance on statements of interested witnesses whose evidence has not stood the test of cross-examination, the trial court came to a wrong conclusion as to the guilt of the accused persons. It is to be noted that 3 letters Ex. P-28, DA and DB which though not very proximate in time clearly show that there was no demand as has been alleged by the prosecution by the accused and the contents of the said letter clearly show that the allegation made after the death of Devinder Kaur of dowry demand or harassment leading to cruelty is unsubstantiated. For all these reasons we are of the opinion that the trial court committed serious error in coming to the conclusion that the prosecution had established its case against the appellants.

There is no need for us to discuss the reasons given by the High Court independently because we are in agreement with the argument of learned counsel for the appellants that there has been no application of mind by the High Court which is evident from a perusal of the judgment of the said court. The learned counsel has taken us through paragraphs after paragraphs of the judgment of the High Court including the conclusions which, in our opinion, are nothing but paraphrasing of the judgment of the trial court without any application of mind whatsoever. So much so even factual errors committed by the trial court have been faithfully copied by the High Court e.g. the trial court at one place erroneously recorded that the deceased Devinder Kaur had given birth to two female children (See P.19 of the trial court) This error is also copied by the High Court in its judgment (See Page 56 of the High Court). The High Court failed to notice its legal responsibility of discussing the evidence independently and recording its findings on the basis of such independent assessment of its own, because it is the first court of appeal on facts. The reasons given by us for rejecting the findings of the trial court, therefore, should ipso facto apply to reject the finding of the High Court if the same could be called a finding at all.

For the reasons stated, this appeal succeeds. The judgments and sentences passed by the courts below are set aside. If the appellants are on bail, their bail bonds shall stand discharged. If they are in custody, they shall be released forthwith.

CASE NO.: Appeal (crl.) 384 of 1998

PETITIONER: The State of Andhra Pradesh

RESPONDENT: Raj Gopal Asawa and Anr.

DATE OF JUDGMENT: 17/03/2004

BENCH: DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT: J U D G M E N T

ARIJIT PASAYAT, J.

The State of Andhra Pradesh has questioned legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court holding respondents to be not guilty of the alleged offences for which the Trial Court had convicted them i.e. offences punishable under Section 304B and Section 498A of the Indian Penal Code 1860 (for short 'the IPC'). Three persons faced trial relating to the alleged suicidal death of one Mangala (hereinafter referred to as 'the deceased'). A-3 was her husband, while A-1 and A-2 were her brother-in-law and mother-in-law respectively. During the pendency of the appeal before the High Court, A-2 expired and the appeal was held to be abated so far she was concerned.

Accusations which led to the trial were as follows:

The deceased and A-3 were married on 6.7.1989. Admittedly, the accused committed suicide at about 11.30 a.m. on the date of occurrence i.e. 2.4.1990. The accused persons took her to the hospital where she was declared to be dead. The Inspector of Police sent a complaint to the SHO to register a case. FIR was registered and investigation was undertaken. On completion of investigation, charge sheet was placed and the accused persons faced trial. They pleaded innocence. To further the prosecution version 10 witnesses were examined while to substantiate its plea of innocence, accused persons examined 12 witnesses. The Trial Court found that the evidence of PWs 2, 3, 4 and 6 about the demand of dowry made by A-1 and A-2 was cogent and credible. A-3 was held guilty as he extended tacit support, albet indirectly. Placing reliance on the evidence of PWs 2, 3, 4 and 6 it was held that the demand of dowry has been clearly established. Though it was noticed that there was no direct evidence of A-3, the husband making any demand of dowry, his silence was construed to be an act of endorsing the demand and he was, as noted above, held guilty.

In the appeal before the High Court the primary stand taken was that there was no evidence to show about any agreement or demand for payment of dowry before the marriage. Even if any subsequent demand was made as alleged, that cannot bring in application of Section 304B IPC. It was further submitted that no grievance has been ever made before DW-1, the eldest member of the family of the accused persons about the alleged demand. It was the case of PWs 2, 3, 4 and 6 that any demand was made before the marriage. The High Court by the impugned judgment held that on the grounds urged by the accused persons, conviction cannot be maintained. With reference to a decision of the Andhra Pradesh High Court in Ayyala Rambabu v. State of Andhra Pradesh (1993 (1) ALT (Crl.) 73) it was held that to constitute "dowry", the demand should be made directly or indirectly, either at the time of marriage, or before the marriage or at any time after the marriage in connection with the marriage of the parties. If there was no agreement between the parties to give or take any property or valuable security or where the property or valuable security has been given or taken but thereafter further amounts are demanded after the marriage, such demands will not fall within the meaning of dowry. So far as A-3 is concerned, it was held that there was no evidence of his having ever demanded dowry.

Mr. G. Prabhakar, learned counsel for the State submitted that the legal position has not been properly appreciated by the High Court. The view taken that subsequent demand does not constitute dowry is clearly untenable. Further, the conclusion that the demand of dowry has not been established merely because no grievance was made before the father-in-law (DW-1) cannot be a ground to discard the credible evidence of PWs 2, 3, 4 and 6.

In response, learned counsel for the accused- respondents submitted that the view taken by the High Court both on the interpretation of the term "dowry" and the factual aspects is correct. Further in order to attract application of Section 304B, there must be a proximity link of the demand with the alleged suicide. In the absence of any evidence in that regard, the conviction has been rightly set aside. Further, there being no demand of any dowry by the respondent (A-3), the judgment of the High Court so far as he is concerned, does not suffer from any infirmity.

Sections 304B and Section 498A read as follows:

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

Explanation • For the purpose of this sub-section 'dowry' shall have 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."

"498-A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation • For the purpose of this section 'cruelty' means •

(a) any wilful conduct which is of such a nature as is 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."

The term "dowry" has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') as under:-

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

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include 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 declared 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.

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

Explanation to Section 304-B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is : what is the periphery of the dowry as defined therein ?

The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in Pawan Kumar and Ors. v. State of Haryana (1998 (3) SCC 309). The offence alleged against the respondents is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

"113-B: Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman 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 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th 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 wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. 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 304-B IPC). (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.

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC 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 expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and

only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. 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 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. 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, toindicate 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 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.

The above position was highlighted in Hira Lal and Ors. v. State (Govt. of NCT), Delhi (2003(8) SCC 80) and in Vidhya Devi and Anr. v. State of Haryana (JT 2004 (1) 609).

Their accusations have been clearly established so far as A-1 is concerned. The evidence of PWs 2, 3, 4 and 6 are clear, cogent and trustworthy. They have categorically spoken about the demand as made by A-1 and A-2. Therefore, the High Court was not justified in holding that no demand was made. Learned counsel for the accused-respondent submitted that there is no definite evidence about demand soon before the death. In view of the fact that the death occurred within the very few months of the marriage, and the evidence of PWs 2, 3, 4 and 6 that shortly before the deceased committed suicide, demand of dowry was made, the plea is untenable. The accusations clearly stand established so far as A-1, respondent no.1 is concerned. So far as accused A-3 is concerned, there is no evidence that he ever made any demand of dowry. The inference that he had extended tacit approval for the demand is based on mere surmises and conjectures without any material to substantiate it. Therefore, the acquittal so far he is concerned, does not call for any interference, though for reasons different from those indicated by the High Court.

In the ultimate result the appeal is allowed so far respondent no.1 - A-1 is concerned while it is dismissed so far as respondent no.2 - A-3 is concerned. Custodial sentence of 7 years would meet the end of justice for respondent no.1 - A-1. He shall surrender to custody to serve remainder of sentence. Bail bonds of respondent no.2 - A-3 be cancelled.

The appeal is allowed to the extent indicated.

CASE NO.: Appeal (crl.) 609 of 1997

PETITIONER: Hans Raj

RESPONDENT: State of Haryana

DATE OF JUDGMENT: 26/02/2004

BENCH: N. Santosh Hegde & B.P. Singh.

JUDGMENT: JUDGMENT

B.P. Singh, J.

In this appeal by special leave the appellant Hans Raj has impugned the judgment and order of the High Court of Judicature of Punjab and Haryana at Chandigarh dated January 21, 1997 in Criminal Appeal No.633 • SB of 1986 affirming the judgment and order of the learned Additional Sessions Judge, Kurukshetra dated September 24, 1986 convicting and sentencing the appellant to seven years rigorous imprisonment and a fine of Rs.300/- under Section 306 I.P.C. We have carefully perused the judgments of the learned Additional Sessions Judge and the High Court and we are constrained to observe that the High Court while disposing of the appeal did not even apply its mind to the facts of the case. A disturbing feature noticed by us is that the High Court merely repeated paragraphs after paragraphs from the judgment of the learned Additional Sessions Judge as if those conclusions were its own, reached on an appreciation of the evidence on record. Many of the paragraphs are word from word borrowed from the judgment of the learned Additional Sessions Judge without acknowledging that fact. We are, therefore, left with the impression that the High Court failed to apply its mind to the facts of the case as it was required to do, and was content with repeating what was stated in the judgment of the Trial Court. In these circumstances we found it necessary to carefully scrutinize the evidence on record since the High Court even though the first court of appeal failed to do so.

The case of the prosecution is that the wife of the appellant, namely, Jeeto Rani committed suicide on 24.8.1986 on account of the cruelty and harassment meted out to her by the appellant herein.

The case of the prosecution is that in the year 1982 the appellant married Jeeto Rani, daughter of Munshi Ram, PW-2. It is also not in dispute that Naro, sister of the appellant was married to Fateh Chand, PW-3 the brother of the deceased. The appellant lived in village Kheri Sahidan with the deceased while Naro and Fateh Chand resided in the house of Munshi Ram, PW-2 at village Laha Majri. The appellant was blessed with a daughter only seven months before the death of Jeeto. On August 24, 1986 Munshi Ram, PW-2 father of Jeeto (deceased) lodged the FIR which was recorded by ASI Chaman Lal, PW-5 of Police Station Ismailabad at 2.50 p.m. The allegations in the FIR were to the following effect.

The appellant was addicted to 'Bhang' and did not pay any attention towards his domestic affairs. Whenever Jeeto attempted to prevent her husband from taking 'Bhang' she used to be assaulted by him. Jeeto (deceased) had reported this matter to her parents but they all persuaded her to go back to her matrimonial home. On Friday last the appellant and Jeeto (deceased) came to the house of Munshi Ram (PW-2) when the appellant stated that he would not keep Jeeto (deceased) with him because his sister Naro was being harassed by Fateh Chand, PW-3, the brother of Jeeto (deceased). Munshi Ram and members of his family persuaded the appellant not to do so but Jeeto (deceased) was frightened and refused to accompany her husband. The appellant and Jeeto (deceased) stayed at the house of Munshi Ram for two days and on the third day with great difficulty Munshi Ram, PW-2 persuaded his daughter Jeeto to accompany the appellant to her matrimonial home. It was alleged by Munshi Ram in the FIR that the appellant had told them that since Fateh Chand, PW-3 was harassing his sister he would take revenge.

On the date of occurrence at about 10 a.m. Munshi Ram, PW-2 was informed by one Shana Ram that Jeeto was seriously ill and asked him to reach village Kheri immediately. The informant alongwith his brothers and others reached village Kheri and found that his daughter was dead. In the report he stated that he entertained a suspicion that Jeeto had committed suicide by taking poison being fed up by the

beatings and the harassment caused to her by her husband.

On the basis of the said report a case was registered and the matter was investigated by ASI, Chaman Lal, PW-5. The medical evidence on record as well as the chemical examiner's report established the fact that Jeeto died of poisoning. Apparently, therefore, the case of the prosecution was that she had committed suicide by consuming poison. The record also discloses that Jeeto was treated by Dr. Ram Gopal Sharma when she was in a precarious condition at the house of the appellant. He gave her an injection and thereafter she was shifted to his clinic at Ismailabad on his advice. It appears that thereafter Dr. Kaushal also treated her but her life could not be saved.

In the FIR only two allegations were made by Munshi Ram, PW-2, firstly, that there were frequent quarrels, sometimes resulting in physical assault, between the appellant and Jeeto on account of his being addicted to consumption of 'Bhang', and secondly, that the appellant was aggrieved by the fact that his sister was not being properly looked after by his brother-in-law namely, Fateh Chand, PW-3.

Munshi Ram was examined by the prosecution as PW-2. In his deposition he stated that the appellant was addicted to liquor and bhang and whenever Jeeto attempted to persuade him to desist from this addiction he used to misbehave with her and even beat her. According to him, 8-9 days before her death Jeeto had come to his house alongwith the appellant. The appellant had then complained to him that Jeeto was not good looking and therefore he was not going to take her back and that he intended to perform a second marriage. However, on their persuasion he stayed at his village for 2-3 days whereafter he persuaded his daughter Jeeto to accompany the appellant to village Kheri. From his cross-examination, it appears that the case sought to be made out at the Trial that the appellant was addicted to liquor was not stated in the course of investigation. Similarly, Munshi Ram, PW-2 had not stated in the course of investigation that the appellant had complained that Jeeto was not good looking. It also appears that in the course of investigation he had not stated about Jeeto having told him that the accused had been beating her.

Fateh Chand, PW-3 also deposed in favour of the prosecution and he also alleged that the appellant was addicted to liquor and bhang and that he had been told by Jeeto that the appellant did not want to keep her as he did not find her to be good looking. According to Fateh Chand, PW-3 whenever Jeeto came to their house she used to complain about the treatment meted out to her by the appellant. Even the appellant had told him that he did not like Jeeto. PW-3 further deposed that for about a year and a half after marriage the appellant and Jeeto lived in harmony. In his statement before the police in the course of investigation there is no mention about the fact that the appellant was addicted to liquor. PW-3 also admitted that in his statement before the police he did not state that the accused had told him that his sister was not good looking, nor did he state that his sister had told him that the accused felt aggrieved because she was not good looking.

The case of the prosecution rests mainly on the evidence of these two witnesses namely, Munshi Ram, PW-2 and Fateh Chand, PW-3. In his examination under Section 313 Cr.P.C. the appellant stated that the case against him was false. He had kept his wife Jeeto with love and affection and had never proclaimed that she was not good looking. She had given birth to a daughter but thereafter she had been keeping unwell because of some tension in her mind on account of birth of a daughter. Only four days prior to her death she had come from her parents' house and thereafter she started vomiting. Dr. Ram Gopal Sharma was called from Ismailabad and he gave her an injection. Thereafter Jeeto was removed to the clinic of Dr. Ram Gopal. Dr. Kaushal was also consulted but he did not give any hope. The parents of Jeeto were thereafter informed through a messenger but by the time they came Jeeto had died.

The learned Additional Sessions Judge noticed the fact that Munshi Ram, PW-2 had considerably improved his case at the trial. The allegations that the appellant used to taunt Jeeto because she was not good looking, or that he was going to re-marry, or even regarding beatings to her, were all in the nature of improvements. His statement at the trial that once the deceased had come to his house in injured condition did not find mention in his statement recorded by the police in the course of investigation. The allegation that the appellant was addicted to liquor also did not find recorded in the statement of the witnesses before the police. However, the Trial Court was greatly impressed by the fact that this was clearly a case of suicide and the appellant had maintained complete silence as to what was the conversation between him and the deceased immediately before the deceased was found in a

precarious condition. According to the Trial Court, law enjoined upon the husband an obligation to explain the circumstances in which his wife committed suicide. Reliance was placed on the presumption under Section 113-A of the Indian Evidence Act. It observed that in the absence of any suitable answer from the defence a presumption arose under Section 113-A of the Indian Evidence Act. Therefore, the Court found that though there were improvements in the statements of the prosecution witnesses, it could not be disbelieved that the appellant treated his wife with cruelty. Taking the aid of Section 113-A the trial court concluded that a presumption of law arose in the given circumstances. Since Jeeto was led to commit suicide, it must have been due to the abetment on the part of the appellant, since the story set up by the appellant in his statement under Section 313 Cr.P.C. was totally unbelievable. Surprisingly, the Trial Court observed that the appellant's remark that his wife was not good looking and to his liking and that he was going to re-marry was "a gravest of abetment on the part of the husband leading to the wife to commit suicide". The trial court while recording this conclusion completely lost sight of its own finding that this part of the story was clearly an improvement and that no such allegation was made either in the FIR or in the course of investigation. All that was stated in the FIR and in the course of investigation was that the appellant was aggrieved of the fact that his sister Naro was not properly treated by Fateh Chand, PW-3 who was the brother of Jeeto. The only other allegation found in the FIR is that the appellant was addicted to 'Bhang' and whenever Jeeto objected to it, it resulted in a quarrel and sometimes physical assault on Jeeto.

Having gone through the evidence on record we are satisfied that the prosecution has sought to improve its case at the trial by introducing new facts and allegations which were never stated in the course of investigation. All that appears to have been satisfactorily established is that the appellant was addicted to 'Bhang' and that frequent quarrels took place when his wife Jeeto objected to his taking 'Bhang'. Though it is stated in the FIR that the appellant had complained about the treatment meted out to his sister Naro by Fateh Chand, there is evidence of Fateh Chand, PW-3 himself that he was living happily with Naro, his wife, who happened to be the sister of the appellant. One fails to understand why the appellant should make such an allegation when his sister was living happily with Fateh Chand, PW-3. As to the frequent assaults on the deceased by the appellant and her reporting the matter to her father and brother, there appears to be no reason why, if these facts were true, no such allegation was made in the course of investigation by the prosecution witnesses PWs 2 and 3. We are, therefore, satisfied that the prosecution has been able to establish its case only to the extent that the appellant was addicted to 'Bhang' which was opposed by his wife Jeeto and on account of such opposition there used to be frequent quarrels and may be on some occasions Jeeto was assaulted by the appellant. Beyond this we find the other allegations made by the prosecution to be unacceptable.

The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 I.P.C. with the aid of the presumption under Section 113 A of the Indian Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 I.P.C. Section 107 I.P.C. lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more person in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113-A of the Indian Evidence Act under which the Court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113-A further clarifies that cruelty shall have the same meaning as in Section 498A of the Indian Penal Code which 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".

Unlike Section 113-B of the Indian Evidence Act, a statutory presumption does not arise by operation of

law merely on proof of the circumstances enumerated in Section 113-A of the Indian Evidence Act. Under Section 113-A of the Indian Evidence Act the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the Court is not bound to presume that the suicide had been abetted by her husband. Section 113-A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of word cruelty in Section 498-A I.P.C. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The law has been succinctly stated in RameshKumar Vs. State of Chhattisgarh (2001) 9 SCC 618 wherein this Court observed :

"This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression • "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says • "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it".

The same principle has been reiterated in Sanju Alias Sanjay Singh Sengar Vs. State of M.P. (2002) 5 SCC 371.

In the State of West Bengal Vs. Orilal Jaiswal and Anr. (1994) 1 SCC 73 this Court observed : "We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Bater v. Bater [(1950) 2 All ER 458,459] has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a

reasonable and just man for coming to a conclusion considering the particular subject-matter".

Having regard to the principles aforesaid, we may now advert to the facts of this case. The learned Trial Judge took the view that since the wife of the appellant committed suicide and since the appellant did not disclose as to what conversation preceded her committing suicide and that there were allegations of cruelty against the appellant, it must be presumed under Section 113-A of the Indian Evidence Act that the suicide had been abetted by him. We do not find ourselves in agreement with the finding of the Trial Court, having regard to the facts and circumstances of this case and our finding that the prosecution is guilty of improving its case from stage to stage. The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told his wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW-3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW-3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence therefore we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306 I.P.C.

The Trial Court found that there was material to support the charge under Section 498-A I.P.C. but did not pass a sentence under Section 498-A I.P.C. on a finding that the same will be overlapping, the appellant having been found guilty of the offence under Section 306 I.P.C. Having regard to the facts of the case, we are satisfied that though the prosecution has failed to establish the offence under Section 306 I.P.C., the evidence on record justifies the conviction of the appellant under Section 498-A I.P.C.

We, therefore, set aside the conviction and sentence passed against the appellant under Section 306 I.P.C. and acquit him of that charge, but we find the appellant guilty of the offence under Section 498-A I.P.C and sentence him to undergo rigorous imprisonment for one year on that count. This appeal is partly allowed. The appellant was admitted to bail by this Court. His bail bonds are cancelled, and he must surrender to his sentence, subject to the provisions of Section 428 of the Code of Criminal Procedure.

CASE NO.: Appeal (crl.) 920 of 1997

PETITIONER: Nallam Veera Stayanandam & Ors.

RESPONDENT: The Public Prosecutor, High Court of A.P.

DATE OF JUDGMENT: 24/02/2004

BENCH: N Santosh Hegde & B P Singh.

JUDGMENT: JUDGMENT

SANTOSH HEGDE, J.

The appellants before us were charged of offences punishable under section 304B and 498A IPC and were sentenced to undergo RI for a period of 7 and 2 years respectively by the by the Sessions Judge, East Godavari District at Rajahmundry, Andhra Pradesh. Said conviction and sentence of the appellants came to be confirmed by the High Court of Judicature, Andhra Pradesh at Hyderabad by the impugned judgment. Now they are in appeal before us. Prosecution case necessary for disposal of this appeal is as follows :

The first appellant before us is the son of appellant Nos.2 and 3 while appellant No.2 is the husband of appellant No.3. The first appellant was married to one Aruna Kumari which took place on 18.5.1990. It is the prosecution case that Aruna Kumari was the daughter of the sister of A-1. Thus, in reality Aruna Kumari had married her own maternal uncle. It is the further case of the prosecution that the appellants were constantly making demand from the parents of Aruna Kumari which, inter alia, included 1/3rd share in a house belonging to the parents of Aruna Kumari. Thus, the appellants were constantly harassing said Aruna Kumari. The prosecution in support of its case relating to harassment relied upon Ex. P-4 to P-6 • letters written by Aruna Kumari between 12th May and 5th August, 1991. Prosecution also relies upon a Panchayat Ex. P-8 which took place and an agreement Ex. P-9 executed by the accused 1 and 2 undertaking to look after Aruna Kumari properly and not to harass her. It is the further case of the prosecution that on 12.7.1992 at about 3 p.m. deceased doused herself with kerosene and set herself afire due to which she suffered severe burn injuries. She was then taken to Government Hospital, Kothapeta, where noticing her condition the doctor sent a requisition to the Munsif Magistrate to make arrangements to record her dying declaration. Consequent to this request the Munsif Magistrate, PW-13 proceeded to the Government Hospital and recorded the dying declaration Ex. P- 28 at about 5.30 p.m. He states that before recording he asked the opinion of the doctor PW-10 whether the patient was in a fit condition to make a declaration and on being told that she was in a fit condition, he started recording her declaration. He states that while recording the said statement, he asked the Police and others attending on the patient to leave the room and he recorded her statement in a question and answer form. A perusal of this document Ex. P-28 shows that the deceased stated that she suffered the burn injuries accidentally because of a stove burst while she was preparing tea. There is nothing in this dying declaration to indicate even remotely that she committed suicide. Soon after this dying declaration was recorded, PW-11 who was then working as a Head Constable in Kothapeta Police Station, having received an intimation from the hospital, proceeded to the hospital and recorded another statement of the deceased marked as Ex. P-25. This statement also contains a certificate of PW-10 as to the condition of the patient to make a declaration. As per this dying declaration, the deceased stated that on being unable to bear the dowry demand and harassment meted out by her husband and in-laws, she poured kerosene on herself and set herself ablaze, consequent to which she suffered burn injuries. From the record it is seen that Aruna Kumari died at about 7.30 p.m. on the same day. During the course of investigation the prosecution examined nearly 14 witnesses out of whom PWs.1 to 5 and 7 speak to the demand of dowry made by the appellants as also the harassment meted out to the deceased. Prosecution has also produced Ex. P-4 to 7 – letters written by the deceased to her parents narrating the nature of dowry demand as also the harassment. Ex. P-8 is a Memorandum drawn up by the Panchayatdars calling upon the appellants to give an undertaking to treat the deceased properly.

Ex. P-9 is an undertaking given by A-1 and A-2 to look after the deceased properly. It is on the basis of the above evidence collected during the course of investigation the appellants were charged for

offences as stated above in the Court of District & Sessions Judge, Rajahmundry who as per his judgment dated 30.3.1994 convicted all the accused persons for offences punishable under sections 304B and 498A IPC. The said conviction and sentence came to be confirmed by the High Court of Judicature, Andhra Pradesh at Hyderabad by the impugned judgment and against which the appellants herein preferred a SLP. When the said petition came up before the Court on 26.11.1996, this Court dismissed the petition of the first appellant herein while notice confined to the petition of appellant Nos.2 and 3 alone was issued. However, subsequently, by entertaining a review petition filed by the first appellant as per its order dated 29.9.1997, this Court granted leave in regard to the petitions of all the three appellants, hence, all the 3 appellants are now before us in this appeal. In this appeal, Mr. P S Narasimha, learned counsel appearing for the appellants, submitted that both the courts below erred in rejecting the first dying declaration Ex. P-28 on unsustainable grounds and further erred in placing reliance on the subsequent dying declaration Ex. P-25 recorded by a Police official which gave a different version. He also submitted that the courts below erred in finding corroboration to the contents of the dying declaration Ex. P-25 from the evidence of the prosecution witnesses. He submitted that a dying declaration recorded by a Magistrate which is in conformity with the requirements of law, should always be preferred to an extra-judicial dying declaration made to a Police Officer and that too subsequent to the recording of the first dying declaration. Learned counsel pointed out if the contents of Ex. P-28, the dying declaration made to the Munsif Magistrate are unimpeachable and if the court is satisfied, reliance can safely be placed on the contents of the said dying declaration. Any amount of evidence to the contrary could not diminish the value of such dying declaration. He submitted the fact that the deceased died of accidental burns is not only spoken to by her in unequivocal terms, the same is also supported by the entries made by the doctor, PW-10 in the information sent by him to the Police as also in the accident register Ex. P-20 and 21 which were entries and information made prior to Ex. P-28 which also shows that the deceased had suffered accidental burns. He submitted that there was a dispute between the families of the deceased and the appellants and all the witnesses who have spoken about the harassment or demand for dowry are interested persons whose evidence cannot be relied upon to discard the statement of the deceased herself as to the cause of her death. Mr. G. Prabhakar, learned counsel appearing for the State, very strongly supported the judgments of the two courts below and submitted that there is hardly any room for interference with the well-considered judgments of the two courts below. He submitted that there is no law which makes a dying declaration recorded by a Police official either inadmissible or, in any way, lesser in evidentiary value. It is his submission that courts will have to weigh the evidentiary value of these two dying declarations on their merit and if there is contradiction between the two, either reject both or choose one which is more acceptable for its evidentiary value. In the instant case, he submitted that the evidence produced by the prosecution shows that right from the beginning the appellants have been making undue demand for dowry and have also been harassing the deceased both physically and mentally which is amply evidenced by the documentary evidence as well as the oral evidence produced by the prosecution. In such a case a dying declaration which is in conformity with the said line of evidence produced by the prosecution should be accepted instead of the one which is contrary to other acceptable evidence produced in the case. We have heard learned counsel and also perused the records. It is true from the evidence led by the prosecution it has been able to establish that the appellants were demanding dowry which was a harassment to the deceased. It is also true that the death of the deceased occurred within 7 years of the marriage, therefore, a presumption under section 113B of the Evidence Act is available to the prosecution, therefore, it is for the defence in this case to discharge the onus and establish that the death of the deceased in all probability did not occur because of suicide but was an accidental death. It is for the above purpose, learned counsel for the appellants has strongly relied on the dying declaration Ex. P-28 which according to him, is free from all blemish and is not surrounded by any suspicious circumstances. We are of the opinion that if the contents of Ex. P-28 can be accepted as being true then all other evidence led by the prosecution would not help the prosecution to establish a case under section 304B IPC because of the fact that even a married woman harassed by demand for dowry may meet with an accident and suffer a death which is unrelated to such harassment. Therefore, it is for the defence in this case to satisfy the court that irrespective of the prosecution case in regard to the dowry demand and harassment, the death of the deceased has not occurred because of that and the same resulted from a cause totally alien to such dowry demand or harassment. It is for this purpose the appellants strongly place reliance on the contents of Ex. P-28, therefore, we will have to now scrutinise the circumstances in which Ex. P-28 came into existence and the truthfulness of the contents of the said document. It is the prosecution case itself that on the fateful day at about 3'O clock, the deceased suffered severe burn injuries and she was brought to the Government hospital at Kothapeta. As per the

evidence of PW-10 the doctor when she was admitted to the hospital, he sent an intimation to the Police as per Ex. P-21 and also made an endorsement in Ex. P-22, the accident register. In both these documents, he had noted that the deceased suffered accidental burn injuries due to stove burst. It is not the case of the prosecution that this entry was made by the doctor at the instance of any one of the appellants. At least no suggestion in this regard has been put to the doctor when he was in the witness box. As a matter of fact, there is considerable doubt whether any of the appellants was present at the time when the deceased was brought to the hospital and was first seen by the doctor PW-10. On the contrary, according to the doctor, a large number of relatives other than the appellants were present at that point of time when the deceased was brought to the hospital, therefore, it is reasonable to infer that the information recorded by the doctor in Ex. P-21 and 22 is an information given to the doctor either by the victim herself or by one of the relatives present there, who definitely were not the appellants. From the evidence of this doctor, we notice that anticipating the possible death he sent a message to the Munsif Magistrate to record a dying declaration and the said Magistrate PW-13 came to the hospital immediately and after making sure that all the relatives and others were sent out of the ward and after putting appropriate questions to know the capacity of the victim to make a statement and after obtaining necessary medical advice in this regard, he recorded the dying declarations which is in question and answer format. It is in this statement the deceased unequivocally stated that she suffered the injuries accidentally while preparing tea. There has been no suggestion whatsoever put to this witness when he was in the box to elicit anything which would indicate that this statement of the deceased was either made under influence from any source or was the statement of a person who was not in a proper mental condition to make the statement. From the questions put by the Munsif Magistrate, and from the answers given by the victim to the said questions as recorded by the Munsif Magistrate we are satisfied that there is no reason for us to come to any conclusion other than that this statement is made voluntarily and must be reflecting the true state of facts. The trial court while considering this dying declaration seems to have been carried away by doubting the correctness and genuineness of this document because of other evidence led by the prosecution thus, in our opinion, erroneously rejected this dying declaration which is clear from the following finding of the trial court in regard to Ex. P-28 : "Her statement made to the Magistrate which is at Ex.P-28 has been demonstrated to be an incorrect statement of fact and it appears that in the presence of the 3rd appellant, she made the statement that from the burning stove her sari caught fire while she was preparing tea." We find absolutely no basis for the two reasons given by the trial court for coming to the conclusion that the deceased's statement under Ex. P-28 is an incorrect statement. The court came to the conclusion that this statement must have been made in the presence of the 3rd appellant, a fact quite contrary to the evidence of PWs.10 and 13. On the contrary, the Munsif Magistrate specifically states that he asked everyone present and who were unconnected with the recording of the statement, to leave the room This has not been challenged in the cross-examination. Therefore, in our opinion, this part of the foundation on which the trial court rejected Ex. P-24 is non-existent. It is also seen from the above extracted part of the judgment of the trial court that it held that it "has been demonstrated to be an incorrect statement of fact". For this also, we find no basis. If the trial court was making the second dying declaration as the basis to reject the first dying declaration as incorrect then also in our opinion, the trial court has erred because in the case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there are more than one dying declaration, it is the duty of the court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. The trial court in its turn while considering Ex. P-28 observed thus : "I do not want to give much importance to the dying declaration recorded by PW.13. The deceased out of confusion or live (sic) and affection towards her husband and in-laws, who are no other than the grand parents might have stated so." With respect to the learned Judge, this finding in regard to Ex.P-28 is based on inferences not based on record. We have already noticed that none of the accused was present at the time Ex. P-28 was recorded. That apart, we fail to understand if the finding of the trial court that Ex. P-28 came into existence because of love and affection towards her husband and in-laws, is correct then why did the deceased about 10 minutes later implicate the very same persons in Ex. P-25 of having led her to commit suicide. In our opinion, unless there is material to show that the statement as per Ex. P-28 is given either under pressure of the accused or is a statement made when the victim was not in a proper state of mind or some such valid reason, the same cannot be rejected merely because it helps the defence. We have already observed even a harassed wife can get burnt accidentally in which case her death cannot be attributed to harassment so as to attract section 304B IPC. Having noticed the findings of the two courts below in regard to Ex. P-25, we will now consider the dying declaration recorded by

PW-11 as per Ex. P-25. This statement came into existence about 10 minutes after Ex. P-28 was recorded by the Munsif Magistrate. We have already expressed our doubt as to the need for recording this statement when the Munsif Magistrate on a request made by the doctor had already recorded a dying declaration as per Ex. P-28. It has come on record that when PW-11 recorded this statement, he did not take the precautions which the Munsif Magistrate took in sending the relatives of the victim out of the room. He also did not put preliminary questions to find out whether the patient was in a fit state of mind to make the said statement. It is to be noted here that the doctor in Ex. P-25 only states that the patient is conscious. In the said statement, of course, the victim had stated that she set fire to herself being unable to bear the harassment meted out to her by her husband and in-laws. This part of the statement in Ex. P-25 directly contradicts has earlier statement made to the Munsif Magistrate as per Ex. P-28. Ex. P-28 is a document which exculpates the accused person of an offence under section 304B IPC. There is no reason to disbelieve the contents of Ex. P-28 merely because it is not in conformity with the prosecution case as to the harassment meted out to the victim. The courts will have to examine the evidentiary value of Ex. P-28 on its own merit and unless there is material to show that the statement made in P-28 is inherently improbable and the same was made by the victim either under pressure from outside source or because of her physical and mental condition, the same cannot be rejected as untrue or unreliable. The Magistrate by the preliminary questions had satisfied himself that the victim was in a fit condition to make the statement. In this background, we find no reason why Ex. P-25 which was recorded by a Head Constable without following the proper procedure should be given preference. The courts below, in our opinion, have fallen in error in rejecting Ex. P-28 and preferring to place reliance on Ex. P-25; more so in the background of the fact that no suggestion whatsoever has been made either to the Munsif Magistrate or to the doctor as to the correctness of Ex. P-28. Per contra, a specific suggestion has been made to PW-11 the Head Constable that he had implicated the accused persons in Ex. P-25 at the instance of the relatives of the deceased and her thumb impression was taken subsequently. Of course, he has denied this suggestion. Be that as it may, the fact that Ex. P-25 came into existence a few minutes after Ex. P-28 and was recorded without taking necessary precautions by a Police Officer, we think it more appropriate to place reliance on Ex. P-28 rather than on Ex. P-25. If that be so, the death of the deceased will have to be related to her having suffered burn injuries accidentally and succumbed to the same. We are aware that since death of Aruna Kumari in this case occurred within 3 years of her marriage, a presumption under section 113B of the Evidence Act is available to the prosecution, but since we have accepted the contents of Ex. P-28 as true, that presumption stands rebutted by the contents of Ex. P-28. In such a case unless the prosecution is able to establish that the cause of death was not accidental by evidence other than the dying declarations, the prosecution case under section 304B IPC as against the appellants must fail. The above finding of ours, however, will not exonerate the appellants of the charge under section 498A. We have noticed from the evidence of PWs.1 to 5 and 7 as also from Ex. P-4 to 9 that the prosecution has established frequent demands for dowry as also harassment of the victim because of the non-payment of dowry. In this regard, we are in agreement with the findings of the two courts below, though we have come to the conclusion that the same finding would not assist the prosecution to base a conviction under section 304B. In our opinion the material produced by the prosecution in regard to the demand for dowry and harassment is sufficient to base a conviction under section 498A IPC. Hence while allowing this appeal and setting aside the conviction and sentence imposed by the two courts below for an offence punishable under section 304-B IPC, we confirm the sentence imposed by the courts below for an offence punishable under section 498A IPC. We are told appellants are on bail. Their bailbonds shall stand cancelled. They shall serve out the balance of sentence, if need be. Remission for the sentence already served, if any, shall be given. The appeal is partly allowed.

CASE NO.: Appeal (crl.) 193 of 2004

PETITIONER: Biman Chatterjee

RESPONDENT: Sanchita Chatterjee & Anr.

DATE OF JUDGMENT: 10/02/2004

BENCH: N.Santosh Hegde & B.P.Singh.

JUDGMENT: JUDGMENT

(Arising out of SLP(Crl.)No.4348 of 2003)

SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

Pursuant to a criminal complaint filed by the respondent-wife herein alleging offence punishable under Section 498A IPC against the appellant-husband herein being registered and cognizance taken, the said appellant on 6th October, 1999 surrendered before the Judicial Magistrate, Ranchi in Complaint Case No.78 of 1999 and sought for grant of bail. On hearing both the sides and noticing the fact that there was a possibility of compromise between the parties, the appellant herein was released on bail by the said Magistrate on his furnishing a bail bond for a sum of Rs.5,000/- with two sureties of the like amount each. On 13.1.2000, on an application made by the respondent herein alleging that the appellant is not cooperating in the compromise talk, the learned Magistrate cancelled the bail. On a revision filed against the said cancellation of bail by the appellant herein, the High Court of Judicature at Patna, Ranchi Bench on 18.4.2000 allowed the revision. While doing so it held that the court below was not justified in rejecting in cancelling the bail on the ground that the revision petitioner has adopted an indifferent attitude and was not taking any steps for normalising the relationship as contended by the respondent herein. In the said process, the High Court remanded the matter to the trial court to re-hear the matter on merit. After remand, on 30th July, 2001, the said Judicial Magistrate, Ranchi rejected the petition filed by the respondent for cancellation of bail holding that "therefore, it does not appear legally just to cancel the bail of the accused on the ground that the accused is not compromising". Being aggrieved by the said order the respondent preferred a Criminal Misc. Petition before the High Court of Jharkhand at Ranchi contending that the very basis of granting of bail to the appellant was the compromise petition filed by him to keep the respondent herein as his legally wedded wife at her matrimonial home and since the appellant has failed to adhere to this term of the compromise, the appellant has lost his right to continue on bail. Thus, the High Court by the impugned order has allowed the said petition of the respondent-wife holding, inter alia, that the appellant herein had also not appeared before the High Court inspite of the service of notice which showed that he is not willing to keep his wife in violation of the terms and conditions of the compromise petition which, according to the High Court, was the basis for the grant of bail by the trial court. In the said process, it set aside the order of the Judicial Magistrate Ranchi made on 30th of July, 2001 rejecting the prayer of the respondent for cancellation of bail. Learned counsel appearing for the appellant herein contended that the impugned order is based on factual inaccuracies as also contrary to law. He submitted that the observation of the High Court that there was a compromise between the parties which was reduced to writing and under the terms and conditions of the said compromise the appellant had agreed to keep his wife is wholly incorrect. He pointed out from the records to the contrary and that there was no such compromise arrived at between the parties. He pointed out that what was submitted to the court was only that there were negotiations going on for finalisation of the compromise. Therefore, the question of the appellant contravening the terms of the compromise did not arise at all. He also contended that assuming that there was any such violation of the terms of the compromise that cannot be a ground for cancelling the bail. He also submitted that the appellant was never served any court notice of the petition filed by the respondent in the High Court and the impugned order has wrongly noted that the appellant had been served and he remained absent. The learned counsel appearing for the respondent,

however, contended that the very basis of the grant of bail originally was on an assurance given by the appellant that he would compromise and would keep his wife with him and he having failed to fulfil the said promise made to the court, the High Court was justified in cancelling the bail because the foundation for the grant of bail was the promise made by the appellant. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law. Therefore, in our opinion, the High Court has erred in passing the impugned order.

For the reasons stated above, this appeal succeeds. The impugned order of the High Court is set aside. The appeal is allowed.

CASE NO.: Appeal (crl.) 564 of 1997

PETITIONER: Ashok Vishnu Davare

RESPONDENT: State of Maharashtra

DATE OF JUDGMENT: 10/02/2004

BENCH: N Santosh Hegde & B P Singh.

JUDGMENT: JUDGMENT

SANTOSH HEGDE, J.

Being aggrieved by the judgment of the High Court of Judicature at Bombay, the appellant has preferred this appeal. By the said judgment said High Court confirmed the conviction and sentence imposed on the appellant by the Court of Sessions Judge at Nasik for offences punishable under sections 498A and 306 IPC. Brief facts necessary for the disposal of this appeal are as follows :

The appellant herein was married to one Jayashree about 10-11 years before the death which took place on 8.5.1998. The cause of death was suicide by consuming pesticides. It is the prosecution case that about 15 days before the death of said Jayashree she had visited her parents who were staying in village Chitegaon which was a neighbouring village to the one in which the appellant and Jayashree were staying with their family namely village Konambe. During the abovesaid visit to her parents, it is stated she told her brothers that she was sent by her husband to bring a sum of Rs.5,000. It was also the case of the prosecution that she did express that her husband was mal- treating her and physically abusing her for bringing said money. On such request being made by the deceased, it is stated that her brothers told her that they will make arrangements for sending the said money. Shortly thereafter Jayashree returned to her husband leaving behind one of her sons whom she had taken along with her. On 7.5.1988 it is stated Vilas PW-6 who is the son of one of the brothers of the deceased visited village Konambe along with the son of the appellant by name Kiran whom the deceased had left behind in her parents' house but he did not bring the promised amount. It is stated that PW-6 stayed overnight at Konambe, though not in the house of the appellant, but visited the appellant's house, which is a farm-house situated in the lands belonging to the family of the appellant, on 8.5.1988 in the morning when this witness saw appellant quarrelling with the deceased and even beating her. It is stated that PW-6 then returned to his village Chitegaon and informed PW-2 Ranganath one of the brothers of the deceased about what he had seen in the house of the appellant. The prosecution further alleges that at about 2 p.m. on that day some villagers of Konambe came and told PW-2 that his sister had died. On hearing this news PW-2 and another brother of his along with some villagers went to Konambe and saw the dead body lying on a cot in front of the farm-house. Suspecting some foul play it is stated that PW-2 went to Police Station Sinnar and lodged a complaint of unnatural death of his sister, pursuant to which a case was registered and after investigation the appellant and his father by name Vishnu Anand Davare were charged for offences punishable under sections 498A and 306 read with 34 IPC before the learned Sessions Judge, Nasik and after trial the said court came to the conclusion that the prosecution while failing to establish its case against A-2 the father of the appellant herein, has established its case against the appellant, therefore, punished him for an offence punishable under section 306 IPC and sentenced him to undergo RI for 2 years and further to pay a fine of Rs.250. It further convicted the appellant for an offence punishable under section 498A IPC and sentenced him to undergo RI for one year and to pay a fine of Rs.250. The substantive sentences were directed to run concurrently.

As stated above, an appeal filed against the said conviction and sentences in the High Court of Bombay came to be dismissed.

Mr. Gaurav Agarwal, learned counsel appearing for the appellant contended that though prosecution had examined about eight witnesses and exhibited certain documents, it has failed to establish that the appellant either abetted the suicide of Jayashree or had in any manner subjected her to cruelty. The prosecution evidence in this regard, according to learned counsel, has failed to establish the required ingredients of sections 306 and 498A. Learned counsel first pointed out that if really there was any

cruelty meted out to Jayashree by the appellant then it would have been clearly mentioned in the complaint filed by PW-2 on 8.5.1988 before the Sinnar Police. He took us through the complaint and urged that nowhere in the complaint any allegation is made against the appellant in regard to he beating her or making any demand as sought to be made out subsequently in the evidence led before the court. Learned counsel submitted that if really PW-6 had noticed the appellant beating the deceased on the day she committed suicide, the said fact would certainly have been mentioned in the complaint since it is the prosecution case that PW-6 did mention this to PW-2 when he returned back from the village. Similarly he pointed out from the evidence of Sonabai PW-3, who was a neighbour of PW-2 residing in Konambe village, that the allegation of beating and the demand of Rs.5000 as stated by her before the court was not stated by her when her statement was recorded during the course of investigation by the investigating agency, hence the same should be treated as an improvement. Similarly with reference to the evidence of PW- 6, the nephew of the deceased, the learned counsel submitted that his evidence is also full of material contradictions, creating serious doubt as to his having witnessed the alleged assault by the appellant on the deceased. In these circumstances learned counsel submits that both the courts below have failed to notice these vital defects in the prosecution case hence they erred in coming to the conclusion that the prosecution has established its case against the appellant. Mr. S.S. Shinde, learned counsel appearing for the State of Maharashtra, per contra, contended that from the evidence led by the prosecution as accepted by the two courts below, it is clear that the prosecution has established beyond all reasonable doubt that the appellant was demanding money from the family of the deceased and was also physically ill-treating her to bring the money. He submitted that the concurrent finding of the two courts below does not require any interference by this Court. We will now examine whether the prosecution in this case has established beyond all reasonable doubt that the appellant in any manner abetted the suicide of the deceased so as to make his act punishable under section 306 and whether he had subjected the deceased to such a degree of cruelty or harassment to meet the monetary demand made by him as to hold him guilty of an offence punishable under section 498A IPC. As noted above, to bring these ingredients of the two sections with which the appellant was charged, the prosecution relies on the evidence of PWs.2 to 7. So far as PW-2 is concerned, we notice that in his evidence before the court he did say that the appellant used to make demand for money through the deceased which the deceased's family was meeting. He also says that 15 days prior to her death, deceased Jayashree had asked for Rs.5,000 since her husband was demanding the same. He further states that since the family did not have sufficient money at that point of time, he promised to send the money 4 or 5 days later. He also says on 7.5.1988 he sent Kiran son of the deceased who was left behind in their house by the deceased during her last visit, with his nephew PW-6 to Konambe village and when PW-6 returned from the said village on 8.5.1988 in the afternoon PW- 6 did tell him that the appellant had beaten the deceased. Therefore, it is clear this witness had the knowledge of the fact that the appellant was making the demand for money and about 15 days prior to the death of the deceased, she had come to her parental home and asked for the money which could not be paid and on the day of her death PW-6 had come to him and told him that the appellant had beaten the deceased. In spite of the same we find that in the complaint given by this witness to the Police on the very day of the death of the deceased, none of these facts has been mentioned. If really, these facts were known to PW-2, he would not have failed to mention these facts in his complaint. On the contrary in the complaint all that is stated is that two persons from the village Konambe had come to him in the afternoon of 8.3.1988 and told him that Jayashree had died. On hearing it he and his relatives went to Konambe and saw the dead body. The failure to mention any one of these facts which might have been the cause of his sister's suicide indicates that at that point of time when he gave the complaint he did not have any knowledge either of the demand for money or of harassment meted out to his sister including the beating. Further during his cross-examination he even denies the fact that PW-6 had gone to Konambe on 6.5.1988 accompanying Kiran the son of the deceased. In such circumstances we think it not safe to place reliance on the evidence of this witness. The next witness examined by the prosecution to establish its case of harassment and demand for money is PW-3 Sonabai, a resident of Chitegaon and a neighbour of PW-2. This witness does mention the fact that whenever the deceased visited Chitegaon she used to come to her house and used to complain that her husband was beating her. She also states about 8 days prior to the death of the deceased she had come to her and told her that deceased's father-in-law was demanding Rs.5,000. From her evidence it is not clear when exactly the beating referred to in her evidence had taken place. Obviously, it cannot be the beating referred to by PW-6 because PW-6 had never met her and told her about it therefore if at all her evidence is true, it could be with reference to some beating earlier during the subsistence of 11 years' marriage between the appellant and the deceased. Therefore, this part of her evidence cannot be treated as the evidence indicating the

harassment meted out to the deceased. It is also to be noticed that in her evidence, she states that deceased had told her about 8 days before her death that her father-in-law had demanded Rs.5,000 which is not the case of the prosecution. According to the prosecution the demand was being made by the husband- appellant herein. In the cross examination a suggestion is put to her that she had not told the I.O. when her statement was recorded under section 161 Cr.P.C. of these facts of harassment and demand which of course she denied. But from the above discussion as noticed by us it is clear that the evidence of this witness is insufficient to hold that the appellant had immediately prior to the death of deceased on 8.3.1988 had either beaten her or had made a demand of Rs.5,000 unless there is an acceptable corroboration on these aspects from other sources.

PW-4 is a neighbour of the appellant. He says that he had scribed two letters dated 22.1.1986 and 6.1.1987 at the instance of the deceased to her parents. According to this witness these have been exhibited as Ex. 29 and 30. A perusal of these two letters does not indicate that there was any demand for money by the appellant or for that matter from anybody from his side or about any harassment meted out to her. The letter merely states that she wanted a blouse piece and a good blanket. The letter as per Ex. 29 only states and makes a complaint that she has not been receiving any letters from her family in Chitegaon. Even in Ex.30 there is no allegation as to any harassment or demand. This letter states that she has been sick for about 8 or 10 days but not to worry about the same. But in that letter she did request one of her brothers to visit her. In our opinion, neither the evidence of PW-4 nor the two letters Ex.29 and 30 support the prosecution case in any way.

PW-5 is the wife of one of the brothers of the deceased who states in her evidence generally that the husband of the deceased was demanding money and her family was paying money from time to time. She also states that about 8 days prior to the incident in question deceased had come to their house and asked for Rs.5,000 since the same was being demanded by her husband, but the money could not be given. She further states that on his return PW-6 did tell her that there was some dispute going on between the husband and the wife. She does not state that PW-6 told her that he saw the appellant beating deceased on 8.5.1988. In our considered opinion the statement of this witness in regard to harassment and the demand for money is too general in nature to base a conviction or to treat the same as corroborating any other acceptable evidence led by the prosecution.

PW-6 is the nephew of the deceased who according to the prosecution visited the house of the appellant on 7.5.1988 with a view to drop the appellant's son Kiran who was staying for a few days with his grand-parents at Konambe. According to this witness he stayed overnight in Konambe though not in the house of the appellant. He further states that he visited the farm-house of the appellant on 8.5.1988 when he saw the appellant beating the deceased. He further states that on his return he told his father and uncle about this incident of beating. But in his cross examination this is what the witness stated :

"• At that time, Jayashri was present out of the hut and our talk taken place out of the hut. The quarrel was going on between husband and wife before I reached there. I am unable to give reason for the quarrel. Accused Ashok had beaten her before I reached there. Accused again beat her in my presence. I did tell before police "accused Ashok beat his wife because I did not take money or there was a talk about money, between myself and Jayashri and he assured Jayashri that he would send the money and Jayashri replied I should send money immediately."

This part of the statement of PW-6 clearly shows that his evidence in regard to having seen the beating of the deceased by the appellant and the demand for money is an improvement from his previous statement made to the Police. This coupled with the fact that in the complaint no such allegation has been made makes us feel that it is not safe to rely on the evidence of this witness.

PW-7 in his evidence has stated that on one or two occasions the deceased was driven out of the house because she did not bring money which is not even the case of the prosecution. The evidence of PW-7 shows that the demand for money was made by the appellant's father who was A-2 before the trial court hence we do not think it would assist the prosecution in any manner to implicate the appellant.

From the evidence of PW-8, the I.O. it is seen that PW-3 Sonabai, the neighbour of PW-2 did not tell him that the deceased had told her about the demand of Rs.5,000 and that she had heard about it. Therefore, this part of the evidence of PW-3 becomes an improvement.

From the above evidence, in our opinion, it is not possible to come to the conclusion that the prosecution has established its case beyond all reasonable doubt in regard to the charges alleged against the appellant. In our opinion, the courts below have not properly appreciated the evidence and failed to notice the glaring improvements made by the witnesses in their evidence given before the court. These improvements in our opinion materially affect the creditworthiness of the prosecution case hence it is not safe to base a conviction.

For the reasons stated above, this appeal succeeds and the same is allowed. We set aside the judgments of the two courts below, setting aside the conviction and sentence imposed on the appellant. His bail-bonds shall stand discharged.

CASE NO.: Appeal (crl.) 431 of 1997

PETITIONER: Yashoda and another

RESPONDENT: State of Madhya Pradesh

DATE OF JUDGMENT: 04/02/2004

BENCH: N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT: J U D G M E N T

B.P. Singh, J.

The appellants in this appeal are the parents of Kalicharan, who was married to Gangabai (deceased) about 4 years before the date of occurrence. Her death in circumstances not considered normal within seven years of her marriage led to the prosecution of the appellants as well as Kalicharan and eight other relatives and villagers charged variously of the offences under Sections 498A, 304B and 201 IPC. The trial of Kalicharan, husband of the deceased, was separated as he was found to be a juvenile and his case transferred to the Juvenile Court for his trial. The appellants alongwith eight other accused persons were put up for trial before the Fourth Additional Sessions Judge, Morena in Sessions Case No. 252 of 1989. The learned Sessions Judge by his judgment and order of February 4, 1992 found the appellants guilty of the offences with which they were charged but acquitted the remaining accused persons who were charged of the offence under Section 201 IPC finding no evidence to support the charge. The appellants herein were sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- under Section 498A IPC; to ten years rigorous imprisonment and a fine of Rs.1,000/- under Section 304B IPC and two years rigorous imprisonment and a fine of Rs.500/- under Section 201 IPC. The appellants challenged their conviction and sentence before the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 31 of 1992 but the High Court, finding no merit in the appeal, dismissed the same upholding their conviction and sentence.

It is not in dispute that deceased Gangabai was married to Kalicharan about 4 years before the occurrence which occurred on May 19, 1989. While the prosecution contended that the death of Gangabai occurred under circumstances otherwise than normal and she was earlier subjected to cruelty and harassment by the appellants as well as by her husband and soon before her death also she was meted out such treatment by them in connection with demand for dowry, the defence contended that Gangabai died on account of an attack of diarrhoea and vomiting, and inspite of the fact that the appellants had taken her for medical treatment to the hospital at Morena where she was treated by the doctors. According to the defence the allegation against the accused that they had made persistent demand of dowry was false and that they had been falsely implicated on account of the fact that some amount had been advanced to Shankar Lal (father of the deceased) by them which remained unpaid.

The trial court as well as the High Court have subjected the prosecution evidence to critical scrutiny and have concurrently reached the conclusion that so far as the appellants herein are concerned, the charges under Sections 498A; 304B and 201 IPC are fully established.

Shri S.K. Gambhir, Senior Advocate, appearing on behalf of the appellants vehemently contended before us that there was really no substance in the allegation made by the prosecution. He further submitted that the deceased suffered a bout of vomiting accompanied with diarrhoea and when they found that her condition was not stable, the appellants immediately removed her to the Morena Hospital where she was treated by the doctors concerned, but inspite of the their best efforts, she did not survive. He also submitted that in any event the prosecution has failed to establish the charge under Section 304B IPC since there was no evidence to prove that the deceased had been subjected to harassment and cruelty by the appellants soon before her death in connection with any demand of dowry. It, therefore, followed that the presumption under Section 304B could not be drawn against them and there was no other evidence to prove that the appellants had caused the death of deceased Gangabai.

The prosecution has examined several witnesses to prove its case which includes Lalaram (PW-3),

brother of the deceased; Kalicharan (PW-4), uncle of the deceased; Shankarlal (PW-5), father of the deceased and Ramdei (PW-7), mother of the deceased. The prosecution also examined as PW-2, Natthi Devi who was a nurse attached to the Morena Hospital. This witness was declared hostile but we shall notice her evidence at the appropriate place. The defence examined only one witness, namely • Vijay Singh (DW-1). Shri R.N. Pachori (PW-6), who partly investigated the case has also deposed with regard to the steps taken by him after he received the information about the admission of Gangabai in the Morena Hospital in suspicious circumstances.

We have carefully scrutinized the evidence on record despite the concurrent findings of fact recorded by the courts below but we find no reason to differ from the findings recorded by them.

The evidence on record disclosed that Gangabai was married to Kalicharan about 4 years before her death. At the time of marriage some amount in cash and some ornaments were given by the parents of the deceased. Gangabai went to her matrimonial home after the marriage but returned after 5-6 days. She reported to her parents and brother that her father- in- law ; mother-in-law as well as her husband were demanding a gold chain ; a ring and a phool (earing) and had threatened her that if she did not bring those items, she will not be ever sent to her parents house again. The evidence on record also establishes the fact that on two other occasions the deceased had gone to her matrimonial home and on both occasions the appellants persisted in their demand for gold ornaments and harassed the deceased and treated her with cruelty. The evidence on this aspect of the matter is consistent. The mother of the deceased namely, Ramdei (PW-7) to whom the deceased reported her sufferings in detail stated that whenever the deceased came back from her matrimonial home she told her that the appellants were demanding the ornaments and that they assaulted her and threatened her for not bringing those ornaments. They used to assault her with fists and kicks and also with a 'danda'. According to PW-7 she had seen the marks on her body supporting the version of her daughter that she was assaulted by them on account of the failure of her parents to give the ornaments demanded. Lalaram (PW-3), brother of the deceased, has also deposed on the same lines. In particular, he has mentioned that when he had gone to bring his sister from her matrimonial home, the appellants had demanded from him those three items of jewellery and he had somehow or the other managed to pacify them by assuring that their demands will be fulfilled. He has also stated about the reports made by deceased Gangabai about her ill treatment at the hands of the appellants. The evidence of Kalicharan (PW-4), uncle of the deceased is also to the same effect. He has stated that once when Lalaram (PW-3) went to bring back his sister the appellants refused to send her back on the ground that their demands had not been met. Lalaram (PW-3) came back and reported the matter to his father Shankarlal (PW-5), brother of Kalicharan. Shankarlal then persuaded his brother Kalicharan (PW-4) to go and bring the deceased and deal with the appellants in a suitable manner. According to Kalicharan (PW-4) he went to the matrimonial home of the deceased and in view of the resistance of the appellants, he had to assure them that all their demands will be met and that he will take personal responsibility for the same. It was only thereafter that the deceased was permitted to go to her parents.

The evidence of these witnesses also prove that about 15 days before the occurrence, Kalicharan, the husband of the deceased, had himself come to fetch the deceased. On that occasion also he had reiterated his demand for the gold ornaments and to him also an assurance was given by the father of the deceased Shankarlal (PW-5) that he would arrange for the said articles within a month. On the basis of the evidence of PWs. 3, 4, 5 and 7 we are satisfied that the prosecution has successfully proved its case that there was a persistent demand for gold ornaments ever since the marriage of the deceased with Kalicharan, which demand was reiterated on many occasions and the demand last made was just 15 days before the occurrence.

We shall now consider the evidence relevant to the conduct of the appellants. The defence case is that the deceased suffered a bout of vomiting and diarrhoea and was therefore removed to the Morena Hospital for treatment. It is true that the deceased was removed to the Morena Hospital for treatment on May 19, 1989. It is equally true that the appellants did not inform the parents of the deceased about her death and they came to know about it from another source. PWs. 3, 4 and 5 had rushed to the matrimonial home of the deceased but they found that her body had already been cremated in the night. There is neither any evidence nor any suggestion to the prosecution witnesses that the appellants had made any attempt to send intimation to the parents of the deceased regarding her death, nor is there any dispute that the body of the deceased was cremated on the same night and, therefore, it was

not possible to hold post-mortem examination to ascertain the cause of death.

The evidence of the nurse at the Morena Hospital, namely Natthi Devi (PW-2) is to the effect that the deceased had been brought to the hospital in an unconscious condition. She was admitted in the hospital on the basis of a slip given by the doctor. When she found that the condition of the patient was critical she immediately gave a call to the doctor on duty who responded immediately. However, within 5-6 minutes of the arrival of the doctor, namely - Dr. Srivastava, the patient died. According to her the death of the deceased took place within = an hour of her being brought to the hospital. The witness could not say what medicines were given to the deceased and what was the nature of her ailment. In fact this witness had to be declared hostile since she went back on the statements made by her in the course of investigation.

We have then the evidence of the Investigating Officer (PW-6). According to him it came to his knowledge that the deceased had been admitted in the hospital in suspicious circumstances and she had been cremated without giving information. On the basis of the said information he registered Marg No.5/1989 and proceeded to enquire into the matter. He went to the cremation ground and had seized ashes and some bones of the deceased. During enquiry he recorded the statement of the father and brother of the deceased as well as Kotwar. His enquiry revealed that the deceased had been done to death by her in-laws who had been demanding dowry and that for non fulfillment of demand the deceased used to be reprimanded and beaten. He, therefore, registered Case No. 26 of 1989 under Sections 304B ; 498A ; 201 ; 176 /34 IPC. He had arrested the appellants and some of the other accused.

The evidence on record, therefore, revea ls that the deceased was taken to the Morena Hospital in a critical condition when she was about to die and in fact she died within = an hour of her admission in the hospital. The appellants made no effort to inform the parents of the deceased about her death and on the contrary cremated the body of the deceased the same night in a suspicious manner.

Shri Gambhir seriously contended that it was for the prosecution to prove that the deceased had died in circumstances otherwise than normal. He contended that the prosecution ought to have examined the doctor and produced the relevant documents from the hospital to establish the cause of death of the deceased. We cannot uphold this contention. The prosecution has successfully established that the deceased was married to Kalicharan about 4 years before her death. The facts also reveal that the death was not under normal circumstances. There was also evidence to show that the deceased was persistently subjected to cruelty and harassment by her husband as well as by her parents in connection with demand for dowry, in particular the demand for gold ornaments. Once it is held that these facts stand established, under Section 304B IPC a presumption arises that it is a case of dowry death, and that her husband or relatives who subjected her to cruelty and harassment shall be deemed to have caused her death. No doubt this is a rebuttable presumption, but in the absence of any evidence in rebuttal, the Court may, with the aid of the presumption convict the accused of that charge. Once the prosecution proves the facts which give rise to the presumption under Section 304B IPC, the onus shifts to the defence and it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea and vomiting and that resulted in her death, it was for the defence to adduce evidence and rebut the presumption that arose under Section 304B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment and had also been treated for such ailment.

The evidence adduced by the prosecution, therefore, clearly establishes that the appellants made a persistent demand for some gold ornaments and the first demand was made when the deceased went to her matrimonial home on the first occasion and returned after 5-6 days. She complained to her mother about the treatment meted out to her. She also narrated her woes to her brother and father. The evidence of her mother Ramdei (PW-7) is clear and categoric that her daughter had been assaulted by the appellants in her matrimonial home and she had seen signs of violence on the person of the deceased. The evidence on record also discloses that on other occasions also when the deceased went to

her matrimonial home the demand was repeated. The evidence of her brother Lalaram (PW-3) and her uncle Kalicharan (PW-4) in this regard is eloquent. Even on the last occasion when she was about to leave for her matrimonial home and her husband had come to fetch her, he again made the demand but with a view to pacify him, Shankarlal (PW-5), father of the deceased, assured him that he will make necessary arrangement. While leaving her parental home, the deceased had wept and told her uncle that if the demand of the appellants was not met, they will not let her live. About 15 days after her last departure the parents of the deceased suddenly came to know that she had died. The evidence on record, therefore, clearly establishes that there was persistent demand for gold ornaments and she was being persistently ill treated by the appellants for not bringing those gold ornaments, and her death occurred in circumstances which cannot be considered to be normal.

Mr. Gambhir, however, submitted that there is no evidence to show that soon before her death she had been treated with cruelty and had been harassed by the appellants. According to him the words "soon before" in Section 304B IPC are material and there must be evidence to show that soon before her death she had been subjected to cruelty or harassment by her husband in connection with demand for dowry.

The words "soon before" found in Section 304B IPC have come up for consideration before this Court in large number of cases. This Court has consistently held that it is neither possible nor desirable to lay down any straitjacket formula to determine what would constitute "soon before" in the context of Section 304B IPC. It all depends on the facts and circumstances of the case. Learned counsel for the appellant relied upon a decision of this Court rendered by two Learned Judges reported in AIR 1997 SC 1873 : Sham Lal vs. State of Haryana and submitted that as in that case, so in the present case, there was no evidence to suggest that after the deceased went to her matrimonial home, she had been subjected to cruelty and harassment before her death. The facts of Sham Lal's case are clearly distinguishable and they have been so distinguished in the case of Kans Raj vs. State of Punjab and others : (2000) 5 SCC 207 by a Bench of 3 Learned Judges of this Court. This Court observed :-

"It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the internal should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough". (emphasis supplied)

Noticing the earlier judgment of this Court in Sham Lal case it held that the facts were distinguishable as in that case there was evidence to show that an attempt had been made to patch up between two sides for which a Panchayat was convened in which the matter was settled. The Panchayat was held about 10-15 days before the occurrence. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having been taken to the nuptial home and her tragic end.

In the instant case as well there is nothing to show that the demand had been given up or had been satisfied by the parents of the deceased. On the contrary there is evidence to prove that even 15 days before the occurrence such a demand was reiterated and while leaving for her matrimonial home the deceased had wept and told her uncle that if the demand was not met, they will not let her live. The

facts of this case are similar to the facts in the case of Kans Raj. In our view the same principle must apply. There is clear evidence on record that the demand for gold ornaments persisted and so did harassment and cruelty meted out to the deceased. Every time she came to her parents she wept and narrated her miserable plight. The last demand was made only fifteen days before her death. In these circumstances it cannot be said that there is no evidence on record to support the finding that soon before her death she was subjected to cruelty and harassment by the appellants and her husband in connection with demand of dowry.

Learned counsel also submitted that the prosecution evidence did not rule out natural or accidental death. As we have noticed above, the deceased was a young girl and there is no evidence even to suggest that she was suffering from any ailment. 15 days before her death she had gone to her matrimonial home in good health. Suddenly one day her parents came to know that she had died. Her death was therefore, clearly in circumstances which cannot be considered to be normal. If she had really died a natural or accidental death, the appellants were the best persons to disclose the relevant facts which were solely within their knowledge. Indeed when all the conditions of Section 304B were fulfilled and a presumption arose against the appellants they were required to rebut that presumption in order to successfully defend themselves. They did not do so. The evidence of DW-1 has been rightly discarded by the courts below. In these circumstances and in the absence of any acceptable evidence whatsoever, to suspect that the death may have been accidental or on account of natural causes, will be speculative. Law does not permit a Court to speculate or conjecture so as to imagine events about which there is absolutely no evidence on record. The manner in which the dead body was disposed of at night has further added to the incriminating circumstances proved against the appellants.

We are, therefore, satisfied that the prosecution has successfully proved its case against the appellants. We, therefore, concur with the view of the courts below and affirming the conviction and sentence of the appellants, dismiss this appeal.

CASE NO.: Appeal (crl.) 455 of 2003

PETITIONER: Moti lal

RESPONDENT: State of M.P. (Now Chhattisgarh)

DATE OF JUDGMENT: 20/01/2004

BENCH: Doraiswamy Raju & S. B. Sinha.

JUDGMENT: J U D G M E N T

D. Raju, J.

The above appeal has been filed against the judgment of a learned Single Judge of the Chhattisgarh High Court dated 30.1.2003 in Criminal Appeal No.931 of 1989 wherein the learned Judge, while affirming the conviction and sentence imposed on the appellant, dismissed his appeal.

The appellant, accused No.1 in Sessions Trial No.228 of 1985 on the file of the Additional Sessions Judge, Raipur, then part of the Madhya Pradesh State, is the husband of one Shakuntla Bai @ Amrika Bai having been married to each other during the year 1976-1977. The second accused Surja Bai is the wife of Rajaram, the elder brother of the appellant. Rajaram, the elder brother, was said to be residing away from the Village being a Government Servant, leaving his wife to live in the joint family house in the village where the appellant was said to have also been living with his wife. The case of the prosecution was that the appellant used to harass his wife from the beginning on the ground that she had not brought sufficient dowry and often used to pester her to bring more gold and money from her father. Whenever she used to remind the appellant that the status and economic position of her father did not permit further dowry being given as demanded, the deceased used to be not only taunted and harassed but also threatened and beaten and at times even driven out of the house. In the month of December, 1984, the appellant appears to have called Suryamani, the elder brother of the deceased, and demanded payment of Rs.3,000/- saying that if he really was interested in the welfare of his sister he must immediately pay the amount. The father of the deceased appears to have arranged for the money from his brother-in-law and through his son paid the sum to the appellant. About 3 or 4 months prior to the occurrence resulting in the death of Shakuntla Bai, the servant of the appellant appears to have, at the behest of the appellant, called the father of the deceased and when he went to the house of the appellant he told him that he did not want to keep his daughter any longer in the house and he may take her with him. On that, with great difficulties he was able to persuade the appellant and leave the deceased with her husband, in the house. Immediately thereafter during March-April when once the father of the deceased was in the house of his brother-in-law, the deceased was said to have come accompanied by a servant from the village where she was living, with broken utensils in a bag to her Uncle's house at Mahasamund, telling her father that her husband has broken all utensils saying that the brass utensils given by her father, instead of giving modern age steel utensils, have become old and, therefore, get them substituted with new stainless steel utensils. Her father, finding the pitiable condition of his daughter, has purchased new utensils from the shop at Mahasamund and sent her back with new utensils.

While matters stood thus, the ill-treatment and harassment by the appellant of his wife continued unabated also for further reason that she found out on many occasions the appellant having illicit relations with his Bhabhi Surja Bai. In the background of such events and strained relations, it appears that on 18.6.1985 in the marital home at the Village Deori the deceased consumed poison pesticide and died on the same day as a result thereof, in the house of the appellant. The vomiting made before her death, which the Police seems to have seized under a seizure memo Ex.P-7 and got tested also proved to contain pesticide. On coming to know of the occurrence at about 10.00 p.m. in the night, the father of the deceased filed the next day a written complaint to the Police on the basis of which an FIR was said to have been recorded and crime registered and investigation commenced. After completing the formalities of the investigation including the spot inspection, the seizure of the vomiting material and sending the same for laboratory test and arranging for the post mortem examination of the body, the prosecution laid charge against the appellant under Section 498-A and both the appellant and Surja Bai

under Section 306 read with Section 34, IPC. PWs.1 to 9 seem to have been examined besides marking documents and material objects for the prosecution and for the defence also witness was examined and document marked. The defence side also seems to have attempted to show that there was enough money available and no need for demanding money at any time from the complainant side existed. On consideration of the materials placed on record and the stand taken for defence, the learned Trial Judge came to the conclusion that the prosecution was able to substantiate the charges against the appellant under Section 498A as well as under Section 306 read with Section 34 and sentenced him to 3 years R.I. for the offence under Section 498A, IPC, and 7 years R.I. under Section 306, IPC, both of which to run concurrently. So far as the other accused Surja Bai, A-2, is concerned, in the absence of concrete material and the very statement of PW-1 the father of the deceased that she did not harass his deceased daughter, the learned Trial Judge acquitted her of the charge against her.

Aggrieved, the appellant alone pursued the matter, as noticed earlier, unsuccessfully before the High Court and thereafter filed this appeal. The learned counsel for the appellant strenuously contended that the materials on record are not sufficient to prove the necessary ingredients to constitute the offences for which the appellant has been charged with, and held proved. According to the plea on behalf of the appellant, there was no proper or concrete proof of the further demand for dowry as alleged or as to the payment of such amounts and that the deceased Shakuntla Bai consumed poisonous substance to commit suicide on her own, due to apparently the stomach pain with which she was said to be suffering for the past one year prior to her death. It was pointed out that once in the year 1982 also the deceased consumed rat killing pesticide though she was saved at that time and consequently the conviction of the appellant, though concurrent, was not based on acceptable evidence and consequently is liable to be set aside. The learned counsel also made a grievance about non-compliance with the provisions of Section 235(2), Cr.P.C., and relied upon the decision reported in Santa Singh Vs. State of Punjab [(1976 (4) SCC 190. Per contra, the learned counsel appearing for the respondent-State contended that the concurrent findings recorded by the courts below are well merited and borne out on the materials placed on record and they do not suffer from any infirmity whatsoever to call for interference in an appeal filed under Article 136 of the Constitution of India. The learned counsel on either side invited our attention extensively to the relevant portions of the judgment of the courts below to substantiate their respective standpoint.

We have carefully considered the submissions of the learned counsel appearing on either side. The grievance sought to be made on the alleged non-compliance with the provisions in Section 235(2), Cr.P.C., does not merit countenance and the decision relied upon, as noticed above, does not help to support the claim as well. The decision in Santa Singh's case (supra) was one where the sentence imposed was of death the maximum and in such circumstances this Court thought fit to set aside the sentence alone and remand the same to give a hearing on the same. It was indicated even therein in the concurring judgment of S. Murtaza Fazl Ali, J. that no grievance can be made where minimum sentence under the provisions of law has been awarded. As a matter of fact, the same Bench while dealing with the case reported in Narpal Singh & Ors. Vs. State of Haryana [AIR 1977 SC 1066] remitted for consideration afresh of the Sessions Judge the question of sentence after giving opportunity only in respect of the accused on whom death sentence was imposed and straight away disposed of and dismissed the appeal in respect of those accused who were sentenced to life imprisonment only on being convicted of an offence of murder under Section 302, IPC. In Ramdeo Chauhan alias Rajnath Vs. State of Assam [(2001) 5 SCC 714] a Bench of three learned Judges had an occasion to consider the question in the light of the amendment made by introducing third proviso to Sub-section (2) of Section 309, Cr.P.C., and observed that the plea made as to the sentence and conviction being recorded on the same day resulting in contravention of Section 235(2), Cr.P.C., cannot be accepted and that though the normal rule be that after pronouncing the verdict of guilt the hearing should be made on the same day and sentence also should be pronounced that day itself, in cases where the Judge feels or if the accused demands more time for hearing on the question of sentence especially when the Judge proposes to impose death penalty, the third proviso to Section 309, Cr.P.C., would be no bar for affording such time and if for any reason the Court was inclined to adjourn the case after pronouncing the verdict of guilt in grave offences, the person convicted should be committed to jail till the verdict on the sentence is pronounced.

So far as the case on hand is concerned, the order of the Trial Court would disclose that the verdict of guilt was pronounced on 4.10.1989 and on that day itself after hearing perhaps the learned counsel for

the accused the order sentencing the appellant was separately passed. So far as the conviction under Section 498A, IPC, is concerned, as against the permissible sentence of life imprisonment or imprisonment which may extend to ten years and fine, a sentence of three years R.I. and for conviction under Section 306, IPC, as against the permissible sentence of imprisonment up to ten years and fine, seven years R.I. have been found imposed. It is not the case of the appellant that he sought for an adjournment or grant of further time for making submission on the sentence but the same was refused. Even no grievance in that behalf by the appellant appears or shown to have been made before the High Court either in the memorandum of appeal or at the time of argument. In the light of the above, the appellant cannot make any legitimate grievance at any rate on the alleged non-compliance with Section 235(2), Cr.P.C. The contention in this regard shall stand rejected.

So far as the challenge sought to be made on merits as to the conviction of the appellant is concerned, we find that both the courts below have undertaken an independent consideration of the materials on record in the light of the contentions urged on behalf of the appellant and yet found the prosecution case fully substantiated on the basis of concrete and relevant materials brought on record. The defence plea as to want of sufficient proof for demand of additional dowry and harassment on that account and as to the appellant being possession of sufficient resources in Bank have been considered elaborately and found rejected for valid and relevant reasons supported by concrete materials produced. The ample materials on record overwhelmingly support the factual findings concurrently recorded by both the courts below and they are not shown to be vitiated for any infirmity whatsoever to call for or justify the interference of this Court in the appeal filed under Article 136 of the Constitution of India. The evidence on record, to which our attention has also been drawn by the learned counsel, sufficiently makes out the case of persistent and unabated harassment and acts of cruelty meted out to the deceased by not only pestering her and her relatives to give more and more by way of additional dowry from time to time, but that she has been ill-treated physically and consequently the challenge made to the concurrent findings is not only bereft of substance but does not merit countenance in our hands. The quantum of sentence, keeping in view the serious nature of the offences, also cannot be said to be on the higher side, for showing any further leniency.

The appeal, consequently, fails and shall stand dismissed.

CASE NO.: Appeal (crl.) 25 of 2004

PETITIONER: Reema Aggarwal

RESPONDENT: Anupam and Ors.

DATE OF JUDGMENT: 08/01/2004

BENCH: DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT: J U D G M E N T

(Arising out of SLP (Crl.) No. 3169 of 2003

ARIJIT PASAYAT, J.

Leave granted.

Parties to a marriage tying nuptial knot are supposed to bring about the union of souls. It creates a new relationship of love, affection, care and concern between the husband and wife. According to Hindu Vedic philosophy it is sanskar • a sacrament; one of the sixteen important sacraments essential to be taken during one's lifetime. There may be physical union as a result of marriage for procreation to perpetuate the lineal progeny for ensuring spiritual salvation and performance of religious rites, but what is essentially contemplated is union of two souls. Marriage is considered to be a junction of three important duties i.e. social, religious and spiritual. A question of intricate complexity arises in this appeal where factual scenario has very little role to play.

Filtering out unnecessary details, the factual position is as follows:

On 13.7.1998 information was received from Tagore Hospital, Jalandhar that Reema Aggarwal the appellant had been admitted on having consumed poisonous substance. On reaching hospital, ASI Charanjit Singh obtained opinion of the doctor regarding her fitness to make a statement. Appellant stated before Investigating Officer that she was married to Anupam the respondent no.1 on 25.1.1998 and after the marriage, she was harassed by her husband-respondent no.1, mother-in-law, father-in-law and brother-in-law (respondents 2, 3 and 4) respectively for not bringing sufficient and more dowry. It was also disclosed that it was the second marriage of both the appellant and respondent no.1. On the date of incident at about 5.00 p.m. all the four accused persons forced her to take something to put an end her life and forcibly put some acidic substance in her mouth. She started vomiting and was taken to the hospital in an unconscious state. The first information report was registered accordingly and on completion of investigation the charge sheet was placed and charges were framed for offences punishable under Sections 307 and 498-A of the Indian Penal Code, 1860 (for short the 'IPC'). Accused persons pleaded innocence. Seven witnesses were examined to further the prosecution version.

Before the trial Court the accused persons put the plea that charge under Section 498-A was thoroughly misconceived as both Sections 304-B and 498-A IPC pre-suppose valid marriage of the alleged victim-woman with the offender- husband. It was required to be shown that the victim-woman was the legally married wife of the accused. Since it was admitted that the appellant had married during the lifetime of the wife of respondent no.1, what happened to his first marriage remained a mystery. Prosecution has failed to establish that it stood dissolved legally. Prosecution having failed to bring any material record in that regard, Section 498-A had no application. Reliance was placed on a decision of the Madhya Pradesh High Court in Ramnarayan & Ors. v. State of M.P. (1998 (3) Crimes 147 M.P.) The Trial Court held that the accusations, so far as Section 307 is concerned, were not established and in view of the legal position highlighted by the accused persons vis-`-vis Section 498-A the charge in that regard was also not established. Accordingly the accused persons were acquitted.

The State of Punjab filed an application for grant of leave to appeal which was disposed of by the Division Bench of the Punjab and Haryana High Court with the following order:

"We have heard the learned counsel for the appellant and with his assistance, have gone through the finding recorded by the learned trial Court. In our considered opinion, the finding recorded by the learned trial Court cannot be held to be erroneous or that there was no perverse appreciation of evidence. Leave to appeal declined. Appeal is also dismissed."

In view of the dismissal of the State's application for grant of leave, criminal revision application which was filed by the appellant before the High Court was dismissed with the following orders:-

"Vide our separate order of even date in Crl. Misc. No. 580 MA of 2002, we have not granted permission to the State to file the appeal. In these circumstances, there is no merit in this criminal revision which is hereby dismissed."

In support of the appeal, learned counsel for the appellant submitted that the High Court was not justified to dispose of the application for grant of leave as well as the revision filed by the appellant by such cryptic orders. Important questions of law are involved. In fact, various High Courts have taken view different from the one taken by the Madhya Pradesh High Court in Vungarala Yedukondalu v. State of Andhra Pradesh (1988 Crl.L.J. 1538 (DB)) and State of Karnataka v. Shivaraj (2000 Crl.L.J 2741). The Andhra Pradesh High Court and the Karnataka High Court have taken different view. According to him the expressions "husband" and "woman" appearing in Section 498-A IPC are to be read in a manner so as to give full effect to the purpose for which Section 498-A was brought into the statute. The restricted meaning as given by the Madhya Pradesh High Court in Ramnarayan case (supra) does not reflect the correct position of law. On the other hand, contrary view expressed by the Karnataka and Andhra Pradesh High Courts reflect the correct view.

In response, learned counsel for the respondents submitted that to constitute a marriage in the eye of law it has first to be established that the same was a valid marriage. Strong reliance was placed on Bhaurao Shankar Lokhande and Anr. v. The State of Maharashtra and Anr. (AIR 1965 SC 1564) in that context. Reference was also made to Sections 5(i), 11 and 16 of Hindu Marriage Act, 1955 (for short the 'Marriage Act') to contend that the stipulations of conditions of valid marriage, the circumstances in which the marriage becomes void and the protection given to children of void and voidable marriage respectively makes the position clear that wherever the legislature wanted to provide for contingencies flowing from void or voidable marriages, it has specifically done so. It is latently evident from Section 16 of the Marriage Act. There is no such indication in Section 498-A IPC. The language used is "husband or relative of the husband". Marriage is a legal union of one man and woman as husband and wife and cannot extend to a woman whose marriage is void and not a valid marriage in the eye of law.

The marriages contracted between Hindus are now statutorily made monogamous. A sanctity has been attributed to the first marriage as being that which was contracted from a sense of duty and not merely for personal gratification. When the fact of celebration of marriage is established it will be presumed in the absence of evidence to the contrary that all the rites and ceremonies to constitute a valid marriage have been gone through. As was said as long as 1869 "when once you get to this, namely, that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law". (See Inderun Valungypooly v. Ramaswamy (1869 (13) MIA 141.) So also where a man and woman have been proved to have lived together as husband and wife, the law will presume, until contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. (See Sastry Velaider v. Sembicutty (1881 (6) AC 364) following De Thoren v. Attorney General (1876 (1) AC 686) and Piers v. Piers (L.R.(2) H.L.C. 331). Where a marriage is accepted as valid by relations, friends and others for a long time it cannot be declared as invalid. In Lokhande's case (supra), it was observed by this Court "The bare fact that man and woman live as husband and wife it does not at any rate normally give them the status of husband and wife even though they may hold themselves before the society as husband and wife and the society treats them as husband and wife". These observations were cited with approval in Surjit Kaur v. Garja Singh and Ors. (AIR 1994 SC 135). At first blush, it would seem that these observations run counter to the long catena of decisions noted above. But on closer examination of the facts of those cases it is clear that this Court did not differ from the views expressed in the earlier cases. In Lokhande's case (supra), this Court was dealing with a case of prosecution for bigamy. The prosecution had contended that second marriage was gandharva form of

marriage and no ceremonies were necessary and, therefore, did not allege or prove that any customary ceremonies were performed. In that background, it was held that even in the case of gandharva marriages, ceremonies were required to be performed. To constitute bigamy under Section 494 IPC, the second marriage had to be a valid marriage duly solemnized and as it was not so solemnized it was not a marriage at all in the eye of law and was therefore invalid. The essential ingredient constituting the offence of Bigamy is the "marrying" again during the lifetime of husband or wife in contrast to the ingredients of Section 498A which, among other things, envisage subjecting the woman concerned to cruelty. The thrust is mainly "marrying" in Section 494 IPC as against subjecting of the woman to cruelty in Section 498A. Likewise, the thrust of the offence under Section 304B is also the "Dowry Death". Consequently, the evil sought to be curbed are distinct and separate from the persons committing the offending acts and there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married but also any one who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabitate and exercise authority as such husband over another woman. As the prosecution had set up a plea of gandharva marriage and had failed to prove the performance of ceremonies, it was not open to fall back upon the presumption of a valid marriage. It was further held that there was no such presumption if the man was already married. In Surjit Singh's case (supra) the stand was that the marriage was in Karewa form. This Court held that under the custom of Karewa marriage, the widow could marry the brother or a relation of the husband. But in that case the man was a stranger. Further even under that form of marriage certain ceremonies were required to be performed which were not proved. Dealing with the contention relating to presumption, reference was made to Lokhande's case (supra). As the parties had set up a particular form of marriage which turned out to be invalid due to absence of proof of having undergone the necessary ceremonies related to such form of marriage, the presumption of long cohabitation could not be invoked.

The presumption may not be available in a case, for example, where the man was already married or there was any insurmountable obstacle to the marriage, but presumption arises if there is strong evidence by documents and conduct. Above position has been highlighted in Mayne's Hindu Law and Usage.

The question as to who would be covered by the expression 'husband' for attracting Section 498A does present problems. Etymologically, in terms of the definition of "husband" and "marriage" as given in the various Law Lexicons and dictionaries • the existence of a valid marriage may appear to be a sine qua non for applying a penal provision. In Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. (AIR 1988 SC 644) a woman claimed maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). This Court applied the provision of the Marriage Act and pointed out that same was a law which held the field after 1955, when it was enacted and Section 5 lays down that for a lawful marriage the necessary condition that neither party should have a spouse living at the time of the marriage is essential and marriage in contravention of this condition therefore is null and void. The concept of marriage to constitute the relationship of 'husband' and 'wife' may require strict interpretation where claims for civil rights, right to property etc. may follow or flow and a liberal approach and different perception cannot be an anatheme when the question of curbing a social evil is concerned.

The question of origin of dowry or dos has been the subject of study by theoreticians. Mayne says that it was a contribution by the wife's family, or by the wife herself, intended to assist the husband in bearing the expenses of the conjugal household (Mayne on "Early History of Institution" page 319). While dos or dowry previously belonged to husband, his right over it being unrestricted, all the property of the wife not included in the dowry was called her "paraphra" and was her absolute property over which her husband had no control. (See Banerjee on 'Marriage and Stridhan' 345) In Pratibha Rani v. Suraj Kumar and Anr. (AIR 1985 SC 628) after tracing out the history of stridhan it was held that wife is the absolute owner of such property under Section 27 of the Marriage Act. Property presented to the husband and wife at or about the time of marriage belongs to them jointly.

The Dowry Prohibition Act, 1961 (in short the 'Dowry Act') was introduced to combat the ever-increasing menace of dowry. The avowed object is prohibition on giving and taking of dowry. Section 2 defines "dowry". Section 4 provides the penalty for demanding "dowry", while Section 5 is a significant provision making agreement for giving or taking dowry to be void. Section 6 is another provision which reflects

statutory concern for prevention of dowry, be it taking or giving. It is provided therein that pending transfer of the dowry, the person who received the dowry holds it in trust for benefit of the woman. Amendment to Section 2 by Amendment Act 43 of 1986 has made the provision clear and demand made after the marriage is a part of dowry, in view of addition of words "at or before or after the marriage". (See State of H.P. v. Nikku Ram (AIR 1996 SC 67).

The definition of the term 'dowry' under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become 'dowry' punishable under the Dowry Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage."

Section 4 of the Dowry Act aims at discouraging the very "demand" of "dowry" as a 'consideration for the marriage' between the parties thereto and lays down that if any person after the commencement of the Act, "demands", directly or indirectly, from the parents or guardians of a 'bride' or 'bridegroom', as the case may be, any 'dowry' he shall be punishable with imprisonment or with fine or within both. Thus, it would be seen that Section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under Section 3 of the Act punishable with higher imprisonment and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

The definition of the expression 'dowry' contained in Section 2 of the Dowry Act cannot be confined merely to be 'demand' of money, property or valuable security' made at or after the performance of marriage. The legislature has in its wisdom while providing for the definition of 'dowry' emphasized that any money, property or valuable security given, as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognized claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non- fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression "dowry" under the Dowry Act has to be interpreted in the sense which the statute wishes to attribute to it. The definition given in the statute is the determinative factor. The Dowry Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Dowry Act.

Aryan Hindus recognised 8 forms of marriage, out of which four were approved, namely, Brahma, Daiva, Arsha and Prajapatya. The dis-approved forms of marriages were Gandharva, Asura, Rakshasa and Paisacha. In the Brahma form of marriage, some amounts had to be spent by father/guardian, as the case may be, to go ultimately to the spouses. The origin of dowry may be traced to this amount either in cash or kind.

The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were

introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". 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 subjects the woman concerned to cruelty or coerce 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. Such an interpretation, known and recognized 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 contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.

In Chief Justice of A.P. v. L.V.A. Dixitulu (1979 (2) SCC 34), this Court observed:

"The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

In Kehar Singh v. State (Delhi Admn.) (AIR 1988 SC 1883), this Court held:

"....But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as out paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

In District Mining Officer v. Tata Iron & Steel Co. (JT 2001 (6) SC 183), this Court stated:

"The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of thing, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for the words chosen to communicate such indefinite referents are bound to be in many cases, lacking in charity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed".

The suppression of mischief rule made immortal in Heydon's case (3 Co Rep 7a 76 ER 637) can be pressed into service. With a view to suppress the mischief which would have surfaced had the literal rule been allowed to cover the field, the Heydon's Rule has been applied by this Court in a number of cases, e.g. Bengal Immunity Co. Ltd., v. State of Bihar and Ors. (AIR 1955 SC 661), Goodyear India Ltd. v. State of Haryana and Anr. (AIR 1990 SC 781), P.E.K. Kalliani Amma and Ors. v. K. Devi and Ors. (AIR 1996 SC 1963) and Ameer Trading Corporation Ltd., v. Shapporji Data Processing Ltd. (2003 (8) Supreme 634).

The judgments of High Courts taking a view contrary to the one expressed above, cannot be considered to lay down the correct position of law.

In Reserve Bank of Indi a etc. etc. v. Peerless General Finance and Investment Co. Ltd. and others etc. etc. (1987 (1) SCC 424) while dealing with the question of interpretation of a statute, this Court observed:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statue is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

In Seaford Court Estates Ltd. v. Asher (1949) 2 All ER 155 (CA), Lord Denning, advised a purposive approach to the interpretation of a word used in a statute and observed:

"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.....A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in this texture of it, they would have straightened it out? He must then do so as they would have doe. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(underlined for emphasis)

These aspects were highlighted by this Court in S. Gopal Reddy v. State of A.P. (1996 (4) SCC 596).

Whether the offences are made out is a matter of trial. The High Court was not justified in summarily rejecting the application for grant of leave. It has a duty to indicate reasons when it refuses to grant leave. Any casual or summary disposal would not be proper. (See State of Punjab v. Bhag Singh (2003 (8) Supreme 611). In the circumstances, we set aside the impugned order of the High Court and remit the matter back to the High Court for hearing the matter on merits as according to us points involved require adjudication by the High Court. The appeal is allowed to the extent indicated.

CASE NO.: Appeal (crl.) 1250 of 2003

PETITIONER: Bharat Chaudhary & Anr.

RESPONDENT: State of Bihar & Anr.

DATE OF JUDGMENT: 08/10/2003

BENCH: N.Santosh Hegde & B.P. Singh.

JUDGMENT: J U D G M E N T

(Arising out of SLP(Crl.)No.2243 of 2003)

SANTOSH HEGDE,J.

Heard learned counsel for the parties.

Leave granted.

Appellants in this case are husband and wife and were accused by their daughter-in-law of offences punishable under Sections 504, 498A and 406 of the Indian Penal Code and Sections 3 / 4 of the Dowry Prohibition Act. Their application, filed under Section 438 of the Crl. P.C. for grant of anticipatory bail has been rejected by the High Court of Judicature at Patna. The said order is under challenge in this Appeal. When this matter came up for preliminary hearing of 19th May, 2003, we issued notice to the respondents and also made an interim order not to arrest the appellants in the meantime. Today after hearing the parties on facts, we are inclined to grant anticipatory bail to the appellants. Shri B.B. Singh, learned counsel appearing for the respondent-State, however, raised a legal objection. His contention was that since the Court of first instance has taken cognizance of the offence in question, Section 438 of the Crl. P.C. cannot be used for granting anticipatory bail even by this Court and the only remedy available to the appellants is to approach the trial court and surrender, thereafter apply for regular bail under section 439 of the Crl. P.C. In support of this contention the learned counsel relied on the judgment of this Court in the case of Salauddin Abdulsamad Shaikh vs. State of Maharashtra (1996 (1) SCC 667).

If the arguments of the learned counsel for the respondent - State is to be accepted then in each and every case, where a complaint is made of an non-bailable offence and cognizance is taken by the competent court then every court under the Code including this court would be denuded of its power to grant anticipatory bail under Section 438 of the Cr. P.C. We do not think that was the intention of the legislature when it incorporated Section 438 in the Crl.P.C. which reads thus :

"When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest he shall be released on bail."

From the perusal of this part of Section 438 of the Crl. P.C., we find no restriction in regard to exercise of this power in a suitable case either by the Court of Sessions, High Court or this Court even when cognizance is taken or charge sheet is filed. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a chargesheet, would not by itself, in our opinion, prevent the concerned courts from granting anticipatory bail in appropriate cases. The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail. In our opinion, the courts i.e. the Court of Sessions, High Court or this Court has the necessary power vested in them to grant anticipatory bail in non-bailable offences under Section

438 of the Crl. P.C. even when cognizance is taken or charge sheet is filed provided the facts of the case require the Court to do so. The learned counsel, as stated above, has relied on the judgement of this Court referred to herein above. In that case i.e. namely Salauddin Abdulsamad Shaikh , a three-Judge Bench of this Court stated thus :

"When the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge sheet is submitted.

Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail."

From a careful reading of the said judgment we do not find any restriction or absolute bar on the concerned Court granting anticipatory bail even in cases where either cognizance has been taken or a chagesheet has been filed. This judgment only lays down a guideline that while considering the prima facie case against an accused the factum of cognizance having been taken and the laying of chargesheet would be of some assistance for coming to the conclusion whether the claimant for an anticipatory bail is entitled for such bail or not. This is clear from the following observations of the Court in the above case:

"It is, therefore, necessary that such anticipatory bail orders should be of limited duration only and ordinarily on the expiry of the duration or extended duration, Court, granting anticipatory bail, should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or chargesheet is submitted."

From the above observations, we are unable to read any restriction on the power of the courts empowered to grant anticipatory bail under Section 438 of the Crl. P.C. We respectfully agree with the observations of this Court in the said case that the duration of anticipatory bail should be normally limited till the trial court has the necessary material before it to pass such orders and it thinks fit on the material available before it. That is only a restriction in regard to blanket anticipatory bail for an unspecified period. This judgment in our opinion does not support the extreme argument addressed on behalf of the learned counsel for the respondent-State that the courts specified in Section 438 of the Crl.P.C. are denuded of their power under the said Section where either the cognizance is taken by the concerned court or charge sheet is filed before the appropriate Court. As stated above this would only amount to defeat the very object for which Section 438 was introduced in the Crl.P.C. in the year 1973. As observed above and having heard the learned counsel for the parties, we are of the considered opinion that the appellants in this case should be released on bail, in the event of their being arrested, on their furnishing a self bond each for a sum of Rs.5,000/- and a surety to the like sum. The appellants shall abide by the conditions enumerated in Section 438 of the Code.

CASE NO.: Appeal (crl.) 1358 of 2002

PETITIONER: Kaliyaperumal and Anr.

RESPONDENT: Vs.

State of Tamil Nadu

DATE OF JUDGMENT: 27/08/2003

BENCH: DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT: J U D G M E N T

ARIJIT PASAYAT, J.

The appellants who were found guilty of offences punishable under Section 304B and Section 498A of the Indian Penal Code, 1860 (for short 'IPC') by the Assistant Sessions Judge, Nagapattinam, unsuccessfully challenged the conviction before the Madras High Court. By the impugned judgment the High Court only reduced the sentence from nine years to seven years for the offence punishable under Section 304B IPC but confirmed the sentence five years as imposed in respect of offences punishable under Section 498A, on the allegation that Devasena (hereinafter referred to as 'the deceased') committed suicide because of the cruelty and tortures perpetuated by the appellants who were her father-in-law and mother-in-law respectively along with husband Ashok Kumar (since acquitted).

Synoptical resumption of factual position is as follows:

The marriage between the deceased and Ashok Kumar was solemnized on 27.1.1989. At the time of the marriage, it was a condition stipulated by the accused persons that along with other articles, 15 sovereigns of jewels and a cash of Rs.10,000/- was to be paid. Though the parents of the deceased (PWs 3 and 4) agreed to meet the demands, they could only arrange 12 sovereigns of jewels and cash of Rs.7,000/- and gave it to the accused persons at the time of marriage. They agreed to give the balance as early as practicable. Ashok Kumar was working abroad. Whenever he left India, he used to take his wife and leave her with her parents i.e. PWs 3 and 4. Since the balance jewellery and cash were not given as agreed, the accused persons continued to make demand therefor. Deceased was insulted, humiliated and tortured. When they became unbearable, the deceased came out of the matrimonial home. The appellant no.1 Kaliyaperumal took her back and beat her with chappel in a public street. This was witnessed by PW-5. On hearing about the incident, PWs. 3 and 4 went to the house of appellant no.1. Here again they were insulted and abused by appellant no.1. On 9.12.1992, PW.3 received the information that their daughter (deceased) had committed suicide. Both PWs. 3 and 4 came to the house of appellant no.1. At that time the village Administrative Officer (PW.1) was present. On the basis of the statement given by PW.3, Ex.P1 was prepared by PW1 and sent to the police station. PW.9 received the report and a case was registered. Intimation was sent to the RDO to conduct inquest. He came to the spot and obtained statements from the accused-appellants, parents of the deceased and other witnesses.

Thereafter he sent Ex.P8 report to PW.11 D.S.P. for further action. The enquiry of RDO revealed that the death was due to dowry torture. PW.11 took up further investigation. On completion of investigation, charge sheet was filed. During trial, thirteen witnesses were examined. Accused person pleaded false implication. As noted above, the appellants were convicted while the husband of the deceased was acquitted. The conviction and sentences imposed were challenged before the Madras High Court. By the impugned judgment, as noted above, the conviction was maintained but the sentence was reduced in respect of offence under Section 304B.

In support of the appeal, learned counsel for the appellants submitted that Section 304B has no application because there was no evidence to show that soon before deceased committed suicide, there was any cruelty or torture. According to him Section 113B of the Indian Evidence Act, 1872 (for short 'Evidence Act') has no application because the prosecution has failed to prove that "soon before her

death" the victim was subjected to such cruelty or harassed in action with demand for dowry. It was also submitted that both the Trial Court and the High Court have relied on inadmissible evidence. The RDO who submitted the report was not examined and therefore, letters claimed to have been written by the husband of the deceased accused Ashok Kumar could not have considered. The RDO was not examined and PW12 an Assistant in the office was examined to show that the report was given by the RDO. The evidence of PWs 3 and 4 were attacked on the ground of exaggerations. It was submitted that on the selfsame evidence accused Ashok Kumar the husband was acquitted, there is no reason for convicting the present appellants. In response, learned counsel for the State has submitted that the High Court has analysed the evidence minutely and has come to the conclusion that the prosecution has been able to bring home the accusations against the accused persons.

Section 304B IPC deals with dowry death which reads as follows:

"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 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."

The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B IPC and Section 113B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths.

Section 113B reads as follows:-

"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 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th 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 wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. 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).

(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.

A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC 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 expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. 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. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114.

Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. 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 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.

Further question is whether a case under Section 498A has been made out, even if accusations under Section 304B fail. Section 498A reads as follows:

"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."

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Evidence Act 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 cannot be held to be mutually inclusive. 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. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498A IPC and Section 113B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under:-

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

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include 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 declared 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.

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

As was observed by this Court in Satvir Singh and Ors. vs. State of Punjab and Anr. (2001 (8) SCC 633), "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused .....or occurs otherwise than under normal circumstances" as expressed in Section 304B IPC.

Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

"306: Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

It may be noted that though no charge was framed under Section 306 IPC that is inconsequential in view of what has been stated by a three-judge Bench of this Court in K. Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors. (2003 (1) SCC 217).

When the factual scenario is considered in the background of the aforesaid principles the inevitable conclusion is that the appellant- Kaliyaperumal has been rightly convicted for offence punishable under Section 304B and Section 498A. As the High Court has awarded the minimum punishment prescribed no interference with the sentences is called for. So far as appellant no.2 Muthulakshmi is concerned, there is inadequacy of material to attract culpability under Section 304B. But Section 498A IPC is clearly attracted to her case. Therefore, the appeal is allowed so far as her conviction under Section 304B IPC is concerned, but stands dismissed so far as it relates to offence punishable under Section 498A IPC.

The appeal is allowed to the extent indicated above so far as accused Muthulakshmi is concerned, but fails so far as accused-appellant Kaliyaperumal is concerned.

CASE NO.: Appeal (crl.) 825 of 2002

PETITIONER: Hira Lal and Ors.

RESPONDENT: Vs.

State (Govt. of NCT) Delhi

DATE OF JUDGMENT: 25/07/2003

BENCH: DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT,J

Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters the dreams. Inlaws are characterized to be outlaws for perpetrating a terrorism which destroys matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.

With a view to curb the spiraling number of cases where demand for dowry leads to loss of life, Dowry Prohibition (Amendment) Act 1986 brought about sweeping changes in the penal statutes, and Sections 304-B of the Indian Penal Code, 1860 (in short the 'IPC') and Section 113B of Indian Evidence Act, 1872 (in short the 'Evidence Act') came to be enforced.

One Sarita (hereinafter referred to as 'deceased') committed suicide by consuming poison on 14.4.1999. She was married to accused Surender on 26.11.1995. Other appellants Hiralal and Angoori Devi were her father-in-law and mother- in-law respectively. Since the death was unnatural, information was lodged with police and investigation was undertaken.

Grievance was made by the family members of deceased that she was subjected to torture for dowry and that led to her suicide. On completion of investigation, charge-sheet was placed for alleged commission of offences punishable under Section 304-B and 498A IPC. Trial was conducted by learned Sessions Judge, New Delhi in Sessions case No. 11/1999 and the appellants were found guilty under Sections 304-B and 498A read with Section 34 IPC. They were sentenced to undergo RI for 10 years and fine of Rs.10,000/- each with default stipulation of SI for one year, and also one year RI with fine of Rs.5000/- with stipulation of SI for one month for the two substantive offences respectively. It is relevant to note that for substantiating the accusations twelve witnesses were examined. Bahadur Singh (PW-1), Sobha Rani (PW-5), Ratti Ram (PW-10), Manju (PW-11), the father, brother, cousin brother and sister, respectively of the deceased spoke about the dowry demands. The testimony was accepted to be truthful and cogent by the Trial Court.

The matter was carried in appeal before the Delhi High Court. By the impugned judgment, learned Single Judge reduced the sentence to 3 years RI instead of 10 years RI in respect of accused-appellants Hiralal and Angoori keeping in view their old age. The fine imposed was maintained but the default sentence was reduced to six months, custodial sentence and fine for offences punishable under Section

498A were maintained. In case of appellant-Surender, the sentence was reduced to 7 years in respect of first offence, while for the second offence the sentence was maintained.

In support of the appeal, learned counsel for the appellants submitted that ingredients of Section 304-B and 498A are not made out. There was no evidence regarding any dowry demand. On the contrary it was confirmed that at the time of marriage there was no demand for dowry. It is of relevance to note that while deceased was married to accused-Surender, her sister, Manju (PW-11) was married to Virender, elder brother of Surender. Both the marriages were solemnized on the same date. It has been accepted by the prosecution witnesses that there was no demand for valuable articles at any point subsequent to the marriage in case of Manju. If the demand was made for deceased as alleged, there is no reason as to why a departure was made in case of her sister. The evidence of relatives (PW-1, PW- 2, PW-10 and PW11) does not inspire any confidence. Before the alleged suicide, there were differences between the deceased and her husband for which allegations were made with the police. Finally the difference was sorted out by settling that they shall stay separately from other members of the family. There was a conciliation made by the officials and the conditions indicated related to separate residence. There was not even inkling about demand of money or articles. This has been categorically accepted by both PWs 10 and 11. It is, therefore, submitted that both Trial Court and the High Court fell in grave error by going into surmises to convict the appellants.

In response learned counsel for the State -Govt. of NCT of Delhi, submitted that the ingredients of the offences have been clearly made out. In any event the case can be considered in terms of Section 306 IPC.

Section 304-B IPC deals with dowry death reads as follows:

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

Explanation – For the purpose of this sub- section 'dowry' shall have 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."

The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304-B IPC, the essential ingredients are as follows:-

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii)She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as

follows:-

"113-B: Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman 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 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th 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 wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. 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 304-B IPC).

(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.

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC 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 expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. 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 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. 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 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.

The evidence of PWs 1, 5, 10 and 11 shows that at the time of marriage there was no demand for dowry. But subsequently, the demands were made, and ill-treatments were meted out. The crucial question is whether they were soon before the death. PWs 10 and 11 stated that grievances were made before the Crime against Women Cell and the authorities brought about reconciliation. It however was candidly admitted that there was no mention about any dowry aspect while the differences were ironed out. The settlement arrived at on 30.11.1998 was essentially for separate residence. Therefore, there is no definite evidence about ill-treatment to the deceased at any time having immediate proximity to the date of death of the deceased on 14.4.1999 about ill-treatment by the accused persons to attach culpability under Section 304-B IPC. Therefore, the basic requirement of cruelty or harassment soon before the death to bring application of Section 304-B is absent.

Further question is whether a case under Section 498-A has been made out, even if accusations under Section 304-B fail. Section 498-A reads as follows:

"498-A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section 'cruelty' means –

(a) any wilful conduct which is of such a nature as is 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."

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the explanation for the purpose of Section 498- A. Substantive Section 498-A IPC and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A, IPC cannot be held to be mutually inclusive. 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 498-A gives the meaning of 'cruelty'. In Section 304-B 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 498-A under which 'cruelty' by itself amounts to an offence. Under Section 304-B 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 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A 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. (See Akula Ravinder and others v. The State of Andhra Pradesh (AIR 1991 SC 1142). Section 498-A IPC and Section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under:-

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

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include 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 declared 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.

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

As was observed by this Court in Satvir Singh and Ors. vs. State of Punjab and Anr. (2001 (8) SCC 633), "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused .....or occurs otherwise than under normal circumstances" as expressed in Section 304B IPC.

Section 306 IPC deals with abetment of suicide. The said provision reads as follows:

"306: Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

It may be noted that though no charge was framed under Section 306 IPC that is inconsequential in view of what has been stated by a three-judge Bench of this Court in K. Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors. (2003 (1) SCC 217).

On the facts of the case even though it is difficult to sustain the conviction under Section 304B IPC, there are sufficient materials to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC.

Custodial sentence of three years for the offence punishable under Section 306 IPC would meet the ends of justice. The sentence awarded for offence punishable under Section 498A by Trial Court and upheld by the High Court is maintained. Both the sentences relatable to Sections 498A and 306 IPC shall run concurrently.

It may be noted here that the High Court had reduced the sentence to three years from 10 years in case of accused –appellant Hiralal and Angoori Devi, while upholding their conviction under Section 304B IPC. It is unfortunate that the High Court failed to notice that the minimum sentence for offence punishable under Section 304B is seven years in terms of sub-section (2) thereof.

Since the appellants 1 and 2 were released on bail pursuant to the order dated 25.10.2002, they shall surrender to serve out the remainder of the sentence, if not already served. The appeal is disposed of accordingly.

CASE NO.: Appeal (crl.) 146 of 2002

PETITIONER: Sadhu Ram & another

RESPONDENT: The State of Rajasthan

DATE OF JUDGMENT: 10/04/2003

BENCH: N. Santosh Hegde & B.P. Singh.

JUDGMENT:

J U D G M E N T

B.P. Singh, J.

This appeal by special leave has been preferred by the two appellants namely, Sadhu Ram, appellant no.1 and Jagdish, appellant no.2. Sadhu Ram is the son of Jagdish. They alongwith one Narain (since acquitted) were put up for trial before the learned Additional Sessions Judge, Nimkathana (Sikar) in Sessions Case No.4 of 1997 charged variously under Sections 498A, 302, 201 and 436 I.P.C. for the murder of Rukma, wife of Sadhu Ram and Munni, daughter of Sadhu Ram who was about 8 months old at the time of occurrence. The Trial Court, while acquitting Narain of the charges levelled against him, found appellant Sadhu Ram guilty of offence under Sections 498A and 302 I.P.C. and sentenced him to undergo three years rigorous imprisonment and a fine of Rs.250/- under Section 498A I.P.C. in default to undergo three months rigorous imprisonment, and life imprisonment with a fine of Rs.2000/- under Section 302 I.P.C. in default to undergo two years simple imprisonment. Jagdish was found guilty of the offence under Section 201 I.P.C. and sentenced to three years rigorous imprisonment and a fine of Rs.500/- in default of payment of fine to undergo two years simple imprisonment. The High Court has upheld the conviction and sentence of the appellants recorded by the trial court mainly relying upon the evidence of PW-3, Mala Ram, a neighbour who lodged the F.I.R. on the basis of which this case was investigated. It was fairly submitted before us by the counsel for the parties that apart from the evidence of PW-3, Mala Ram, no other witness had seen the occurrence and there is no evidence to corroborate the testimony of PW-3, Mala Ram though large number of witnesses were examined. The case of the prosecution rests entirely only on the evidence Mala Ram, PW-3. In this background the facts not in dispute may be noticed. The appellant Sadhu Ram was married to Rukma (deceased) about 3-1/2 or 4 years before the occurrence. They had a child Munni who was about 8 months old on the date of occurrence. On November 22, 1996 at about 4.00 a.m. the appellant, Jagdish lodged a report before the Station House Officer, police station Nimkathana stating therein that at about 2.15 a.m. in the night while his son Sadhu Ram alongwith his wife, Rukma and his daughter aged about 8 months was sleeping in the house, suddenly a fire broke out and Rukma and her daughter, Munni were burnt to death. His son Sadhu Ram was married to Rukma 4 years ago. This report has been marked as Ex.P-9. The Station House Officer, police station, Nimkathana treating the report as one under Section 174 of the Code of Criminal Procedure recorded Case No. 20 of 1996 and informed the Sub-Divisional Magistrate about the occurrence and requested him to prepare an inquest panchnama of the dead bodies under Section 176 Cr. P.C. Accordingly, the Sub- Divisional Magistrate proceeded to the place of occurrence to enquire into the cause of death and prepared the inquest panchnama in the presence of Phulchand, PW-4 and Ganpat Ram Saini, PW-5 neighbours of the appellants, Bugla Ram, brother of the deceased and two other witnesses who have not been examined. The panchnama also records the fact that Jagdish, the father-in-law of deceased Rukma and Bahadur, father of deceased Rukma were also present. From the inquest report prepared by the Sub-Divisional Magistrate it is apparent that the bodies were almost completely burnt up and apparently it appeared to be a case of death in an accidental fire. In the course of enquiry under Section 176 Cr. P.C. the statement of Mala Ram, PW.3 was also recorded in which he stated that he was in his field when the fire broke out in the village. He rushed to the place of occurrence where many villagers had assembled. The appellants put off the fire but the wife of Sadhu Ram and his daughter were burnt to death. On inquiry, he came to learn that at about 2-2.30 a.m. while they were sleeping in the house a fire broke out all of a sudden, the cause of which was not known. He further stated that Sadhu Ram was married to Rukma 3-4 years ago. He had not noticed any differences between Sadhu Ram and his wife Rukma. The above statement of Mala Ram (Ext. D-1) recorded by PW.10 ASI R.C. Sharma disclosed the version which supports the case of death by burning in an accidental fire. R.C. Sharma, ASI, PW.10 has stated that he was posted as A.S.I. at Police Station Nimkathana on 22nd November, 1996. According to this witness the written report Ex. P-9 was given to him by Jagdish at 4.00 a.m.. Earlier he had left for the place of occurrence between 3.00 and 3.30 a.m. on telephonic information regarding the occurrence. At the place of occurrence he had also recorded the statement of Mala Ram, Ext. D-1 between 5.00 a.m. and 2.00 p.m. The statement was read over to Mala Ram and finding it to be correct he had signed the same. From the evidence of this witness it also appears that the bodies were badly burnt and the post mortem examination of the dead bodies was conducted at the place of the incident itself. The post mortem examination of the dead bodies was conducted by Dr. M.C. Sharma at about 1.00 p.m. on the same day. According to Dr. Sharma the cause of death was suffocation due to burns. The burns were ante mortem in nature and all the burn wounds were sufficient to cause death in the ordinary course of nature. It is worth noticing that the medical board consisted of three doctors who conducted the post mortem examination. Dr. Sharma also deposed that they noticed the presence of sooty carbon particles in larynx, trachea, pharynx and oseophagus, which indicated that the deceased were burnt alive. The marks of burning of skin were ante mortem. The post mortem reports are Exts. P-14 and P-15, which fully support the evidence of Dr.

Sharma, PW.11. The medical evidence, therefore, is to the effect that the deceased were burnt alive and the burn injuries were ante mortem in nature. It appears, in the enquiry which was being conducted under Section 176 of the Code of Criminal Procedure, PW.14 Sub Inspector Gokul Singh again recorded the statement of Mala Ram, P.W. 3 at 6.30 p.m.. The said statement has been marked as Ex. P- 4. In this statement Mala Ram gave a different version of the occurrence. According to him at about 1.00 a.m. on the night of occurrence he was sleeping in his house when appellant Jagdish came to him and asked him to accompany him to his house as the wife of his son Sadhu Ram was not opening the door. He went with Jagdish first to the house of Narain and then to the house of Mohan. Narain (since acquitted) is a brother of Jagdish. He then came to the house of Jagdish alongwith them and found that the door was closed. Narain knocked at the door asking Rukma (deceased) to open the door but the door was not opened. Thereafter Sadhu Ram lifting the thatched roof entered the room and opened the door latch from inside. He lighted the lamp and it was seen that the wife of Sadhu Ram and his daughter were hanging from the hook with plastic rope around their necks. Jagdish and Narain examined them and found that both of them had died. The dead bodies were hanging two feet above the ground. The bodies were brought down by the appellants herein and Narain. Mala Ram was told by Jagdish to wait for five minutes so that in the meantime the family members may have consultation in the house of Mohan. After about half an hour the appellants came to him and administered him oath in the name of Goddess Ganga that he would not disclose what he had seen to anyone in the village. At that time Sadhu Ram had a tin of kerosene oil and he sprinkled the kerosene oil on the dead bodies. Thereafter he reminded Mala Ram of the oath in the name of Goddess Ganga. He then went to his house. At about 2.00 a.m. a hue and cry was heard by him to the effect that a fire had broken out. He rushed to the house of Jagdish where large number of villagers had assembled. Two huts of Jagdish had been completely burnt. He did not tell anyone in the village about what had happened earlier. He further stated that Sadhu Ram often used to beat his wife and on an earlier day also he had beaten her and that is why Rukma committed suicide by hanging herself. Thereafter the appellants and Narain in league with Mohan set the bodies ablaze with the result that the huts got burnt. They deliberately destroyed the evidence by burning the bodies and had got lodged a false report of accidental fire. He said that he did not tell these things to anyone and had gone to his well during the day. Rukma, deceased, was married about 4 years ago and since she was harassed, she was compelled to commit suicide. This statement of Mala Ram Ext. P-4 was recorded by S.I. Gokul Singh, P.W. 13 at 6.30 p.m.. From Ext. P-4 it appears that the statement was recorded in connection with the investigation of case No. 20 of 1996 under Section 176 of the Code of Criminal Procedure. However, on the basis of this report made by Mala Ram a formal First Information Report was recorded and a fresh case No.372 of 1996 was registered. Statement of Mala Ram, PW.3 was thereafter recorded in the course of investigation as well. As we have observed earlier the only evidence which implicates the appellants is the evidence of Mala Ram, PW.3 His evidence is not corroborated by any other evidence on record. Apart from his evidence there is medical evidence on record which supports the case of death by burning and to that extent goes against the evidence of Mala Ram, PW.3

Mala Ram was examined during trial as PW.3. In his deposition before the Court he supported the later version given by him in Ext. P-4 though he admitted that the statement recorded by ASI Sharma, PW.10 marked as Ext. D-1 bears his signatures. He stated that his statement was once recorded by the Dy. S.P. and once by some other police officer. His statement was recorded by the police officer on the same day in the evening, while his statement was recorded by Dy. S.P. on the next day. It thus appears that the witness attempted to exclude his statement recorded earlier by PW.10, though he admitted his signatures on the statement, Ext. D.1.

In his examination-in-chief he reiterated that on the night of occurrence at about 1.00 a.m. Jagdish had come to him and asked him to accompany him to his house since the wife of his son was not opening the door. He went to the house of Jagdish where Narain was also called. Narain knocked at the door but the door was not opened and thereafter Sadhu Ram by lifting the thatched roof went inside and opened the door from inside. It was found that Rukma and her daughter were hanging and this he saw from outside. The appellants told him that they have been ruined and they will settle the matter after negotiations. Sadhu Ram had administered oath to him in the name of Goddess Ganga Mata that he would not tell anyone about the occurrence. Thereafter he went to his house. Sadhu Ram had a tin of kerosene oil in his hand. At about 2 or 2.30 a.m. he heard a hue and cry that a fire had broken out and then came to the place of occurrence. The fire was put off and he went to his well. On the next day he told the police whatever he had seen.

The examination-in-chief of this witness is rather cryptic. Many of the facts which he stated in the statement Ext. P-4 are not found in his deposition. He has not mentioned about the presence of Mohan nor has he mentioned that he had seen the appellants sprinkling kerosene oil on the dead bodies of the deceased. However, when confronted with portion of earlier statement Ext. D-1, he denied having made such a statement. He could not say why it was not recorded in his statement that he had seen a tin of kerosene oil in the hand of Sadhu Ram though he had so stated before the police. It will thus appear from the record that though this witness in the course of enquiry under Section 176 of the Code of Criminal Procedure stated before PW.10, ASI Sharma that the deceased had died on account of burn injuries suffered in an accidental fire, his subsequent statement recorded at 6.30 p.m. on the same day is at variance with his earlier statement and gives a completely different picture. In his subsequent statement Ext. P.4 he claims to have gone to the house of Jagdish at his request and found that the two dead bodies were hanging from the hook with rope around their necks and that on account of harassment by the appellants, Rukma had committed suicide. Even in his subsequent statement he did not allege that the appellants had killed either Rukma or his daughter Munni and at best an allegation was made that Rukma had committed suicide. The trial court as well as the High Court have placed reliance upon the evidence of PW.3 Mala Ram. The different versions put forward by Mala Ram were brought to the notice of the High Court but the High Court was content with observing that some part of his earlier statement Ext. D-1 was put to this witness when he was in the witness box but he had denied the same. The High Court observed that the attention of Mala Ram was not drawn to his later statement Ext. P-4 which was treated as the First Information Report in this case and, therefore, the defence has not succeeded in impeaching the credibility of Mala Ram, PW.3. It is note worthy that both the statements, Ext. D-1 and Ext. P-4 were recorded by police officers in the course of enquiry which was being conducted under Section 176 Cr. P.C. The two versions given by Mala Ram are so much at variance with each other that they cannot be reconciled, the first version supporting the case of death by accidental fire and the second supporting the case of suicide and burning of the bodies thereafter.

It is no doubt true that the conviction of an accused can be based solely on the testimony of a solitary witness. However, in such a case the court must be satisfied that implicit reliance can be placed on the testimony of such a witness and that his testimony is so free of blemish that it can be acted upon without insisting upon corroboration. The testimony of the witness must be one, which inspires confidence and leaves no doubt in the mind of the court about the truthfulness of the witness. In the facts of this case the credibility of Mala Ram, PW.3 has been sufficiently impeached. We cannot say that Mala Ram is a witness on whom implicit reliance can be placed. He certainly does not come in the category of a witness on whom implicit reliance can be placed. In fact we are inclined to take the view that he is a wholly unreliable witness and no conviction can be based on the evidence of such an unreliable witness. Even if we place Mala Ram in the category of a partially reliable witness, we find no evidence to corroborate his testimony and, therefore, it is not safe to base a conviction on the testimony of such a witness. Moreover we find that the medical evidence does not support his testimony. According to Mala Ram the wife of Sadhu Ram had committed suicide. He is categoric in his assertion that the bodies were hanging when he saw them and their bodies were burnt thereafter. The medical evidence, which we find no reason to disregard, is clearly to the contrary. Dr. Sharma, who was one of the doctors who conducted the post mortem examinations is clear and categoric in asserting that the injuries were ante mortem and he has given good reasons to support his opinion. The medical evidence is consistent with the defence case that the deceased died of burning in an accidental fire, but the same is not consistent with the version given by Mala Ram, PW.3 that their dead bodies were set ablaze later. If it were so, the injuries found could not have been ante mortem injuries, and the presence of sooty carbon particles would not have been found in larynx, trachea, pharynx and esophagus. We are, therefore, of the view that the judgment of the High Court cannot be sustained. Accordingly the appeal is allowed, the judgment of the High Court appealed against is set aside and the appellants are acquitted of the charges levelled against them. Appellant No.2 Jagdish is on bail. His bail bonds are discharged. Appellant No.1 is in jail. He shall be released forthwith, if not required in any other case.

CASE NO.: Appeal (crl.) 383 of 2003

PETITIONER: B.S. Joshi & Ors.

RESPONDENT: State of Haryana & Anr.

DATE OF JUDGMENT: 13/03/2003

BENCH: Y.K. Sabharwal & H.K. Sema.

JUDGMENT:

J U D G M E N T

[Arising Out of SLP (Crl.) No.3416 of 2002]

Y.K. Sabharwal, J.

Leave granted. The question that falls for determination in the instant case is about the ambit of the inherent powers of the High Courts under Section 482, Code of Criminal Procedure (Code) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. The scope and ambit of power under Section 482 has been examined by this Court in catena of earlier decisions but in the present case that is required to be considered in relation to matrimonial disputes. The matrimonial disputes of the kind in the present case have been on considerable increase in recent times resulting in filing of complaints by the wife under Sections 498A and 406, IPC not only against the husband but his other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High Court and jointly pray for quashing of the criminal proceedings or the First Information Report or complaint filed by the wife under Sections 498A and 406, IPC, can the prayer be declined on the ground that since the offences are non-compoundable under Section 320 of the Code and, therefore, it is not permissible for the Court to quash the criminal proceedings or FIR or complaint. The facts here are not in dispute. Appellant No.4 is the husband. Respondent No.2 is his wife. Their marriage had taken place on 21st July, 1999. They are living separately since 15th July, 2000. Appellant Nos. 1 to 3 are father, mother and younger brother of appellant No.4. FIR No.8 of 2002 was registered under Section 498A/323 and 406 IPC at Police Station, Central Faridabad at the instance of the wife on 2nd January, 2002. She has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. According to that affidavit, her disputes with the appellants have been finally settled and she and Appellant No.4 have agreed for mutual divorce. The affidavit further states that on filing of the petition for mutual divorce, statements on first motion were recorded on 18th July, 2002 and 2nd September, 2002. Also that in second motion filed by the parties to the marriage, their statements were recorded by the Court of Additional District Judge, Delhi on 13th September, 2002. Counsel for respondent No.2 supporting the appeal also prays for quashing of the FIR. There is, however, serious opposition on behalf of the State. The High Court has, by the impugned judgment, dismissed the petition filed by the appellants seeking quashing of the FIR for in view of the High Court the offences under Sections 498A and 406 IPC are non-compoundable and the inherent powers under Section 482 of the Code cannot be invoked to bypass the mandatory provision of Section 320 of the Code. For its view, the High Court has referred to and relied upon the decisions of this Court in State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp.(1) SCC 335]; Madhu Limaye v. The State of Maharashtra [(1977) 4 SCC 551; and Surendra Nath Mohanty & Anr. v. State of Orissa [AIR 1999 SC 2181]. After reproducing the seven categories of cases as given in para 102 of Bhajan Lal's case, the High Court has held that the parameters, principles and guidelines for quashing of complaints, first information report and criminal proceedings have been settled in terms thereof and has concluded therefrom that the instant case does not fall in any of the said categories. It is quite clear that the High Court has lost sight of the earlier part of para 102 which made it abundantly clear that the said categories of cases were being given by way of illustration. Neither the categories of cases given were exhaustive nor it could be so. Before giving those categories, it was said in Bhajan Lal's case that : "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the

extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised."

In Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749], this Court with reference to Bhajan Lal's case observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers. The High Court has relied upon Madhu Limaye's case for coming to the conclusion that since the offences under Sections 498A and 406 IPC are non-compoundable, i t would be impermissible in law to quash the FIR on the ground that there has be en a settlement between the parties. The decision in Madhu Limaye's case has be en misread and misapplied by the High Court. The question considered in that ca se was when there was a bar on the power of revision in relation to any interloc utory order passed in an appeal, enquiry, trial or other proceedings, what would be its effect on exercise of power under Section 482 of the Code. Sub-section (2) of Section 397 of Cr.P.C providing that the power of revision conferred by s ub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings was noticed and it was held that on a plain reading of Section 482, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". The Court said that if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers but adopting a harmonious approach held that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. It was further held that, then, in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redressal of the grievance of the aggrieved party. In Madhu Limaye's case, it was, inter alia, said that if for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. By way of illustration, an example was given where without jurisdiction the Court takes cognizance or issues process and assumes it to be an interlocutory order, would it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceedings as early as possible, since being an interlocutory order, it was not revisable and resultantly the accused had to be harassed up to the end, though the order taking cognizance or issuing process was without jurisdiction. It was held that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code or extra ordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. The High Court has also relied upon the decision in case of Surendra Nath Mohanty's case (supra) for the proposition that offence declared to be non-compoundable cannot be compounded at all even with the permission of the Court. That is of course so. The offences which can be compounded are mentioned in Section 320. Those offences which are not mentioned therein cannot be permitted to be compounded. In Mohanty's case, the appellants were convicted by the trial court for offence under Section 307. The High Court altered the conviction of the appellants and convicted them for offence under Section 326 and imposed sentence of six months. The trial court had sentenced the appellants for a period of five years RI. The application for compounding was, however, dismissed by the High Court. This Court holding that the offence for which the appellants had been convicted was non-compoundable and, therefore, it could not be permitted to be compounded but considering that the parties had settled their dispute outside the court, the sentence was reduced to the period already undergone. It is, however, to be borne in mind that in the present case the appellants had not sought compounding of the offences.

They had approached the Court seeking quashing of FIR under the circumstanced abovestated. In State of Karnataka v. L. Muniswamy & Ors. [(1977) 2 SCC 699], considering th e scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proce edings if it comes to the conclusion that ends of justice so require. It was ob served that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. Answer clearly has to be in 'negative'. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. In Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. [(1988) 1 SCC 692], it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings. The special features in such matrimonial matters are evident. It becomes the duty of the Court to encourage genuine settlements of matrimonial disputes. The observations made by this Court, though in a slightly different context, in G.V. Rao v. L.H.V. Prasad & Ors. [(2000) 3 SCC 693] are very apt for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code. For the foregoing reasons, we set aside the impugned judgment and allow the appeal and quash the FIR above mentioned.

CASE NO.: Appeal (civil) 4023 of 2001

PETITIONER: Shaligram Shrivastava

RESPONDENT: Naresh Singh Patel

DATE OF JUDGMENT: 19/12/2002

BENCH: R.C. Lahoti, Brijesh Kumar & H.K. Sema.

JUDGMENT: JUDGMENT

BRIJESH KUMAR, J.

The defeated candidate in the bye-election held in February, 2000 to the legislative assembly, Madhya Pradesh from Bhojpur assembly constituency, filed an election petition in the High Court of Madhya Pradesh challenging the declaration of the respondent as elected from the aforesaid assembly constituency. The election petition has been dismissed, hence this appeal.

Briefly, the facts are that nomination paper of one Bhagwan Singh was rejected at the time of scrutiny on the ground that he had not filled up the proforma prescribed by the Election Commission vide letter dated 28.8.97. The said proforma was required to be filled up to ascertain as to whether the candidate had been convicted or not for any offence mentioned in Section 8 of the Representation of People Act, 1951 (for short the 'Act'). Interestingly, the candidate, namely, Bhagwan Singh had filed an affidavit that information given in the proforma was correct but the proforma itself was left blank. He had though filled the nomination paper on Form 2-B as prescribed under Rule 4 of the Conduct of Elections Rules, 1961 declaring that the candidate was qualified and also not disqualified for being chosen to fill the seat. According to the Election petitioner the nomination paper of Bhagwan Singh could not be rejected on the ground that he had not filled up the proforma prescribed under the letter dated 28.8.97, since no such proforma was statutorily provided under the provisions of the Act nor under the rules framed thereunder. It is contended that the commission could not legislate to prescribe a proforma; at best it can only be an executive instruction of the Election Commission whereas the petitioner had filled the form prescribed under the Rules which did not suffer from any defect. Yet another ground taken up by the petitioner was that failure to comply with executive direction of the Election Commission would not entail the consequence of rejection of the nomination paper much less where it is not provided that failure to fill up the proforma would result in rejection of the nomination paper. The High Court considering the points raised by the petitioner came to the conclusion that non-submission of the declaration as required under the instruction dated 28.8.97 is a defect of substantial character. Hence the nomination paper was rightly rejected by the Returning Officer. At this juncture it may also be mentioned that a question seems to have been raised, as to whether election petition could be entertained, in view of the fact that Bhagwan Singh, whose nomination paper was rejected neither approached the court nor he ever raised any objection to the rejection of his nomination paper, but this point does not seem to have been pursued before the High Court nor this court was addressed on the said point. We therefore, need not digress on that question and proceed to consider the matter on merit of the appeal on the grounds canvassed before us.

Before entering into the merits of the other points it would be appropriate to deal with one question raised by the appellant to the effect that the instructions dated 28.8.97 contained in letter P-1 and the letter dated 6.1.98 have not been issued by the Election Commission. On the other hand it is submitted that these letters have been issued by the officers of the Commission, hence Article 324 of the Constitution will not be attracted. This point though argued at length, holds no water and it is destined to be rejected. Referring to letter dated 28.8.97 it is submitted that it has been issued only by the Director (Law) of the Election Commission. It is further pointed out that the said letter has been issued only to operationalise the directive of the Commission. The Commission had desired that at the time a nomination paper is filed, the candidate should also fill up the proforma annexed therewith seeking information with a view to ascertain, at the time of scrutiny, as to whether his candidature is valid in the light of the provision of Section 8 of the Act or not. The instructions of the Commission alongwith copy of the letter of the Commission dated 28.8.97 were furnished to all Returning Officers and Assistant

Returning Officers for their information, guidance and strict compliance. It may be pointed out that the letter written by the Director (Law) itself refers to the instructions issued by the Commission dated 28.8.97 under Article 324 of the Constitution. It has not been anybody's case that letter dated 28.8.97 issued by the Director (Law) is the instruction issued by the Election Commission under Article 324 of the Constitution. The letter of the Director (Law) only indicates the gist of the instructions of the Commission issued on the same date. The appellant has chosen not to file the instructions issued by the Election Commission dated 28.8.97 under Article 324 of the Constitution. It may further be indicated that the main document is the proforma which is required to be filled up by the candidate as per instructions of the Election Commission, seeking information which was considered necessary at the time of scrutiny of the nomination paper. The letter dated January 6, 1998 issued by the Secretary of the Election Commission clearly indicates in para 2 that revised proforma was issued along with letter of the Commission dated 28.8.97. Therefore there is no substance whatsoever in the submission made on behalf of the appellant, with some vehemence too, that the proforma as well as the instructions were issued by the officers of the Election Commission and not by the Commission itself. Apart from what has been indicated above it may also be noticed that such a ground was never canvassed before the High Court nor it has been taken in the special leave petition; rather it has been mentioned at all the places that the instructions and proforma were issued by the Election commission. It is only on the basis of oral submission that such a point was tried to be made out. For the above reasons we repel this contention of the appellant. We thus feel that mainly two aspects of the matter require our consideration, the first being the status of the instruction issued by the Election Commission and its binding nature by virtue of Article 324 of the Constitution and the next point as to the nature and scope of inquiry as well as the power of the Returning Officer under Section 36 (2) of the Act at the time of scrutiny. That is to say suppose it is held that the instructions and the proforma issued by the Commission does not have the force of instructions issued under Article 324 of the Constitution on the ground that the field is already covered by legislation as canvassed or on any other ground whatsoever, could the Returning Officer still in exercise of its power under Section 36(2) of the Act, seek necessary information and reject the nomination paper or not. We propose to deal with the second point first. It will be appropriate to peruse the relevant provisions contained under Sections 30, 33, 34 and 36 of the Act. They read as follows:-

"30. Appointment of dates for nominations, etc.- As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint -

(a) the last date for making nominations, which shall be the [seventh day] after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be [the day immediately following] the last date for making nominations or, if that day is public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidatures, which shall be [the second day] after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken which or the first of which shall be a date not earlier than the [fourteenth day] after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

Xxx xxx xxx

33. Presentation of nomination paper and requirements for a valid nomination - (1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the

constituency as proposer :

[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency.

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

Provided also that in the case a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers.]

(1A) . . . . . .

(2) . . . . . .

(3) . . . . . .

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]

(5) . . . . . .

(6). . . . . .

[(7). . . . . .

34. Deposits:[(1)A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited,-

(a) . . . . . (b) . . . . . .

(2) . . . . . .

Xxx xxx xxx

36. Scrutiny of nominations.- (1)On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such

summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds :-

[(a) [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-

Articles 84, 102, 173 and 191,

[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (2) of 1963)]; or

(b)that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

(3) Nothing contained in [clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularities has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that I case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

[(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.]

To summarise the legal position as emerging from the above provisions we find that Section 30 of the Act provides for fixing of dates for filing of nomination paper for election of a member from a Constituency. Section 32 provides that a person may be nominated as candidate for election to fill a seat who is qualified to be chosen to fill that seat under the provisions of the Constitution and the Act. Section 33 relates to presentation of nomination paper and requirements for a valid nomination. The nomination is to be in the prescribed form signed by the candidate and by an elector of the Constituency as proposer. Other clauses of Section 33 indicate a number of requirements of a valid nomination. A notice of scrutiny of the nomination paper indicating the date and time for the purpose is to be issued and affixed in some conspicuous place as provided under section 35 of the Act. Under Section 36 of the Act, a nomination paper is scrutinized by the Returning Officer. Sub-section (2) of Section 36 provides that the Returning Officer on the objections filed to any nomination, or on his motion may hold a summary enquiry in connection thereof. A nomination can be rejected on the

grounds: (i) the candidate is not qualified or is disqualified for being chosen to fill the seat under any of the provisions namely, Articles 84, 102,173 and 191 of the Constitution or under Part II of the Act (Section 8 of the Act falls in Part II); (ii) the nomination paper can also be rejected on failure to comply with provisions of Section 33 or Section 34 of the Act or; (iii) The signature of the candidate or the proposer on the nomination paper is not genuine. Sub-section (4) of Section 36 provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of substantial character. The prescribed form B-2 for filing the nomination contains a declaration that the candidate is qualified and not disqualified. No further facts, details or information is contained in the prescribed form in relation to his qualification or disqualification. Section 8 of the Act which falls in Part II, provides for disqualification which a person may incur on being convicted. It may be noted that every conviction may not result in disqualification. It depends upon the nature of the offence and provisions under which the offence is committed, as also the period of sentence awarded. At the time of scrutiny the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. Sub-section (2) of Section 36 authorises him to hold an enquiry on his own motions, though summary in nature. The Returning Officer furnished a proforma to the candidates to be filled on affidavit and filed on or before the date and time fixed for scrutiny of the nomination paper. Therefore providing a proforma, eliciting necessary and relevant information in the light of Section 8 of the Act to enquire as to whether the person is qualified and not disqualified, is an act or function fully covered under sub-section(2) of Section 36 of the Act. The Returning Officer is authorized to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer under Sub-section (2) of Section 36 of the Act relating to his being not qualified or disqualified in the light of Section 8 of the Act . It is bound to result in defect of a substantial character in the nomination. The letter dated 28.8.97 issued by Director (Law) was addressed to the Chief Electoral Officer of all the States and Union Territories and it drew attention to the instructions issued by the Election Commission under Article 324 of the Constitution saying that in view of decisions of some High Courts, the disqualification of a candidate for election under Section 8 of the Act would commence from the date of conviction, regardless of the fact whether he is intending to be a candidate, is on bail or not except where the conviction is covered under Sub-section 4 of Section 8 of the Act. To elicit the relevant information in regard to Section 8, the Commission had indicated a proforma which was to be handed over to the candidates who were supposed to fill the same on affidavit. In this context we may peruse Section 8 of the Act which reads as under:-

Disqualification on conviction for certain offences - (1) A person convicted of an offence punishable under -

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or Section 171 E (offence of bribery) or section 171 F (offence of undue influence or personation at an election) or sub- section (1) or sub-section (2) of Section 376 or section 376A or Section 376B or Section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub section (2) or sub section (3) of Section 505 (offence of making statement creating or promoting enmity, hatred or ill will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) or the Indian Penal Code (45 of 1860), or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

section 11 (offence of importing or exporting prohibited goods) or the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) The Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of Section 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub section (2) of section 136 (offence of Fraudulently defacing or fraudulently destroying any nomination paper) of this Act;

(j) section 6 (offence of conversion of a place or worship) of the Places of Worship (special Provisions) Act 1991

(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence or preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971) shall be disqualified or a period of six years from the date of such conviction.

(2) A person convicted for the contravention of – a) any law providing for the prevention of hoarding or profiteering; or (b) any law relating to the adulteration of food or drugs; or (c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961); or (d) any provisions of the Commission of Sati (Prevention) Act, 1987 (3 of 1988),

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release]

(4) Notwithstanding anything (in sub section (1) sub section2 and sub section (3) a disqualification under either sub section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation - In this section -

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for -

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be brought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(a) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955)

(b) "food" has the meaning assigned to it in the Prevention Food Adulteration Act, 1954 (37 of 1954).

According to the petitioner information furnished in the form 2-B prescribed under Rule 4 for the nomination is sufficient, as it contains the declaration of the candidate that he is qualified and not disqualified to be a candidate for being chosen from the constituency. In our view the bald declaration that the candidate is qualified and not disqualified is not at all sufficient to scrutinize the nomination paper from the angle of Section 8 of the Act. Clause (a) of sub-section 2 of Section 36 provides for scrutiny of the nomination paper to see whether he is disqualified for being chosen to fill the seat or not, amongst others in the light of part II of the Act; as indicated earlier, Section 8 falls in part II of the Act. Therefore, the declaration in the nomination paper that the candidate is qualified and not disqualified may only be a mere basic statement necessary to fill up the nomination paper but it contains no information or facts relevant for the purposes of scrutinising the nomination paper in the light of Section 8 of the Act which falls in Part II of the Act. For the purpose of scrutiny further information is necessary. The scrutiny may call for even suo motu inquiry by the Returning Officer though summary in nature. It is one of the statutory duties of the Returning Officer to scrutinize the nomination paper in the light of section 8 of the Act and he is statutorily authorised to hold a summary inquiry about the qualification and disqualification of a candidate (See Birad Mal Singhvi vs. Anand Purohit, AIR 1988 SC 1796). Such a power which vests in the Returning Officer is not dependent upon any instructions issued by the Election Commission, therefore, it is not necessary to enter into the controversy which is sought to be raised as to whether the instructions issued by the Election Commission are in exercise of its power under Article 324 or not. The returning Officer is supposed to have the necessary information at the time of scrutiny of the nomination paper and for that purpose he can very well require a candidate to furnish information relevant for the purpose of section 8 of the Act before or on the date of scrutiny. At best it can be said that the Election Commission by its letter dated 28.8.1997 had brought to the notice of the Returning Officers certain decisions of different High Courts in regard to disqualification under Section 8 of the Act. It was further desired that such a scrutiny be made by the Returning Officers looking to the menace of criminalisation of the politics. Barring the fact that the instructions apprised the Returning officers of the position under law in the light of the judgments of the High Courts, nothing else was provided thereunder which was already not within the power of the Returning Officer under the statutory provisions rather it was a part of their duty to scrutinize the nomination papers in the light of Section 8 of the Act which implies that he is authorised to seek necessary information for the purpose. It can be suo motu as well.

Since such information is necessary and relevant for the purpose of scrutiny of the nomination paper under Section 36(2), in the light of Section 8 of the Act, it can well be furnished on a format provided to the candidate by the Returning Officer and it becomes his duty to furnish such information so that a Returning Officer may discharge its statutory duty to scrutinize the nomination paper effectively, properly and in consonance with the provisions of law.

Here we would like to point out that the directive of the Commission states "when a candidate files his nomination paper the Returning Officer or, as the case may be, the Returning Officer receiving the nomination paper shall hand over to him the enclosed letter, together with the proforma of affidavit annexed thereto to ascertain at the time of scrutiny of nomination as to whether the candidature is valid from the angle of Section 8 of RP Act, 1959", it would be better that for future the directive may find it feasible to require the Returning Officer to hand over the proforma of affidavit while issuing the nomination paper itself.

In the case in hand the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same. The appeal therefore, lacks merit and it is dismissed with costs.

CASE NO.: Appeal (crl.) 1 of 1995

PETITIONER: GANANATH PATTNAIK

Vs.

RESPONDENT: STATE OF ORISSA

DATE OF JUDGMENT: 06/02/2002

BENCH: R.P. Sethi & Bisheshwar Prasad Singh

JUDGMENT:

SETHI,J.

The appellant was charged for the commission of offences punishable under Sections 304B and 498A of the Indian Penal Code for allegedly subjecting his wife to cruelty and causing the dowry death. After trial, the appellant was acquitted of the charge framed against him under Section 304B but convicted under Section 498A of the Indian Penal Code and sentenced to three years rigorous imprisonment. The appeal filed by the appellant against his conviction and sentence under Section 498A IPC was dismissed vide the judgment impugned in this appeal.

The facts of the case are that the appellant's marriage with Rashmirekha was solemnised on 4.3.1984. A male child was born to the parties on 9.5.1985. Rashmirekha, the wife of the appellant died by hanging herself in the bathroom regarding which the appellant is stated to have lodged a written report to the Police Station Sahid Nagar and he informed the family members of the deceased. PW1, the father of the deceased thereafter lodged an FIR alleging therein that his daughter was murdered by the appellant and his family members. During the investigation it transpired that the deceased had committed suicide on account of dowry demands, allegedly made by the appellant and his family members. It was further revealed that the deceased had been subjected to ill-treatment, harassment and cruelty. The appellant was alleged to be having illicit connection with his brother's wife. The accused totally denied the occurrence. In his statement, recorded under Section 313 of the Code of Criminal Procedure, he admitted that the deceased was his wife but asserted that he was having very cordial relations with her. There was no demand of dowry either by him or his brother or his family members. According to him the deceased had committed suicide which is not related to either cruelty or harassment or demand of dowry.

Upon analysis of the prosecution evidence, the trial court concluded that, "in absence of any acceptable evidence to establish the foundational fact, the accused cannot be held guilty for the offence under Section 304B of IPC". The trial court, however, found the appellant guilty for the offence under Section 498A IPC by finding:

"In this case there is evidence that the accused has given purshes to the deceased in presence of PW4. He has taken away the child from her as stated by PW5. There is also evidence that the deceased was not allowed to sit on the scooter by the accused and he was frequently staying absent in the house. He also failed to explain his position in relation to his sister-in-law Bijayalaxmi to the deceased for which there was an impression that he had illicit relationship with Bijayalaxmi. I find the evidence of the witnesses on this score is consistent. Taking away the child and the further ill treatment of the accused to the deceased as indicated above amounts to cruelty in as much as by the said conduct of the accused, it could be much possible that the deceased Rasmirekha could be driven to commit suicide."

The aforesaid findings were confirmed by the High Court vide the order impugned.

It is conceded before us that no appeal or revision has been filed against the judgment of the trial court by which the appellant was acquitted of the charge framed against him under Section 304B of the Indian

Penal Code.

We do not agree with the argument of the learned counsel for the appellant that even on proof of the aforesaid circumstances, as noticed by the trial court, no case was made out against the appellant as, according to him, those facts even proved do not constitute cruelty for the purposes of attracting the provisions of Section 498A of the Indian Penal Code. Cruelty for the purposes of aforesaid section has been defined under the Explanation of the Section to mean:

"(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 here 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."

The concept of cruelty and its effect varies from individual to individual also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

Learned counsel for the appellant then submitted that the findings returned by the trial court regarding the cruelty within the meaning of Section 498A of the Indian Penal Code are not based on any legal evidence.

To hold that the accused had once given pushes to the deceased which drove her to commit suicide are based upon the alleged testimony of PW4 who is the mother of the deceased. We have minutely read the statement of the aforesaid witness and do not find any mention of her having seen the accused pushing the deceased which, in turn, could be held to be "cruelty" driving her to commit suicide.

Another circumstance of cruelty is with respect to taking away of the child from the deceased. To arrive at such a conclusion, the trial court has referred to the statement of PW5, who is the sister of the deceased. In her deposition recorded in the court on 4.5.1990 PW5 had stated:

"Whenever I had gone to my sister, all the times she was complaining that she is not well treated by her husband and in-laws for non-fulfilment of balance dowry amount of scooter and twin one."

and added:

"On 3.6.1987 for the last time I had been to the house of the deceased i.e. to her separate residence. Sworna, Snigdha, Sima apa, Baby Apa accompanied me to her house on that day. At that time the deceased complained before us as usual and added to that she said that she is being assaulted by the accused now-a-days. She further complained before us that the accused is taking away the child from and her, and that her mother in-law has come and some conspiracy is going against her (the deceased). She further told that "MATE AU BANCHEI DEBENAHIN".

Such a statement appears to have been taken on record with the aid of Section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence under Section 304B and such statement was admissible under Clause (1) of the said section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498A of the Indian Penal Code and has to be termed as being only a hearsay evidence. Section 32 is an exception to the Hearsay Rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the Hearsay Rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused.

Another finding for recording the guilt of the accused is that once the deceased was not allowed to sit on the scooter by the accused and that he was frequently staying absent from his house. Learned counsel,

appearing for the respondent, fairly conceded that no witness has stated to that effect and we feel that such a finding is not based upon any legal evidence.

The alleged relationship of the appellant with his sister-in-law is stated to be another circumstance which led the deceased to commit the suicide. Again there is no evidence on the record to hold that the deceased had conceived the apprehension of the appellant having illicit relations with his sister-in-law which led her to end the life. Learned counsel for the appellant has taken us through letters Exhibit A to F, stated to have been written by the deceased as admitted by PW4. In one of the letters the deceased is shown to have written to her mother stating:

"Please informed me when the result of Tutu shall be declared and also send the new address of Bada Bhai in the letter have told you have occasion not to spread bad rumour against the sister-in-law (wife of Kailash Patnaik) and not to discuss about her with anybody; can these discussions will at all lead to a better understanding, rather it will create more misunderstanding and aggravating the situation and which is already in vogue. I came to know that you are telling to others that she is not providing me proper food, allowing me to wear good cloth and giving ill-treatment. I want to know who has given you these false information about her and as I remember, have never discuss about this to you; it is wrong to presume that she is misbehaving me; but you have been getting wrong information about her from others. When it comes her knowledge that that you have made discussion against her it creates rift and misunderstanding in our family; further I would like to bring your notice this is to report to her by those you discuss about her. Further why are you discussing with others regarding my stay; whether it is at village-home or at Bhubaneshwar. I have made number of fervent appeals to you not to make any bad discussion against her but you are not heeding to my advise and continuing same against her. By doing this, you are isolating me from rest of the family members."

(EMPHASIS SUPPLIED)

In view of the aforesaid letter it could not be held that the deceased had conceived an apprehension about the relationship of the appellant with his sister-in-law.

It follows, therefore, that there was no legal evidence tendered in the case which could be made the basis for returning a finding with respect to the alleged cruelty of the accused with the deceased. In the absence of any legal evidence produced in the case, we are of the opinion that the prosecution has failed to prove, beyond doubt, that the appellant had committed the offence under Section 498A of the Indian Penal Code and find that it is a fit case where he is entitled to be given the benefit of doubt.

In view of our finding that there is no legal evidence to connect the accused with the commission of the offence under Section 498A of the Indian Penal Code, this appeal is allowed by setting aside the impugned judgment of the High Court as also of trial court. Giving him the benefit of doubt, the appellant is acquitted of the charge under Section 498A of the Indian Penal Code. His bail bond stands discharged.

.....J. (R.P. Sethi)

.....J. (Bisheshwar Prasad Singh)

February 6, 2002

CASE NO.: Appeal (crl.) 1913 of 1996

PETITIONER: BABURAM

Vs.

RESPONDENT: STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 29/01/2002

BENCH: N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

SANTOSH HEGDE, J.

Deceased Bhagwan Devi was married to one Ram Kumar son of the appellant herein. It is stated by the prosecution that on 27.2.1988, the said Bhagwan Devi was found charred to death in the house where she was living with her husband, and at that time, the appellant was visiting them for about 3 days prior to the ghastly incident. After investigations, the Police filed a chargesheet against the appellant and his son under Sections 302 and 201 IPC and alternative charges were also framed under Section 306 read with Section 498A IPC. Almost all material witnesses examined by the prosecution had turned hostile and the trial court after considering the material on record came to the conclusion that the charges under Sections 201 and 302 were not proved against said Ram Kumar and the appellant and, therefore, acquitted them of the said charges. However, both the accused, namely, Ram Kumar and the appellant were found guilty of the charges under Sections 306 and 498A IPC and were sentenced to undergo RI for 3 years under each count and both the sentences were made to run concurrently.

Aggrieved by the said conviction and sentence imposed on them, the appellant and his son Ram Kumar preferred Criminal Appeal No.53/90 before the High Court of Madhya Pradesh and being aggrieved by the acquittal of the accused persons of the charges under Sections 302 and 201 read with Section 34 IPC, the State of Madhya Pradesh had preferred Criminal Appeal No.219/90 before the said High Court. The High Court tried both the appeals together and came to the conclusion that so far as Ram Kumar is concerned, his innocence is proved by the alibi set up by him and acquitted him of all the charges whereas it partly allowed the State appeal to the extent of the appeal filed against the appellant herein and found the appellant guilty of offences chargeable under Sections 201 and 302 IPC for having caused the murder of Bhagwan Devi and for having caused the disappearance of evidence for screening himself from the said offence and, consequently, sentenced the appellant to undergo RI for life under Section 302 IPC and further RI for 7 years for the offence held proved against him under Section 201 IPC, with a direction that both the sentences will run concurrently.

It is against this judgment of the High Court of Madhya Pradesh that the appellant Babu Ram is before us. Mr. D.B.R. Vohra, learned counsel for the appellant, has contended before us that it is clear from the evidence of Dr. Fayaj Hussan, PW-1, that the death of the deceased Bhagwan Devi was caused not by strangulation but due to the burn injuries received by her. He also contended that the evidence of the said Doctor in regard to the ligature marks found on the neck of the deceased cannot be accepted as a definite conclusion of the said Doctor and in the absence of the prosecution producing any acceptable evidence for the purpose of proving strangulation, the High Court could have relied on probabilities alone to convict the appellant on the charge of murder. On behalf of the State, it was contended by Mr. Rohit Singh that there was enough circumstantial evidence to drive home the point that the death of Bhagwan Devi was notonly caused by the burn injuries she received but also by strangulation and the prosecution has established beyond all reasonable doubt that it was the appellant who was last found in the residence where Bhagwan Devi was found murdered. Therefore, bearing in mind the motive emanating from the ill-will harboured by the appellant against the deceased for not having brought sufficient dowry, the High Court was justified in coming to the conclusion that the death in question was caused by strangulation and burning and both the acts must have been committed only by the

appellant. Hence, the judgment of the High Court was unexceptionable.

We have heard learned counsel for the parties and perused the records. First of all, it should be noticed that PW-1 in his examination-in-chief as also the post mortem certificate did notice some transversely placed ligature marks on the front side of the neck at the level of thyroid cartilage about inch wide. It is the presence of this ligature mark which has made the High Court accept the prosecution case that the death was partly due to strangulation. On a perusal of the evidence of the Doctor in detail, it is seen that when the said doctor was questioned by the court in regard to the ligature marks found by him and the effect thereof on the cause of death, this is what the doctor said : "First there must have been partial strangulation & thereafter she might have been burnt or it may be possible that after the start of burn she might have been strangulated. After burns she might have survived for about an hour and during that period she might have been strangulated." A bare perusal of this evidence/statement clearly shows that the doctor was not sure what exactly was the effect of the so-called ligature marks that were found on the body of the deceased. His evidence is rather uncertain in terms since that evidence postulates more than one possible circumstance. It also indicates that the deceased could have been conscious for nearly an hour after she was burnt and also contemplates deceased being strangulated as she was being burnt. If we analyse these possibilities, it will be extremely difficult to accept the prosecution case that there was strangulation by the appellant for the reason that if the strangulation had taken place during the process of burning then the probabilities are that the accused also would have some signs of burns on his hands, if not the burn injuries itself. But that was not the prosecution case. It is also evident from the said doctor's evidence that there was a possibility that the deceased might have survived for an hour after she was strangulated but the other evidence adduced by the prosecution clearly goes to show that even though there were neighbours in the proximity, nobody ever heard any shrieks from the deceased during her alleged strangulation or burning. Therefore, in our opinion, the evidence of the doctor does not in any manner support the prosecution case to prove beyond all reasonable doubt that the appellant had caused the strangulation of the deceased.

Coming to the next aspect of the prosecution case that it is the appellant who alone could have caused the burn injuries on the deceased, it is to be noted that the said version of the prosecution case is solely based on the fact that the accused was last found in the house wherefrom the dead body was recovered. Here again, we are unable to accept the finding of the High Court because it is the prosecution case that the body in question was found in a locked room where both the front door and the window of the room were locked/bolted from inside. The prosecution tried to develop an hypothesis that there was a window in the house which had a barrel bolt which bolt could have been closed from inside after a person came out of the window and shook the window in such a manner as to put the bolt in proper position. The learned Sessions Judge who conducted a spot-inspection and tried to examine this aspect of the case, has clearly stated that it was extremely difficult to do so and he himself could do it with great difficulty and that too in third attempt. That apart, the case of the prosecution that the appellant might have come out of the window and then locked it from inside afterwards is again only an hypothesis inasmuch as no witness has ever stated that the appellant was seen coming out of the window. It is true that some witnesses, who have turned hostile, have stated in their examinations-in-chief that they saw the appellant coming out of the house but they did not say that he was coming out of the window or at what point of time he came out of the house. Therefore, in our opinion, it is not at all safe to draw any such inference against the innocence of the accused based on the facts which are not at all proved.

We are satisfied that the prosecution has failed to establish the case against the appellant beyond all reasonable doubt. The appellant having been acquitted of the charge under Section 201 read with Section 306 IPC, there being no cross- appeal by the State, we do not think it is necessary for us to go into that aspect of the matter. Even otherwise, so far as the appellant herein is concerned, we find that there is no motive whatsoever why the appellant should have caused the death or abetted the suicide of the deceased because she failed to bring in sufficient dowry. In the background of the prosecution evidence which shows that the appellant and Ram Kumar were satisfied with the gold-ring which was given by the father-in- law and the Government job which he managed to get for Ram Kumar, therefore, even according to the prosecution case, the appellant's son was not having any grouse against his wife on account of bringing in insufficient dowry. We find it extremely difficult why the appellant who was visiting his son and daughter-in-law and had come only 3 days prior to the incident in question, should go to such an extent of murdering or abetting the suicide of his daughter-in-law for not bringing in sufficient dowry. In our opinion, it is extremely dangerous to rely upon the prosecution evidence to base

a conviction against the appellant. In the said view of the matter, this appeal succeeds and the same is allowed accordingly. The conviction and the sentence imposed on the appellant by the High Court as well as the trial court are set aside. The appellant shall be set at liberty, if not required in any other case.

.....J. (N. Santosh Hegde)

.....J. January 29, 2002. (Doraiswamy Raju)

CASE NO.: Appeal (crl.) 1319 of 1998 Appeal (crl.) 123 of 1999

PETITIONER: SATVIR SINGH AND ORS.

Vs.

RESPONDENT: STATE OF PUNJAB AND ANR.

DATE OF JUDGMENT: 27/09/2001

BENCH: K.T. Thomas & S.N. Variava

JUDGMENT:

THOMAS, J.

A young mother of two kids, who is a double graduate, ran into the rail in front of a running train to end her life as well as her miseries once and for all. She was driven to that action on account of the cruel treatments suffered by her at her nuptial home. But the destiny also was cruel to her as the locomotive which she desired to be her destroyer, instead of snuffing her life out in a trice, converted her into a veritable vegetable. She lost her left hand from shoulder joint and got her spinal cord ruptured. She turned into a paraplegic. She herself described her present plight as a living corpse. Thus the miseries she longed to end transformed into a monstrous dimension clutching her as long as she is alive.

Her husband, father-in-law and mother-in-law (the appellants before us) were convicted by the Sessions Court under Section 116 read with Section 306 IPC, besides Section 498A. On the first count they were sentenced to rigorous imprisonment for two and a half years and a fine of Rs.10,000/- each, and on the second count they were sentenced to imprisonment for two years and a fine of Rs.5,000/- each. When the appellants filed an appeal before the High Court in challenge of the said conviction and sentence the victim also made a motion before the same High Court as she felt that condign punishment has not been meted out to the guilty persons. Both were disposed of by the impugned judgment delivered by a single Judge of the High Court of Punjab and Haryana. The findings made by the Sessions Court were concurred with by the High Court. However, an alteration was made by substituting Section 306 IPC with Section 304B IPC to be read with Section 116 IPC. Commensurate alteration was made in the quantum of sentence by escalating it to RI for five years each.

It was during the wee hours of 17.6.1996 that Tejinder Pal Kaur (PW-5) ran in front of a train. The events which culminated in the said tragedy have been set out by the prosecution like this:

Tejinder Pal Kaur (PW-5) daughter of Narender Singh (PW-6) obtained B.A. degree and B.Ed. degree before her marriage. On 15.11.1992 she was given in marriage to Satvir Singh (A-1), a businessman, and thenceforth she was living in her husbands house. Devinder Singh (A-2) and Paramjit Kaur(A-3) who are the parents of Satvir Singh(A-1) were also living in the same house. Though dowry was given at the time of marriage the appellants started harassing the bride after about 4 or 5 months of the wedding for not giving a car and a house as part of the dowry. They used to hurl taunts on her pertaining to the subject, including telling her that she had brought rags instead of wedding costumes. After about a year a male child was born to her and about one and a half years thereafter she gave birth to another male child.

In the month of November 1995 her father Narender Singh (PW-6) paid Rs.20,000/- to her husband Satvir Singh presumably for appeasing him so that he would desist from causing any harassment to Tejinder Pal Kaur. But that appeared to be only a modicum of pelf for abating the shower of abuses heaped up on the housewife.

The immediate cause for the tragic episode happened on the night of 16.6.1996. When food was served to Satvir Singh (A-1) in the night, it was noticed that one of the items in the meals (salad) contained excessive salt. (According to PW-5 the salt was added to the salad by her mother-in-law). After tasting the salad Satvir Singh became furious and he unleashed abuses on his wife and then he was profusely supported by his mother and later they were reinforced by his father. They went to the extent of

suggesting to her why not end your life in front of one of the trains as many such trains are running nearby.

On 17.6.1996 Tejinder Pal Kaur (PW-5) left the house all alone at about 4 A.M. and reached the railway line yonder, expecting the arrival of a train from Jallandhar. Within 15 minutes the expected train arrived and Tejinder Pal Kaur, standing on the track, was run over by that train. What happened thereafter need not be narrated in detail over again except pointing out that she was devastatingly maimed, yet survived. There is practically no dispute that she went to the railway track on that morning and in an attempt to end her life she allowed the train to pass over her. As the doctors expressed the opinion that the testimonial capacity of Tejinder Pal Kaur (PW-5) was not seriously impaired prosecution examined her as the prime witness in the case. The trial court and the High Court believed her testimony. There is no reason to dissent from the finding regarding reliability of her evidence.

At the outset we may point out that on the aforesaid facts no offence linked with Section 306 IPC can be found against any of the appellants. The said section penalizes abetment of suicide. It is worded thus: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could afford to penalise an abetment to the offence of mere attempt to commit suicide.

Learned Sessions Judge went wrong in convicting the appellants under section 116 linked with Section 306 IPC. The former is abetment of offence punishable with imprisonment - if offence be not committed. But the crux of the offence under Section 306 itself is abetment. In other words, if there is no abetment there is no question of the offence under Section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under Section 116 read with Section 306 IPC. Therefore, the High Court was correct in altering the conviction from the penalising provisions fastened with the appellants by Sessions Court.

Now, we have to see whether the appellants can be convicted under Section 511 read with Section 304B IPC. For that purpose it is necessary to extract Section 511 as under:

511.Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.- Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both.

The above section is the solitary provision included in the last chapter of the IPC under the title Of Attempts to Commit Offences. It makes attempt to commit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are: (1) The offender should have done some act towards commission of the main offence. (2) Such an attempt is not expressly covered as a penal provision elsewhere in the Code. Thus, attempt on the part of the accused is sine qua non for the offence under Section 511. Before considering the question as to what is meant by doing any act towards the commission of the offence as an inevitable part of the process of attempt, we may point out that the last act attributed to the accused in this case is that they asked Tejinder Pal Kaur (PW-5) to go to the rail track and commit suicide. That act of the accused is alleged to have driven the young lady to proceed to the railway line on the next morning to be run over by the train. Assuming that the said act was perpetrated by the appellants and that the said act could fall within the ambit of attempt to commit the offence under section 304B it has to be considered whether there is any other express provision in the Code

which makes such act punishable. For this purpose we have to look at Section 498A which has been added to the IPC by Act 46 of 1983. That provision makes cruelty (which a husband of a woman or his relative subjects her to) as a punishable offence. One of the categories included in the explanation to the said section (by which the word cruelty is defined) is thus:

(a) Any willful 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;

Thus, if the act of the accused asking Tejinder Pal Kaur (PW-5) to go and commit suicide had driven her to proceed to the railway track for ending her life then it is expressly made punishable under Section 498A IPC. When it is so expressly made punishable the act involved therein stands lifted out of the purview of Section 511 IPC. The very policy underlying in Section 511 seems to be for providing it as a residuary provision. The corollary, therefore, is that the accused, in this case, cannot be convicted under Section 511 on account of the acts alleged against him.

Now, we have to consider whether the High Court was correct in convicting the appellants under Section 116 read with Section 304B IPC. Shri R.S. Cheema, learned senior counsel for the appellants advanced two contentions against it. First is that Section 304B cannot apply to a case of suicide at all, whether it is sequel to cruelty or harassment with the demand for dowry or not. Second is that the concept of abetment of an offence under Section 304-B is inconceivable in the absence of death of a woman within the statutory period mentioned in that provision. In elaborating the first contention learned senior counsel submitted that Section 306 IPC is now intended to cover all cases of suicide in view of Section 113A of the Evidence Act (which was brought in by Act 46 of 1983).

Both the contentions are fallacious. The essential components of Section 304B are: (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304B. To be within the province of the first ingredient the provision stipulates that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances. It may appear that the former limb which is described by the words death caused by burns or bodily injury is a redundancy because such death would also fall within the wider province of death caused otherwise than under normal circumstances. The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence. In the present context it is advantageous to read Section 113A of the Evidence Act. It is extracted below:

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.

Learned senior counsel submitted that since the word cruelty employed therein is a virtual importation of that word from Section 498A IPC, the offence envisaged in Section 306 IPC is capable of enveloping all cases of suicide within its ambit, including dowry related suicide. According to him, the second limb of the Explanation to Section 498A which defines the word cruelty is sufficient to clarify the position. That limb reads thus:

For the purpose this section, cruelty means-

(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.

At the first blush we thought that there was force in the said contention but on a deeper analysis we found that the contention is unacceptable. Section 306 IPC when read with Section 113A of the

Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused soon before her death or earlier. If it was caused soon before her death the special provision in Section 304B IPC would be invokable, otherwise resort can be made to Section 306 IPC.

No doubt Section 306 IPC read with Section 113A of the Evidence Act is wide enough to take care of an offence under Section 304B also. But the latter is made a more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death, Parliament intended such a case to be treated as a very serious offence punishable even upto imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113A of the Evidence Act) and made a separate offence.

We are, therefore, unable to concur with the contention that if the dowry related death is a case of suicide it would not fall within the purview of Section 304B IPC at all. In Smt. Shanti and anr. vs. State of Haryana {1991(1) SCC 371} and in Kans Raj vs. State of Pubjab and ors. {2000(5) SCC 207} this Court has held that suicide is one of the modes of death falling within the ambit of Section 304B IPC.

Now we have to consider whether the appellants are liable to be punished under Section 116 linked with section 304B IPC. We have already noted above that according to the learned senior counsel for the appellants there is no question of considering Section 304B unless death of a woman had occurred. In the present case, death did not occur. Before considering that contention we may delve into the question whether Tejinder Pal Kaur (PW-5) was subjected to cruelty or harassment in connection with the demand for dowry soon before her death, on a hypothetical assumption that her attempt to commit suicide had succeeded.

Prosecution, in a case of offence under Section 304B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused soon before her death. The word dowry in Section 304B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961.That definition reads thus:

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 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.

Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. 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 perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept soon before her death.

Applying the said principle in this case we have to refer to the evidence of the prosecution to know whether the findings made by the High Court on the facts warrant interference. PW-5 Tejinder Pal Kaur in her evidence said that 4 or 5 months after her marriage, she was ill- treated on the ground of insufficiency of dowry and then she reported the matter to her father. But PW-5 did not say one word in her evidence regarding any other ill treatment relating to dowry thereafter. It is true, she said in her evidence that in November 1995, a sum of Rs.20,000/- was paid by her father. But neither PW-5 (Tejinder Pal Kaur) nor PW-6 (Narendra Singh) testified that the said amount was paid as part of the dowry or in connection with the marriage. We cannot overlook two important events which had happened in the family during the said long interregnum of three years. One is the birth of the elder son on 12.11.1993 and the other is the birth of the second son on 10.6.1995. We have to bear in mind the payment of Rs.20,000/- was made five months after the birth of the second son. Even PW-6 had no case that his daughter was subjected to any ill treatment in connection with the demand for dowry on any day after she reported to him about the demand for further dowry way back in the early 1993 months. All amounts paid by the in-laws of the husband of a woman cannot become dowry.

Shri U.R. Lalit, learned senior counsel for Tejinder Pal Kaur (PW-5) contended that payment of Rs.20,000/- in November 1995 should be presumed as part of the three year old demand for further dowry. When the very participants in the deliberations have no such case it is not proper for the court to make an incriminating presumption against the accused on a very crucial ingredient of the offence, more so when it is quite possible to draw a presumption the other way around as well.

Thus, there is dearth of evidence to show that Tejinder Pal Kaur (PW-5) was subjected to cruelty or harassment connected with the demand for dowry, soon before the attempt to commit suicide. When the position is such it is an unnecessary exercise on our part to consider whether Section 116 IPC can ever be linked with the offence under Section 304B IPC. We, therefore, conclude that appellants cannot be convicted under Section 116 IPC either by linking it with Section 306 or with Section 304B. Hence the conviction and sentence passed on them under Section 116 IPC is set aside.

We have no reason to interfere with the conviction passed on the appellants under Section 498A IPC. We do confirm the same. We are told that first appellant Satvir Singh (A-1) has undergone the substantial portion of the sentence of imprisonment imposed on him and the remaining appellants have also undergone a long period of imprisonment by now in connection with this case. But we feel that the fine portion of the sentence imposed on the appellants is too insufficient, particularly when such fine was intended to be disbursed as compensation to PW-5. In our view PW-5 Tejinder pal Kaur should get at least three lakhs of rupees as compensation from the appellants. We are told that A-2 Devinder Singh and A-3 Paramjit Kaur have now become aged as both have crossed the age of 70. We therefore, modify the sentence under Section 498A IPC in the following terms:

The sentence of imprisonment imposed on the appellants shall stand reduced to the period which they have already undergone. We enhance the fine part of the sentence for the offence under Section 498A IPC, to Rs. one lakh each for all the three appellants. They shall remit the fine amount in the trial court, within three months from today, failing which each of the defaulter shall undergo imprisonment for a further period of nine months. The appeals are disposed of in the above terms.

J [K.T. Thomas]

J [S.N. Variava

September 27, 2001.

CASE NO.: Writ Petition (civil) 242 of 2001

PETITIONER: B.R. KAPOOR

Vs.

RESPONDENT: STATE OF TAMIL NADU AND ANR.

DATE OF JUDGMENT: 21/09/2001

BENCH: G.B. Pattanaik, S.P. Bharucha , Brijesh Kumar , Y.K. Sabharwal & Ruma Pal

JUDGMENT:

With W.P.(C) No. 245 of 2001, W.P.(C) No. 246 of 2001, W.P.(C) No. 261 of 2001, , T.C. (C) No. 26 of 2001 @ T.P.(C) No. 382 of 2001. & C.A. No. 6589 of 2001 @ S.L.P. (C) No. 11763 of 2001

JUDGMENT

PATTANAIK, J.

Leave granted.

I have my respectful concurrence with the conclusions and directions in the judgment of Brother Bharucha, J. I am conscious of the fact that plurality of judgments should ordinarily be avoided. But, having regard to the importance of the question involved, and the enormity of the consequences, if the contentions of Respondent No. 2 are accepted, I consider it appropriate to express my thoughts on some aspects. It is not necessary to reiterate the facts which have been lucidly narrated in the judgment of Brother Bharucha,J. The question that arises for consideration is whether a non elected member, whose nomination for contesting the election to the Legislative Assembly stood rejected, and that order of rejection became final, not being assailed, could still be appointed as the Chief Minister or the Minister under Article 164 of the Constitution, merely because the largest number of elected members to the Legislative Assembly elects such person to be their leader. Be it be stated, that the nomination of such person had been rejected, on the ground of disqualification incurred by such person under Section 8(3) of the Representation of People Act, 1951, the said person having been convicted under the provisions of the Prevention of Corruption Act, and having been sentenced to imprisonment for 3 years. The main basis of the arguments advanced by Mr. Venugopal, the learned senior counsel, appearing for respondent no. 2, and Mr. PP Rao, learned senior counsel appearing for the State of Tamil Nadu, is that Article 164 of the Constitution conferring power on the Governor to appoint a person as Chief Minister, and then appoint Ministers on the advice of such Chief Minister, does not prescribe any qualification for being appointed as Minister or Chief Minister, and on the other hand, Sub-Article (4) of Article 164 enables such a Minister to continue as a Minister for a period of six months and said Minister ceases to be a Minister unless within that period ofsix months gets himself elected as a member of the Legislaure of the State. As such, it would not be appropriate to import the qualifications enumerated for the members of the State Legislature under Article 173, or the dis- qualifications enumerated in respect of a person for being chosen as or for being a member of the Legislative Assembly under Article 191 of the Constitution. According to the learned senior counsel, the Governor, while exercising power under Article 164, is duty bound to follow the well settled Parliamentary convention and invites a person to be the Chief Minister, which person commands the confidence of the majority of the House. In other words, if a political party gets elected to the majority of seats in a Legislative Assembly and such elected legislatures elected a person to be their leader, and that fact is intimated to the Governor then the Governor is duty bound to call that person to be the Chief Minister, irrespective of the fact whether that person does not possess the qualifications for being a member of the Legislative Assembly, enumerated under Article 173, or is otherwise disqualified for being chosen, or being a member of the Legislative Assembly on account of any of the dis- qualifications enumerated under Article 191. The aforesaid contention is based upon two reasonings. (1) The lack of prescription of qualification or dis-qualifications for a Chief Minister or Minister under Article 164, and (2) that in a Parliamentary democracy the Will of the people must prevail. Necessarily, therefore, the provisions of Article 164 of the

Constitution requires an indepth examination, and further the theory that in a Parliamentary democracy, the Will of the people must prevail under any circumstance, as propounded by Mr. Venugopal and Mr. Rao, requires a deeper consideration. I would, therefore, focus my attention on the aforesaid two issues.

It is no doubt true, that Articles 164(1) and 164(4) do not provide any qualification or disqualification, for being appointed as a Chief Minister or a Minister, whereas, Article 173 prescribes the qualification for a person to be chosen to fill a seat in the Legislature of a State. Article 191 provides the disqualification for a person for being chosen as or being a member of the Legislative Assembly or Legislative Council of a State. In the case in hand, the respondent no. 2 was disqualified under Article 191(1)(e) read with Section 8(3) of the Representation of the People Act, 1951, in as much as the said respondent no. 2 has been convicted under Section 13 of the Prevention of Corruption Act, and has been sentenced to imprisonment for a period of 3 years, though the execution of that sentence has been suspended by the Appellate Court while the appeal against the conviction and sentence is pending before the High Court of Madras.

According to Mr. Venugopal, under the Constitution of India, when no qualification or disqualification exists under Article 164(1) or 164(4), it necessarily postulates that in the area of constitutional governance for the limited period of six months, any person could be appointed as a Chief Minister or Minister and it would not be open to the Court to import qualifications and disqualifications, prescribed under the Constitution for being chosen as a member of the Legislative Assembly. According to the learned counsel, the reasonable conclusion to be drawn from the aforesaid constitutional provision is that the constitution does not contemplate the scrutiny of the credentials of a non-member Prime Minister or Chief Minister or Minister, as in constitutional theory it is the House, consisting of the majority thereof which proposes him for this transient, temporary and limited period of six months. It is also contended by Mr. Venugopal that people who are the ultimate sovereign, express their will through their elected representatives for selecting a non-elected person as their leader and could be appointed as Chief Minister and Article 164(4) unequivocally provides a period of six months as locus poenitentia which operates as an exception in deference to the voice of the majority of the elected members, which in fact is the basis of a Parliamentary Democracy. Mr. Venugopal also urged that a disqualification being in the nature of a penalty unless expressly found to be engrafted in the constitution or in other words, in Article 164, it would not be appropriate for the Court to incorporate that disqualification, which is provided for being chosen as a member of the legislative assembly into Article 164 and pronounce the validity of the appointment of respondent No. 2, which has purely been made on the strength of the voice of the majority of the elected members. I am unable to accept these contentions of the learned counsel, as in my considered opinion, the contentions are based on a wrong premise. In a Parliamentary system of government, when political parties fight elections to the legislative assembly or to the Parliament for being chosen as a member after results are declared, it would be the duty of the President in case of Parliament and the Governor in case of Legislative Assembly of the State, to appoint the Prime Minister or the Chief Minister, as the case may be. When the President appoints the Prime Minister under Article 75 or the Governor appoints a Chief Minister under Article 164, the question that weighs with the President or the Governor is, who will be able to provide a stable government.

Necessarily, therefore, it is the will of the majority party that should ordinarily prevail and it is assumed that the elected members belonging to a majority political party would elect one amongst them to be their leader. Constitution, however does not prevent the elected members belonging to a political party commanding the majority of seats in the legislative assembly or the Parliament to elect a person who never contested for being chosen as a member or a person who though contested, got defeated in the election for one reason or the other and it is in such a situation that person on being elected as a leader of the political party commanding the majority in the House, could be appointed as the Prime Minister or the Chief minister. But the constitution certainly does not postulate such elected representatives of the people belonging to a political party commanding a majority in the Parliament or the Assembly to elect a person as their leader so as to be called by the President or the Governor to head the government, who does not possess the qualification for being chosen, to fill a seat in the Parliament or in the legislative Assembly, as contained in Articles 84 and 173 respectively of the Constitution or who is disqualified for being chosen as or for being a member of the House of Parliament or the legislative Assembly, as stipulated under Articles 102 and 191 of the Constitution respectively. At any rate, even if a person is elected as the leader by the elected members of the legislative Assembly, commanding a majority of seats in the Assembly and such person either does not possess the qualification enumerated

under Article 173 or incurs disqualification for being chosen as, or for being a member of the legislative Assembly, enumerated under Article 191, then the Governor would not be bound to respect that will of the elected members of the political party, commanding the majority in the House, so as to appoint that person as the Chief Minister under Article 164(1) of the Constitution. When Article 164(1) itself confers the discretion on the Governor to appoint a Chief Minister at his pleasure and when the Governor has taken oath under Article 159 of the Constitution to preserve, protect and defend the Constitution and the law and shall devote himself to the service and for the well-being of the people, it would be against such oath, if such a person who does not possess the qualification of being chosen as a member or has incurred disqualification for being chosen as a member is appointed as a Chief Minister, merely because Article 164 does not provide any qualification or disqualification for being appointed as a Chief Minister or Minister. It is indeed axiomatic that the necessary qualification in Article 173 and the disqualification in Article 191 proprio vigore applies to a person for being appointed as the Chief Minister or a Minister inasmuch as in a Parliamentary system of government, a person is required to be chosen as a member of the Legislative Assembly by the electorate of a constituency and then would be entitled to be appointed as the Chief Minister or a Minister on the advice of the Chief Minister. Non-prescribing any qualification or disqualification under Article 164 for being chosen as the Chief Minister or Minister would only enable the Governor to appoint a person as the Chief Minister or Minister for a limited period of six months, as contained in Article 164(4) of the Constitution, only if such person possesses the qualification for being chosen as a member of the legislative Assembly, as required under Article 173 and is not otherwise disqualified on account of any of the disqualifications mentioned in Article 191. Any other interpretation by way of conferring an unfettered discretion on the Governor or conferring an unfettered right on the elected members of a political party commanding a majority in the legislative Assembly to elect a person who does not possess the qualifications, enumerated under Article 173 or who incurs the disqualifications enumerated in Article 191 would be subversive of the constitution and would be repugnant to the theory of good governance and would be contrary to the constitution itself, which constitution has been adopted, enacted and given to the people of India by the people of India.

In this connection it would be appropriate to notice that even under the Government of India Act, 1935 where Sections 51(1) and 51(2) were somewhat similar to Article 164 of the Constitution, even the Joint Committee Report on Indian Constitutional Reforms would indicate that a disqualified person could not have been appointed as a Minister, as is apparent from the following sentence:

It was, therefore, suggested to us that the Governor ought not to be thus restricted in his choice, and that he ought to be in a position, if the need should arise, to select a Minister or Ministers from persons otherwise qualified for appointment but to whom the doubtful pleasures of electioneering might make no appeal.

Even in the Constituent Assembly Debates when Mohd. Tahir, an M.P. suggested an amendment to Article 144(3) of the Draft Constitution, which corresponds with Article 164(4) of the Constitution to the effect:

That a member shall, at the time of his being chosen as such be a member of the Legislative Assembly or the Legislative council of the State, as the case may be.

and urged that it is wholly against the spirit of democracy that a person who was not being chosen by the people of the country, should be appointed as a Minister, Dr. Ambedkar did not accept the amendment on the ground that tenure of a minister must be subject to the condition of purity of administration and confidence of the House. He further stated:

It is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency.

If purity of administration and otherwise competence to hold the post of Minister were the factors which weighed with the founding fathers to allow a competent person to be appointed as Chief Minister or a Minister for a limited period of six months, who might have been defeated, it is difficult to conceive that a person who is not an elected member, does not possess even the minimum qualification for being

chosen as a member or has incurred the disqualification for being chosen as a member could be appointed as a Chief Minister or Minister, on the simple ground that Article 164 is quite silent on the same and the Court cannot import anything into the said Article. Thus on a pure construction of provisions of Article 164 of the Constitution, the discussions made in the Constituent Assembly, referred to earlier, the pre-existing pari materia provision in the Government of India Act, 1935 as well as the discussion of the Joint Committee on Indian Constitutional Reforms referred to earlier, make it explicitly clear that notwithstanding the fact that no qualification or disqualification is prescribed in Article 164(1) or Article 164(4) but such qualification or disqualification provided in Articles 173 and 191 of the Constitution for being chosen as a member will have to be read into Article 164 and so read, respondent No. 2, who had incurred the disqualification under Article 191(1)(e) read with Section 8(3) of the Representation of the People Act, could not have been appointed as the Chief Minister, whatever may be the majority of her party members being elected to the legislative assembly and they elected her as the leader of the party to form the Government.

One ancillary argument raised by Mr. Venugopal, in this connection requires some consideration. According to the learned counsel, no adjudicatory machinery having been provided for in Article 164, in the event the qualifications and disqualifications prescribed for being chosen as a member of the legislative assembly under Articles 173 and 191 are imported into Article 164, then it will be an impossible burden for the Governor at that stage to decide the question if the opponent raises the question of any disqualification and no Governor can adjudicate on each one of the disqualifications, enumerated in Article 191 read with Sections 8 to 11 of the Representation of the People Act. According to the learned counsel, the constitution has avowedly not prescribed any qualification or disqualification with regard to a non-member minister or Chief minister and the only limitation is that such minister or Chief minister must get elected within six months or else would cease to become a minister. In my considered opinion, the appointment of a non-member as the Chief Minister or Minister on the advice of a Chief Minister is made under Article 164 on the Governors satisfaction. If any of the disqualifications mentioned in Article 191(1)(e) are brought to the notice of the Governor which can be accepted without any requirement of adjudication or if the Governor is satisfied that the person concerned does not possess the minimum qualification for being chosen as a member, as contained in Article 173, then in such a case, there is no question of an impossible burden on the Governor at that stage and on the other hand, it would be an act on the part of the Governor in accordance with the constitutional mandate not to appoint such person as the Chief Minister or Minister notwithstanding the support of the majority of the elected members of the legislative assembly. In a given case, if the alleged disqualification is dependant upon the disputed questions of fact and evidence, the Governor may choose not to get into those disputed questions of fact and, therefore, could appoint such person as the Chief Minister or Minister. In such a case, Governor exercises his discretion under Article 164 in the matter of appointment of the Chief Minister or a Minister. But in a case where the disqualification is one which is apparent as in the case in hand namely the person concerned has been convicted and has been sentenced to imprisonment for more than two years and operation of the conviction has not been stayed and the appeal is pending, thereby the disqualification under Article 191(1)(e) read with Section 8(3) of the Representation of the People Act staring at the face, the Governor would be acting beyond his jurisdiction and against the constitutional inhibitions and norms in appointing such a disqualified person as the Chief Minister on the sole reasoning that the majority of the elected members to the legislative council have elected the person concerned to be their leader. The constitution does not permit brute force to impede the constitution. The people of India and so also the elected members to the legislative assembly are bound by the constitutional provisions and it would be the solemn duty of the peoples representatives who have been elected to the legislative assembly to uphold the constitution. Therefore, any act on their part, contrary to the constitution, ought not to have weighed with the Governor in the matter of appointment of the Chief Minister to form the Government. In my considered opinion, therefore, the arguments of Mr. Venugopal, on this score cannot be sustained.

One of the arguments advanced on behalf of the respondents was the immunity of the Governor under Article 361 of the constitution. The genesis of the said arguments is that the Governor of a State not being answerable to any Court in exercise of performance of the powers and duty of his office or for any act done or purported to be done by him in the exercise and performance of those powers and duties and respondent No. 2 having been appointed as Chief Minister in exercise of powers of the Governor under Article 164, the said appointment as well as the exercise of discretion by the Governor is immune from being challenged and is not open to judicial review. The arguments of the counsel for the

respondents is also based on the ground that any consideration by the Court to the legality of such an appointment is not permissible as it is a political thicket. The decision of this Court in R.K. Jain vs. Union of India, 1993(4) SCC 119 has been relied upon. At the outset, it may be stated that the immunity provided to the Governor under Article 361 is certainly not extended to an appointee by the Governor. In the present proceedings, what has been prayed for is to issue a writ of quo warranto on the averments that respondent No. 2 was constitutionally disqualified to usurp the public office of the Chief Minister, who has been usurping the said post unauthorisedly on being appointed by the Governor. In fact the Governor has not been arrayed as a party respondent to the proceedings. In the very case of R.K. Jain, it has been held by this Court in paragraph 73 that judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. It has been further stated in paragraph 70 of the said judgment that in a democracy governed by rule of law surely the only acceptable repository of absolute discretion should be the courts. Judicial review is the basic and essential feature of the Indian constitutional scheme entrusted to the judiciary. It is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority, should be within the constitutional limitation and if any practice is adopted by the executive, which is in violation of its constitutional limitations, then the same could be examined by the Courts. In S.R. Bommai vs. Union of India, 1994(3) SCC Page 1, this Court held that a proclamation issued by the President on the advice of the council of ministers headed by the Prime Minister is amenable to judicial review. Even Justice Ahmadi, as he then was, though was of the opinion that the decision making of the President under Article 356 would not be justiciable but was firmly of the view that a proclamation issued by the President is amenable to judicial review. Justice Verma and Justice Yogeshwar Dayal held that there is no dispute that the proclamation issued under Article 356 is subject to judicial review. So also was the view of Justice Sawant and Justice Kuldip Singh and Justice Pandian, where Their Lordships have stated that the exercise of power by the President under Article 356(1) to issue Proclamation is subject to the Judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. According to Justice Ramaswamy, the action of the President under Article 356 is a constitutional function and the same is subject to judicial review and according to the learned Judge, the question relating to the extent, scope and power of the President under Article 356 though wrapped up with political thicket, per se it does not get immunity from judicial review. According to Justice Jeevan Reddy and Agarwal, JJ, the power under Article 356(1) is a conditional power and in exercise of the power of judicial review, the court is entitled to examine whether the condition has been satisfied or not. But in the case in hand, when an application for issuance of a writ of quo warranto is being examined, it is not the Governor who is being made amenable to answer the Court. But it is the appointee respondent No. 2, who is duty bound to satisfy that there has been no illegal usurpation of public office. Quo warranto protects public from illegal usurpation of public office by an individual and the necessary ingredients to be satisfied by the Court before issuing a writ is that the office in question must be public created by the constitution and a person not legally qualified to hold the office, in clear infringement of the provisions of the constitution and the law viz. Representation of the People Act has been usurping the same. If this Court ultimately comes to the conclusion that the respondent No. 2 is disqualified under the constitution to hold public office of the Chief Minister, as has already been held, then the immunity of Governor under Article 361 cannot stand as a bar from issuing a writ of quo warranto. In the present case, it is the State Government who has taken the positive stand that there has been no violation of the constitutional provisions or the violation of law in the appointment of respondent No. 2, as Chief Minister, the correctness of that stand is the subject matter of scrutiny.

I am tempted to quote some observations of the United States Supreme Court in the case of Lucas vs. Colorado General Assembly 377 US 713, 12 L ed 2d 632, 84 S Ct 1472. It has been held in the aforesaid case: Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a Court of equity to refuse to act. It has been further held : The protection of constitutional rights is not to be approached either pragmatically or expediently, and though the fact of enactment of a constitutional provision by heavy vote of the electorate produces pause and generates restrain we can not, true to our oath, uphold such legislation in the face of palpable infringement of rights. It is too clear for argument that constitutional law is not a matter of majority vote. Indeed the entire philosophy of the Fourteenth Amendment teaches that it is personal rights which are to be protected against the will of the majority. What has been stated therein should more appropriately be applicable to a case where the constitution is the supreme document which should

bind people of India as well as all other constitutional authorities, including the Governor, and, therefore if respondent No. 2 is found to have been appointed as the Chief Minister, contrary to the constitutional prohibition and prohibition under the relevant law of the Representation of the People Act, there should be no inhibition on the Court to issue a writ of quo warranto and the so-called immunity of the Governor will not stand as a bar.

According to Mr. P.P. Rao, learned senior counsel appearing for the State of Tamil Nadu, Parliamentary Democracy is admittedly a basic feature of the Constitution. It would be the duty of every functionary under the Constitution, including the Governor, and the judiciary to give effect to the will of the people as reflected in the election to the Legislative Assembly of a State. Once the electorate has given its mandate to a political party and its leader to run the Government of the State for a term of five years, in the absence of any express provision in the Constitution to the contrary, the Governor is bound to call upon the leader of that Legislature Party, so elected by the elected members, to form the Government. According to Mr. Rao, there is no express, unambiguous provision in the Constitution or in the provisions of Representation of People Act, declaring that a person convicted of an offence and sentenced to imprisonment for a period not less than 2 years by the Trial Court shall not be appointed as Chief Minister during the pendency of the first appeal. In such a situation, the Governor is not expected to take a position of confrontation with the people of the State who voted the ruling party to power and plunge the State into a turmoil. In support of this contention, observation of this Court in the case of Shamsher Singh vs. State of Punjab (1974 (2) SCC 831), The head of the State should avoid getting involved in politics, was pressed into service. I am unable to persuade myself to agree with the aforesaid submission of Mr. Rao, inasmuch as, in my considered opinion, the people of this country as well as their voice reflected through their elected representatives in the Legislative Assembly, electing a disqualified person for being chosen as a member of the Legislative Assembly, to be their leader are as much subservient to the Constitution of India as the Governor himself. In a democracy, constitutional law reflects the value that people attach to orderly human relations, to individual freedom under the law and to institutions such as Parliament, political parties, free elections and a free press. Constitution is a document having a special legal sanctity which sets out the frame-work and the principal functions of the organs of government within the State and declares the principles by which those organs must operate. Constitution refers to the whole system of the governance of a country and the collection of rules which establish and regulate or govern the government. In our country, we have a written constitution, which has been given by the people of India to themselves. The said Constitution occupies the primary place. Notwithstanding the fact, we have a written Constitution, in course of time, a wide variety of rules and practices have evolved which adjust operation of the Constitution to changing conditions. No written constitution would contain all the detailed rules upon which the government depends. The rules for electing the legislature are usually found not in the written Constitution but in the statutes enacted by the legislature within limits laid down by the Constitution. A Constitution is a thing antecedent to a government, and a government or a good governance is a creature of the Constitution. A documentary Constitution reflects the beliefs and political aspirations of those who had framed it. One of the principle of constitutionalism is what it had developed in the democratic traditions. A primary function that is assigned to the written Constitution is that of controlling the organs of the Government. Constitutional law pre-supposes the existence of a State and includes those laws which regulate the structure and function of the principal organs of government and their relationship to each other and to the citizens. Where there is a written Constitution, emphasis is placed on the rules which it contains and on the way in which they have been interpreted by the highest court with constitutional jurisdiction. Where there is a written Constitution the legal structure of Government may assume a wide variety of forms. Within a federal constitution, the tasks of government are divided into two classes, those entrusted to the federal organs of government, and those entrusted to the various states, regions or provinces which make up the federation. But the constitutional limits bind both the federal and state organs of government, which limits are enforceable as a matter of law. Many important rules of constitutional behaviour, which are observed by the Prime Minister and Ministers, Members of the Legislature, Judges and Civil servants are contained neither in Acts nor in judicial decisions. But such rules have been nomenclatured by the Constitutional Writers to be the rule of the positive morality of the constitution and some times the authors provide the name to be the unwirtten maxims of the constitution. Rules of constitutional behaviour, which are considered to be binding by and upon those who operate the Constitution but which are not enforced by the law courts nor by the presiding officers in the House of Parliament. Sir Ivor Jennings, in his book, Law and the Constitution had stated that constitutional conventions are observed because of the political difficulties which arise if they are not.

These rules regulate the conduct of those holding public office and yet possibly the most acute political difficulty can arise for such a person is to be forced out of office. The Supreme Court of Canada stated that the main purpose of conventions is to ensure that legal frame work of the constitution is operated in accordance with the prevailing constitutional values of the period. (see (1982) 125 DLR(3d) 1, 84). But where the country has a written constitution which ranks as fundamental law, legislative or executive acts which conflicts with the constitution must be held to be unconstitutional and thus illegal. The primary system of Government cannot be explained solely in terms of legal and conventional rules. It depends essentially upon the political base which underlies it, in particular on the party system around which political life is organised. Given the present political parties and the electoral system, it is accepted that following a general election, the party with a majority of seats in the State legislature or the Parliament will form the Government. This is what the Constitution postulates and permits. But in the matter of formation of Government if the said majority political party elects a person as their leader, whom the Constitution and the laws of the country disqualifies for being chosen as a member of the Legislative Assembly, then such an action of the majority elected member would be a betrayal to the electorates and to the Constitution to which they owe their existence. In such a case, the so called will of the people must be held to be unconstitutional and, as such, could not be and would not be tolerated upon. When one speaks of legislative supermacy and the will of the people, the doctrine essentially consists of a rule which governs the legal relationship between the legislature and the court, but what is stated to be the legislative supermacy in the United Kingdom has no application in our country with a written Constitution limiting the extent of such supermacy of the Legislature or Parliament. In other words, the people of the country, the organs of the Government, legislature, executive and judiciary are all bound by the Constitution which Hon. Justice Bhagwati, J. describes in Minerva Mills case (1980 (3) Supreme Court Cases, 625) to be suprema lex or the paramount law of the land and nobody is above or beyond the Constitution. When Court has been ascribed the duty of interpreting the Constitution and when Court finds that manifestly there is an unauthorised exercise of power under the Constitution, it would be the solemn duty of the Court to intervene. The doctrine of legislative supermacy distinguishes the United Kingdom from those countries in which they have a written constitution, like India, which imposes limits upon the legislature and entrust the ordinary courts or a constitutional court with the function of deciding whether the acts of the legislature are in accordance with the Constitution. This being the position, the action of the majority of the elected members of a political party in choosing their leader to head the Government, if found to be contrary to the Constitution and the laws of the land then the Constitution and the laws must prevail over such unconstitutional decision, and the argument of Mr. Rao, that the will of the people would prevail must give way. In a democratic society there are important reasons for obeying the law, which do not exist in other forms of government. Our political system still is not perfect and there are always the scope for many legislative reforms to be made. But the maintenance of life in modern society requires a willingness from most citizens for most of the time to observe laws, even when individually they may not agree with them.

In the aforesaid premises, and in view of the conclusions already arrived at, with regard to the dis-qualifications the respondent no. 2 had incurred, which prevents her for not being chosen as a member of the Legislative Assembly, it would be a blatant violation of Constitutional laws to allow her to be continued as the Chief Minister of a State, howsoever short the period may be, on the theory that the majority of the elected members of the Legislative Assembly have elected her as the leader and that is the expression of the will of the people.

One other thing which I would like to notice, is the consciousness of the people who brought such Public Interest Litigation to the Court. Mr. Diwan in course of his arguments, had raised some submissions on the subject - Criminalisation of Politics and participation of criminals in the electoral process as candidates and in that connection, he had brought to our notice the order of the Election Commission of India dated 28th of August, 1997. But for answering the essential issue before us, it was not necessary to delve into that matter and, therefore, we have not made an in-depth inquiry into the subject. In one of the speeches by the Prime Minister of India on the subject- Whither Accountability, published in the Pioneer, Shri Atal Bihari Vajpayee had called for a national debate on all the possible alternatives for systematic changes to cleanse our democratic governing system of its present mess. He has expressed his dissatisfaction that neither Parliament nor the State Vidhan Sabhas are doing with any degree of competence or commitment what they are primarily meant to do: Legislative function. According to him, barring exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in law-making nor do they seem to have an inclination to develop the

necessary knowledge and competence in their profession. He has further indicated that those individuals in society who are generally interested in serving the electorate and performing legislative functions are finding it increasingly difficult to succeed in todays electoral system and the electoral system has been almost totally subverted by money power, muscle power, and vote bank considerations of castes and communities. Shri Vajpayee also had indicated that the corruption in the governing structures has, therefore, corroded the very core of elective democracy. According to him, the certainty of scope of corruption in the governing structure has hightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate. Yet they capture and survive in power due to inherent systematic flaws. He further stated casteism, corruption and politicisation have eroded the integrity and efficacy of our civil service structure also. The manifestoes, policies, programmes of the political parties have lost meaning in the present system of governance due to lack of accountability. Lot of arguments had been advanced both by Mr. Venugopal and Mr. Rao, on the ground that so far as the offences under Section 8(3) of the Representation of the People Act are concerned, mere conviction itself will not incur the disqualification, but conviction and sentence for not less than two years would disqualify a person and, therefore, in such a case, a person even being convicted of an offence under the Prevention of Corruption Act, will not be disqualified, if the trying Judge imposes the punishment of imprisonment for a term of one year, which is the minimum under Section 13(2) of the prevention of Corruption Act and thus less than two years, which is the minimum sentence required under Section 8(3) of the Representation of the People Act, to disqualify a person for being chosen as a member or continuing as a member. As has been discussed in the Judgment of Brother Bharucha, J, the validity of providing different punishments under different sub-sections of Section 8, has already been upheld by this Court in the case of Raghbir Singh vs. Surjit Singh, 1994 Supp.(3) S.C.C. 162. But having regard to the mass scale corruption which has corroded the core of elective democracy, it is high time for the Parliament to consider the question of bringing the conviction under the Prevention of Corruption Act, as a disqualification under Section 8(1) of the Representation of the People Act, 1951, so that a person on being convicted of an offence, punishable under the provisions of Prevention of Corruption Act, could be disqualified for being chosen, as a member or being continuing as a member of the Legislative Assembly or the Parliament. I hope and trust, our representatives in the Parliament will bestow due thought over this issue.

These Writ Petitions, Special Leave Petition/Civil Appeal and Transferred case stand disposed of in terms of the directions contained in the judgment of Brother Bharucha,J.

.....J. (G.B. Pattanaik)

September 21, 2001

Bharucha, J.

Leave granted.

A question of great constitutional importance arises in these matters, namely, whether a person who has been convicted of a criminal offence and whose conviction has not been suspended pending appeal can be sworn in and can continue to function as the Chief Minister of a State.

The second respondent, Ms. J. Jayalalitha, was Chief Minister of the State of Tamil Nadu between 1991 and 1996. In respect of that tenure in office she was (in CC 4 of 1997 and CC 13 of 1997) convicted for offences punishable under Section 120B of the Indian Penal Code read with Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and for the offence under Section 409 of the Indian Penal Code. She w as sentenced to undergo 3 years rigorous imprisonment and pay a fine of Rs.10,000 in the first case and to undergo 2 years rigorous imprisonment and pay a fine of Rs.5000 in the second case.

The fine that was imposed in both cases was paid.

The second respondent preferred appeals against her conviction before the High Court at Madras. The appeals are pending. On applications filed by her in the two appeals, the High Court, by an order dated

3rd November, 2000, suspended the sentences of imprisonment under Section 389(3) of the Code of Criminal Procedure and directed the release of respondent No.2 on bail on the terms and conditions specified in that order. Thereafter, she filed petitions in the two appeals seeking the stay of the operation of the judgments in the two criminal cases. On 14th April, 2001 a learned Single Judge of the High Court at Madras, Mr.Justice Malai Subramanium, dismissed these petitions since the convictions were, inter alia, for offences under Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988. These orders were not challenged.

In April, 2001 the second respondent filed nomination papers for four constituencies in respect of the general election to be held to the Tamil Nadu Assembly. On 24th April, 2001 three nomination papers were rejected on account of her disqualification under Section 8(3) of the Representation of the People Act, 1951, by reason of her conviction and sentence in the two criminal cases. The fourth nomination paper was rejected for the reason that she had filed her nomination for more than two seats. The correctness of the orders of rejection was not called in question.

On 13th May, 2001 the results of the election to the Tamil Nadu Assembly were announced and the AIADMK party, which had projected the second respondent as its Chief Ministerial nominee, won by a large majority. On 14th May, 2001, consequent upon the result of the election, the AIADMK elected the second respondent as its leader.

On 14th May, 2001 the second respondent was sworn in as Chief Minister of the State of Tamil Nadu.

These writ petitions and appeal contend that the second respondent could not in law have been sworn in as Chief Minister and cannot continue to function as such. They seek directions in the nature of quo warranto against her.

The provisions of the Prevention of Corruption Act, 1988, that are relevant to the second respondents conviction and sentence read thus : 13. Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct, -

(a) .. (b) .. (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he, -

i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) ..

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Section 409 of the Indian Penal Code, also relevant to the conviction and sentence, reads thus :

409. Criminal breach of trust by public servant, or by banker, merchant or agent Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to

fine.

For the purposes of answering the question formulated earlier, the following provisions of the Constitution of India are most relevant: 163(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

164. Other provisions as to Ministers

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

173. Qualification for membership of the State Legislature A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he

a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and

c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

177. Rights of Ministers and Advocate-General as respects the Houses Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

191. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State -

a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

b) if he is of unsound mind and stands so declared by a competent court;

c) if he is an undischarged insolvent;

d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

e) if he is so disqualified by or under any law made by Parliament.

Explanation For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Provisions of a similar nature with regard to Parliament are to be found in Articles 74, 75, 84, 88 and 102.

The Representation of the People Act, 1951 was enacted to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. The relevant provisions of that Act for our purposes are Sections 8, 8A, 9, 9A, 10 and 10A. They read thus:

8. Disqualification on conviction for certain offences

(1) A person convicted of an offence punishable under -

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) or the Indian Penal Code (45 of 1860), or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of untouchability, and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) or the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of section 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) or clause (a) of sub-section (2) of section 136 (offence of Fraudulently defacing or fraudulently destroying any nomination paper) of this Act; [or]

[(j) section 6 (offence of conversion of a place or worship) of the Places of Worship (Special Provisions) Act 1991; [or]

[(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971);]

shall be disqualified for a period of six years from the date of such conviction.

(2) A person convicted for the contravention of

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961); or

(d) any provisions of the Commission of Sati (Prevention) Act, 1987 (3 of 1988),

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to sub- section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

[(4) Notwithstanding anything [in sub-section (1), sub-section (2) and sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation In this section

(a) law providing for the prevention of hoarding or profiteering means any law, or any order, rule or notification having the force of law, providing for

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be brought or sold;

(iii) the regulation of acquisition, possession, storage,transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) drug has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) essential commodity has the meaning assigned to it in the Essential Commodities Act, 1955 (10 of 1955);

(d) food has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

Central to the controversy herein is Article 164, with special reference to sub-Article (4) thereof. This Court has considered its import in a number of decisions. In Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another [1971 (1) SCC 616], a Constitution Bench rendered the decision in connection with the appointment of the first respondent therein as Chief Minister of Uttar Pradesh at a time when he was not a member of either House of the Legislature of that State. The Court said :

3. It seems to us that clause (4) of Article 164 must be interpreted in the context of Articles 163 and 164 of the Constitution. Article 163(1) provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. Under clause (1) of Article 164, the Chief Minister has to be appointed by the Governor and the other Ministers have to be appointed by him on the advice of the Chief Minister. They all hold office during the pleasure of the Governor. Clause (1) does not provide any qualification for the person to be selected by the Governor as the Chief Minister or Minister, but clause (2) makes it essential that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. This is the only condition that the Constitution prescribes in this behalf.

6. It seems to us that in the context of the other provisions of the Constitution referred to above there is no reason why the plain words of clause (4) of Article 164 should be cut down in any manner and confined to a case where a Minister loses for some reason his seat in the Legislature of the State. We are assured that the meaning we have given to clause (4) of Article 164 is the correct one from the proceedings of the Constituent Assembly and the position as it obtains is England, Australia and South Africa.

The Court set out the position as it obtained in England, Australia and South Africa and observed that this showed that Article 164(4) had an ancient lineage.

In Har Sharan Verma Vs. State of U.P. and Another [1985 (2) SCC 48], a two Judge Bench of this Court considered a writ petition for the issuance of a writ in the nature of quo warranto to one K.P. Tewari, who had been appointed as a Minister of the Government of Uttar Pradesh even though he was not a member of either House of the State Legislature. Reliance was placed upon the earlier judgment in the case of Tribhuvan Narain Singh and it was held that no material change had been brought about by reason of the amendment of Article 173(a) in the legal position that a person who was not a member of the State Legislature might be appointed a Minister, subject to Article 164(4) which said that a Minister who for any period of six consecutive months was not a member of the State Legislature would at the expiration of that period cease to be a Minister.

Another two Judge Bench of this Court in Harsharan Verma Vs. Union of India and Another [1987 (Supp.) SCC 310] considered the question in the context of membership of Parliament and Article 75(5), which is similar in terms to Article 164(4). The Court said that a person who was not a member of the either House of Parliament could be a Minister for not more than six months; though he would not have any right to vote, he would be entitled, by virtue of Article 88, to participate in the proceedings of Parliament.

In S.P. Anand, Indore Vs. H.D. Deve Gowda and Others [1996 (6) SCC 734], the first respondent, who was not a member of Parliament, was sworn in as Prime Minister. This was challenged in a writ petition under Article 32. Reference was made to the earlier judgments. It was held, on a parity of reasoning if a person who is not a member of the State Legislature can be appointed a Chief Minister of a State under Article 164(4) for six months, a person who is not a member of either House of Parliament can be appointed Prime Minister for the same period.

In S.R. Chaudhuri Vs. State of Punjab & Ors. [2001 (5) SCALE 269], one Tej Parkash Singh was appointed a Minister of the State of Punjab on the advice of the Chief Minister, Sardar Harcharan Singh Barar. At the time of his appointment as a Minister Tej Parkash Singh was not a member of the Punjab Legislative Assembly. He was not elected as a member of that Assembly within a period of six months and he submitted his resignation. During the same legislative term Sardar Harcharan Singh Barar was replaced as Chief Minister by Smt. Rajinder Kaur Bhattal. On her advice, Tej Parkash Singh was appointed a

Minister yet again. The appointment was challenged by a writ petition in the High Court seeking a writ of quo warranto. The writ petition was dismissed in limine and an appeal was filed by the writ petitioner in this Court. The judgments aforementioned were referred to by this Court and it was said :

17. The absence of the expression from amongst members of the legislature in Article 164 (1) is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months from the date of his appointment. Article 164(4) is, therefore, not a source of power or an enabling provision for appointment of a non- legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months.

The Court said that in England the position was this : In the Westminster system, it is an established convention that Parliament maintains its position as controller of the executive. By a well settled convention, it is the person who can rely on support of a majority in the House of Commons, who forms a government and is appointed as the Prime Minister. Generally speaking he and his Ministers must invariably all be Members of Parliament (House of Lords or House of Commons) and they are answerable to it for their actions and policies. Appointment of a non- member as a Minister is a rare exception and if it happens it is for a short duration. Either the individual concerned gets elected or is conferred life peerage.

The Court noted the constitutional scheme that provided for a democratic parliamentary form of Government, which envisaged the representation of the people, responsible Government and the accountability of the Council of Ministers to the legislature. Thus was drawn a direct line of authority from the people through the legislature to the executive. The position in England, Australia and Canada showed that the essentials of a system of representative Government, like the one in India, were that, invariably, all Ministers were chosen out of the members of the legislature and only in rare cases was a non- member appointed a Minister and he had to get himself returned to the legislature by direct or indirect election within a short period. The framers of the Constitution had not visualised that a non-legislator could be repeatedly appointed a Minister, for a term of six months each, without getting elected because such a course struck at the very root of parliamentary democracy. It was accordingly held that the appointment of Tej Parkash Singh as a Minister for a second time was invalid and unconstitutional.

Mr. K.K. Venugopal, learned counsel for the second respondent, was right when he submitted that the question that arises before us has not, heretofore, arisen before the courts. This is for the reason that, heretofore, so far as is known, no one who was ineligible to become a member of the legislature has been made a Minister. Certainly, no one who has earned a conviction and sentence covered by Section 8 of the Prevention of Corruption Act would appear to have been appointed Chief Minister.

To answer the question before us, three sub-Articles of Article 164 need, in our view, to be read together, namely, sub-Articles (1),(2) and (4). By reason of sub-Article (1), the Governor is empowered to appoint the Chief Minister; the Governor is also empowered to appoint the other Ministers, but, in this regard, he must act on the advice of the Chief Minister. Sub-Article (2) provides, as is imperative in a representative democracy, that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. The political executive, namely, the Council of Ministers, is thus, through the Legislative Assembly, made representative of and accountable to the people of the State who have elected the Legislative Assembly. There is necessarily implicit in these provisions the requirement that a Minister must be a member of the Legislative Assembly and thus representative of and accountable to the people of the State. It is sub-Article (4) which makes the appointment of a person other than a member of the Legislature of the State as a Minister permissible, but it stipulates that a Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister. Necessarily implicit in sub-Article (4) read with sub- Articles (1) and (2) is the requirement that a Minister who is not a member of the legislature must seek election to the legislature and, in the event of his failing to secure a seat in the

legislature within six months, he must cease to be a Minister. The requirement of sub- Article (4) being such, it follows as the night the day that a person who is appointed a Minister though he is not a member of the legislature shall be one who can stand for election to the legislature and satisfy the requirement of sub-Article (4). In other words, he must be one who satisfies the qualifications for membership of the legislature contained in the Constitution (Article 173) and is not disqualified from seeking that membership by reason of any of the provisions therein (Article 191) on the date of his appointment.

The provision of sub-Article (4) of Article 164 is meant to provide for a situation where, due to political exigencies or to avail of the services of an expert in some field, it is requisite to induct into the Council of Ministers a person who is not then in the legislature. That he is not in the legislature is not made an impassable barrier. To that extent we agree with Mr. Venugopal, but we cannot accept his submission that sub-Article (4) must be so read as to permit the induction into the Council of Ministers of short term Ministers whose term would not extend beyond six months and who, therefore, were not required to have the qualifications and be free of the disqualifications contained in Articles 173 and 191 respectively. What sub-Article (4) does is to give a non-legislator appointed Minister six months to become a member of the legislature. Necessarily, therefore, that non-legislator must be one who, when he is appointed, is not debarred from obtaining membership of the legislature : he must be one who is qualified to stand for the legislature and is not disqualified to do so. Sub-Article (4) is not intended for the induction into the Council of Ministers of someone for six months or less so that it is of no consequence that he is ineligible to stand for the legislature.

It would be unreasonable and anomalous to conclude that a Minister who is a member of the legislature is required to meet the constitutional standards of qualification and disqualification but that a Minister who is not a member of the legislature need not. Logically, the standards expected of a Minister who is not a member should be the same as, if not greater than, those required of a member.

The Constituent Assembly Debates (Volume VII) note that when the corresponding Article relating to Members of Parliament was being discussed by the Constituent Assembly, Dr. B.R. Ambedkar said:

.. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso, namely, that although a person is not at the time of his appointment a member of the House, he may nonetheless be appointed as a minister in the cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K.T. Shah. He said that a minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House. I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this, - it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all..

(Emphasis supplied)

What was said by Dr. B.R. Ambedkar is self-explanatory. It shows clearly that the Constituent Assembly envisaged that non- legislator Ministers would have to be elected to the legislature within six months and it proceeded on the basis that the Article as it read required this. The manner in which we have interpreted Article 164 is, thus, borne out.

It was submitted on behalf of the respondents that it was not open to the Court to read into Article 164 the requirement that a non- legislator Minister must be elected to the legislature within six months. No qualifications or disqualifications could, it was submitted, be read into a constitutional provision.

Reliance was placed upon passages from the some of the judgments in His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala, [1973 (Supp.) S.C.R. 1].

What we have done is to interpret Article 164 on its own language and to read sub-Article (4) thereof in the context of sub- Articles (1) and (2). In any event, it is permissible to read into sub- Article (4) limitations based on the language of sub-Articles (1) and (2).

A Constitution Bench in Minerva Mills Ltd. & Ors. Vs. Union of India & Ors. [1981 (1) SCR 206], considered in some detail the judgment in Kesavananda Bharati. It was considering the validity of the clauses introduced into Article 368 by the Constitution (Forty- second Amendment) Act. They provided :

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article (whether before on after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976) shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

Chandrachud, C.J. noted in his judgment that the avowed purpose thereof was the removal of doubts. He observed that after the decision in Kesavananda Bharti, there could be no doubt as regards the existence of limitations on Parliaments power to amend the Constitution. In the context of the constitutional history of Article 368, the true object of the declaration contained in clause (5) was the removal of those limitations. Clause (5) conferred upon Parliament a vast and undefined power to amend the Constitution, even so as to distort it out of recognition. The theme song of the Court in the majority decision in Kesavananda Bharti had been, Amend as you may even the solemn document which the founding fathers have committed to your care, for you know best the needs of your generation. But, the Constitution is a precious heritage; therefore, you cannot destroy its identity. The majority judgment in Kesavananda Bharti conceded to Parliament the right to make alterations in the Constitution so long as they were within the basic framework. The Preamble assured the people of India of a polity whose basic structure was described therein as a Sovereign Democratic Republic; Parliament could make any amendments to the Constitution as it deemed expedient so long as they did not damage or destroy Indias sovereignty and its democratic, republican character. Democracy was a meaningful concept whose essential attributes were recited in the Preamble itself : Justice, social, economic and political : Liberty of thought, expression, belief, faith and worship; and Equality of status and opportunity. Its aim, again as set out in the Preamble, was to promote among the people an abiding sense of Fraternity assuring the dignity of the individual and the unity of the Nation. The newly introduced clause (5) demolished the very pillars on which the Preamble rested by empowering Parliament to exercise its constituent power without any limitation whatever. No constituent power could conceivably go higher than the power conferred by clause (5) for it empowered Parliament even to repeal the provisions of this Constitution, that is to say, to abrogate democracy and substitute for it a totally antithetical form of government. That could most effectively be achieved, without calling democracy by any other name, by denial of social, economic and political justice to the people, by emasculating liberty of thought, expression, belief, faith and worship and by abjuring commitment to the magnificient ideal of a society of equals. The power to destroy was not a power to amendment. Since the Constitution had conferred a limited amending power on Parliament, Parliament could not under the exercise of that limited power enlarge that very power into an absolute power. A limited amending power was one of the basic features of the Constitution and, therefore, the limitations on that power could not be destroyed. In other words, Parliament could not, under Article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power could not by the exercise of that power convert the limited power into an unlimited one.

All this was said in relation to the Article 368(1) and (5). Sub- Article (1) read thus :

368. Power of Parliament to amend the Constitution and procedure therefor

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

Nothing can better demonstrate that is permissible for the Court to read limitations into the Constitution based on its language and scheme and its basic structure.

We hold, therefore, that a non-legislator can be made Chief Minister or Minister under Article 164 only if he has the qualifications for membership of the legislature prescribed by Article 173 and is not disqualified from the membership thereof by reason of the disqualifications set out in Article 191.

The next question is : Was the second respondent qualified for membership of the legislature and not disqualified therefor when she was appointed Chief Minister on 14th May, 2001.

It was submitted by learned counsel for the respondents that the suspension of the sentences passed against the second respondent by the High Court at Madras was tantamount to the suspension of the convictions against her. Our attention was then drawn to Section 8(3) of the Representation of the People Act, which says that a person convicted of any offence and sentenced to imprisonment for not less than two years shall be disqualified.. In learned counsels submission, for the purposes of Section 8(3), it was the sentence alone which was relevant and if there were a suspension of the sentence, there was a suspension of the disqualification. The sentences awarded to the second respondent having been suspended, the disqualification under Section 8(3), in so far as it applied to her, was also suspended.

Section 389 of the Code of Criminal Procedure on the basis of which the second respondent was released on bail by the Madras High Court reads, so far as is relevant, as follows : 389. Suspension of sentence pending the appeal; release of appellant on bail

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(Emphasis supplied)

It is true that the order of the High Court at Madras on the application of the second respondent states, Pending criminal appeals the sentence of imprisonment alone is suspended and the petitioners shall be released on bail.., but this has to be read in the context of Section 389 under which the power was exercised. Under Section 389 an appellate court may order that the execution of the sentence or order appealed against be suspended... It is not within the power of the appellate court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. The suspension of the execution of the sentence does not alter or affect the fact that the offender has been convicted of a grave offence and has attracted the sentence of imprisonment of not less than two years. The suspension of the execution of the sentences, therefore, does not remove the disqualification against the second respondent. The suspension of the sentence, as the Madras High Court erroneously called it, was in fact only the suspension of the execution of the sentences pending the disposal of the appeals filed by the second respondent. The fact that she secured the suspension of the execution of the sentences against her did not alter or affect the convictions and the sentences imposed on her and she remained disqualified from seeking legislative office under Section 8(3).

In the same connection, learned counsel for the respondents drew our attention to the judgment of a learned single Judge of the High Court at Madras, Mr. Justice Malai Subramanium, on the application of the second respondent for stay of the execution of the orders of conviction against her. The learned Judge analysed Section 8 of the Representation of the People Act and came to this conclusion:

In this case, sentence of imprisonment has already been suspended. Under such circumstances, in my view, there may not be any disqualification for the petitioner to contest in the election.

Learned counsel submitted that it was because of this conclusion that the learned Judge had not stayed the execution of the orders, and his conclusion bound the Governor. In the first place, the interpretation

of the provision by the learned Judge is, as shown above, erroneous. Secondly, the reason why he refused to stay the execution of the orders was because the second respondent had been found guilty of offences under the Prevention of Corruption Act. Thirdly, the learned Judge was required by the application to consider whether or not the execution of the orders against the second respondent should be stayed; the consideration of and conclusion upon the provisions of Section 8 of the Representation of the People Act was wholly extraneous to that issue. Fourthly, the conclusion was tentative, as indicated by the use of the word may in the passage quoted from his judgment above. Lastly, as will be shown, we are not here concerned with what the Governor did or did not do; we are concerned with whether the second respondent can show that she was, when she was appointed Chief Minister, qualified to be a legislator under Article 173 and not disqualified under Article 191.

In relation to the difference in the periods of disqualification in sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act an argument similar to that which was raised and rejected in Raghbir Singh Vs. Surjit Singh [1994 Supp (3) SCC 162] was advanced. This Court there said :

5. Section 8 prescribes disqualification on conviction for certain offences. Sub-section (1) provides the disqualification for a period of six years from the date of conviction for the offences specified in clauses (a) to (i) thereof. In sub- section (1), the only reference is to conviction for the specified offences irrespective of the sentence awarded on such conviction. Sub-section (2) then prescribes that on conviction for the offences specified therein and sentence to imprisonment for not less than six months, that person shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. Thus, in case of conviction for the offences specified in sub- section (2), the disqualification is attracted only if the sentence is of imprisonment for not less than six months and in that event the disqualification is for a period of not merely six years from the date of such conviction but commencing from the date of such conviction it shall continue for a further period of six years since his release. Sub-section (3) then prescribes a similar longer period of disqualification from the date of such conviction to continue for a further period of six years since his release where a person is convicted of any offence and sentenced to imprisonment for not less than two years, other than any offence referred to in sub-section (1) or sub-section (2). The classification is clear. This classification is made with reference to the offences and the sentences awarded on conviction. In sub-section (1) are specified the offences which are considered to be of one category and the period of six years disqualification from the date of conviction is provided for them irrespective of one sentence awarded on such conviction. In sub-section (2) are specified some other offences, the conviction for which is considered significant for disqualification only if the sentence is of imprisonment for not less than six months and in that case a longer period of disqualification has been considered appropriate. Then comes sub-section (3) which is the residuary provision of this kind wherein the disqualification is prescribed only with reference to the period of sentence of imprisonment of not less than two years for which the longer period of disqualification is considered appropriate. The legislature itself has classified the offences on the basis of their nature and in the residuary provision contained in sub-section (3), the classification is made only with reference to the period of sentence being not less than two years.

6. In sub-section (3) of Section 8, all persons convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] are classified together and the period of disqualification prescribed for all of them is the same. All persons convicted of offences other than any offence referred to in sub-section (1) or sub-section (3) and sentenced to imprisonment of not less than two years constitute one class and are governed by sub-section (3) prescribing the same period of disqualification for all of them. The category of persons covered by sub-sections (1), (2) and (3) being different and distinct, the question of comparison inter se between any two of these three distinct classes does not arise. Without such a comparison between persons governed by these different sub- sections being permissible, the very basis of attack on the ground of discrimination is not available. Prescription of period of disqualification for different classes of persons convicted of different offences is within the domain of legislative discretion and wisdom, which is not open to judicial scrutiny.

It was pointed out by learned counsel for the respondents that under Section 8(3) of the Representation of the People Act the disqualification was attracted on the date on which a person was convicted of any offence and sentenced to imprisonment for not less than two years. It was pointed out, rightly, that the law contemplated that the conviction and the sentence could be on different dates. It was submitted

that it was unworkable that the disqualification should operate from the date of conviction which could precede the date of sentence; therefore, the conviction referred to in Section 8(3) should be taken to be that confirmed by the appellate court because it was only in the appellate court that conviction and sentence would be on the same day. We find the argument unacceptable. In those cases where the sentence is imposed on a day later that the date of conviction (which, incidentally, is not the case here) the disqualification would be attracted on the date on which the sentence was imposed because only then would a person be both convicted of the offence and sentenced to imprisonment for less not that two years which is cumulatively requisite to attract the disqualification under Section 8(3).

The focus was then turned upon Section 8(4) of the Representation of the People Act and it was submitted that all the disqualifications set down in Section 8 would not apply until a final court had affirmed the conviction and sentence. This was for the reason that the principle underlying Section 8(4) had to be extended to a non legislator as, otherwise, Article 14 would stand violated for the presumption of innocence would apply to a sitting member till the conviction was finally affirmed but in the case of a non-legislator the disqualification would operate on conviction by the court of first instance. It was submitted that Section 8(4) had to be read down so that its provisions were not restricted to sitting members and in all cases the disqualification applied only when the conviction and sentence was finally upheld.

Section 8(4) opens with the words Notwithstanding anything in sub-section (1), sub-section (2) and sub-section (3), and it applies only to sitting members of legislatures. There is no challenge to it on the basis that it violates Article 14. If there were, it might be tenable to contend that legislators stand in a class apart from non legislators, but we need to express no final opinion. In any case, if it were found to be violative of Article 14, it would be struck down in its entirety. There would be, and is no question of so reading it that its provisions apply to all, legislators and non-legislators, and that, therefore, in all cases the disqualification must await affirmation of the conviction and sentence by a final court. That would be reading up the provision, not reading down, and that is not known to the law.

In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second respondent. Before we advert to the four judgments relied upon in support of this submission, let us clear the air. When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that it is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well.

Learned counsel cited from the judgment of this Court in Padam Singh Vs. State of U.P. [2000 (1) SCC 621] the passage which reads : It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence.

(Page 625 C)

The passage is relevant to the duty of an appeal court. It is the duty of an appeal court to look at the evidence afresh to see if the case against the accused has been established by the prosecution beyond reasonable doubt, uninfluenced by the decision of the trial court; in other words, to look at it as if the presumption of the innocence of the accused still applied. The passage does not support the proposition canvassed.

In Maru Ram Vs. Union of India and Ors. [1981 (1) SCC 107] it was stated :

When a person is convicted in appeal, it follows that the appellate Court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the trial Court. The appellate conviction must relate back to the date of the trial Courts verdict and substitute it.

There is no question of the correctness of what is set out above but it has no application to the issue before us. What we are concerned with is whether, on the date on which the second respondent was sworn in as Chief Minister, she suffered from a disqualification by reason of the convictions and sentences against her.

In Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh [1976 (1) SCC 560], this Court was concerned with Section 303 of the Indian Penal Code, which provided : Whoever being under sentence of imprisonment for life, commits murder shall be punished with death. Sarkaria, J., in his concurring judgment, held, on an interpretation of the section, that once it was established that, at the time of committing the murder, the prisoner was under a sentence of life imprisonment, the court had no discretion but to award the sentence of death, notwithstanding mitigating circumstances. The provision was, therefore, Draconion in its severity. It was in these circumstances that he held that the phrase being under sentence of imprisonment for life had to be restricted to a sentence which was final, conclusive and ultimate so far as judicial remedies were concerned for the other alternative would lead to unreasonable and unjust results. The observations of the learned Judge are relevant to the case before him; they do not have wider implications and do not mean that all convictions by a trial court do not operate until affirmed by the highest Court.

Lastly, in this connection, our attention was drawn to the case of Vidya Charan Shukla Vs. Purshottam Lal Kaushik [1981 (2) SCC 84]. The Court held that if a successful candidate was disqualified for being chosen, at the date of his election or at any earlier stage of any step in the election process, on account of his conviction and sentence exceeding two years imprisonment, but his conviction and sentence was set aside and he was acquitted on appeal before the pronouncement of the judgment in the election petition pending against him, his disqualification was retrospectively annulled and the challenge to his election on the ground that he was so disqualified was no longer sustainable. This case dealt with an election petition and it must be understood in that light. What it laid down does not have a bearing on the question before us: the construction of Article 164 was not in issue. There can be no doubt that in a criminal case acquittal in appeal takes effect retrospectively and wipes out the sentence awarded by the lower court. This implies that the stigma attached to the conviction and the rigour of the sentence are completely obliterated, but that does not mean that the fact of the conviction and sentence by the lower court is obliterated until the conviction and sentence are set aside by an appellate court. The conviction and sentence stand pending the decision in the appeal and for the purposes of a provision such as Section 8 of the Representation of the People Act are determinative of the disqualifications provided for therein.

Our conclusion, therefore, is that on the date on which the second respondent was sworn in as Chief Minister she was disqualified, by reason of her convictions under the Prevention of Corruption Act and the sentences of imprisonment of not less than two years, for becoming a member of the legislature under Section 8(3) of the Representation of the People Act.

It was submitted by learned counsel for the respondents that, even so, the court could do nothing about it. It was submitted that in the case of a Chief Minister or Minister appointed under Article 164(1) read with (4) the people, who were the ultimate sovereign, had expressed their will through their elected representatives. For the period of six months the locus penitentiae operated as an exception, as a result of which, for that period, the peoples will prevailed in a true parliamentary democracy, especially as no provision was made for adjudicating alleged disqualifications, like the holding of an office of profit or a subsisting contract for the supply of goods or execution of works. In this area of constitutional governance, for the limited period of six months, it was not open to the court to import qualifications and disqualifications for a minister qua minister when none existed in Article 164(4). The Governor, not being armed with the machinery for adjudicating qualifications or disqualifications, for example, on the existence of subsisting contracts or the holding of offices of profit, and having no power to summon witnesses or to administer an oath or to summon documents or to deliver a reasoned judgment, the appointment made by him on the basis of the conventions of the Constitution could not be challenged

in quo warranto proceedings so that an appointment that had been made under Article 164 could not be rendered one without the authority of law. If it did so, the court would be entering the political thicket. When qualifications and disqualifications were prescribed for a candidate or a member of the legislature and a machinery was provided for the adjudication thereof, the absence of the prescription of any qualification for a Minister or Chief Minister appointed under Article 164(1) read with (4) and for adjudication thereof meant that the Governor had to accept the will of the people in selecting the Chief Minister or Minister, the only consideration being whether the political party and its leader commanded a majority in the legislature and could provide a stable government. Once the electorate had given its mandate to a political party and its leader to run the government of a State for a term of five years, in the absence of any express provision in the Constitution to the contrary, the Governor was bound to call the leader of that legislature party to form the government. There was no express, unambiguous provision in the Constitution or in the Representation of the People Act or any decision of this Court or a High Court declaring that a person convicted of an offence and sentenced to imprisonment for a period of not less than two years by the trial court shall not be appointed Chief Minister during the pendency of his first appeal. In such a situation, the Governor could not be expected to take a position of confrontation with the people of the State who had voted the ruling party to power and plunge the State into turmoil. In the present case, the Governor was entitled to proceed on the basis that the appeals of the second respondent having been directed, in October, 2000, to be heard within two months, it would be open to the second respondent to have the appeals disposed of within the time limit of six months and, in case of an acquittal, no question of ineligibility to contest an election within the period of six months would arise. If the Governor invited the leader of the party which had a majority in the legislature to form a government, it would, if the leader was a non legislator, thereafter not to be open to the court in quo warranto proceedings to decide that the Chief Minister was disqualified. Otherwise, this would mean that when the Governor had invited, in accordance with conventions, the leader to be Chief Minister, in the next second the leader would have to vacate his office by reason of the quo warranto. The court would then be placing itself in a position of prominence among the three organs of the State, as a result of which, instead of the House deciding whether or not to remove such a person through a motion of no confidence, the court would take over the function, contrary to the will of the legislature which would mean the will of the people represented by the majority in the legislature. In then deciding that the Chief Minister should demit office, the court would be entering the political thicket, arrogating to itself a power never intended by the Constitution, the exercise of which would result in instability in the governance of the State.

We are, as we have said, not concerned here with the correctness or otherwise of the action of the Governor in swearing the second respondent in as Chief Minister in the exercise of the Governors discretion.

But submissions were made by learned counsel for the respondents in respect of the Governors powers under Article 164 which call for comment. The submissions were that the Governor, exercising powers under Article 164(1) read with (4), was obliged to appoint as Chief Minister whosoever the majority party in the legislature nominated, regardless of whether or not the person nominated was qualified to be a member of the legislature under Article 173 or was disqualified in that behalf under Article 191, and the only manner in which a Chief Minister who was not qualified or who was disqualified could be removed was by a vote of no- confidence in the legislature or by the electorate at the next elections. To a specific query, learned counsel for the respondents submitted that the Governor was so obliged even when the person recommended was, to the Governors knowledge, a non-citizen, under-age, a lunatic or an undischarged insolvent, and the only way in which a non-citizen or under-age or lunatic or insolvent Chief Minister could be removed was by a vote of no-confidence in the legislature or at the next election.

The nomination to appoint a person who is a non-citizen or under-age or a lunatic or an insolvent as Chief Minister having been made by the majority party in the legislature, it is hardly realistic to expect the legislature to pass a no-confidence motion against the Chief Minister; and the election would ordinarily come after the Chief Minister had finished his term.

To accept learned counsels submission is to invite disaster. As an example, the majority party in the legislature could recommend the appointment of a citizen of a foreign country, who would not be a member of the legislature and who would not be qualified to be a member thereof under Article 173, as Chief Minister under Article 164(1) read with (4) to the Governor; and the Governor would be obliged to

comply; the legislature would be unable to pass a no- confidence motion against the foreigner Chief Minister because the majority party would oppose it; and the foreigner Chief Minister would be ensconced in office until the next election. Such a dangerous such an absurd interpretation of Article 164 has to be rejected out of hand. The Constitution prevails over the will of the people as expressed through the majority party. The will of the people as expressed through the majority party prevails only if it is in accord with the Constitution. The Governor is a functionary under the Constitution and is sworn to preserve, protect and defend the Constitution and the laws (Article 159). The Governor cannot, in the exercise of his discretion or otherwise, do anything that is contrary to the Constitution and the laws. It is another thing that by reason of the protection the Governor enjoys under Article 361, the exercise of the Governors discretion cannot be questioned. We are in no doubt at all that if the Governor is asked by the majority party in the legislature to appoint as Chief Minister a person who is not qualified to be a member of the legislature or who is disqualified to be such, the Governor must, having due regard to the Constitution and the laws, to which he is subject, decline, and the exercise of discretion by him in this regard cannot be called in question.

If perchance, for whatever reason, the Governor does appoint as Chief Minister a person who is not qualified to be a member of the legislature or who is disqualified to be such, the appointment is contrary to the provisions of Article 164 of the Constitution, as we have interpreted it, and the authority of the appointee to hold the appointment can be challenged in quo warranto proceedings. That the Governor has made the appointment does not give the appointee any higher right to hold the appointment. If the appointment is contrary to constitutional provisions it will be struck down. The submission to the contrary unsupported by any authority must be rejected.

The judgment of this Court in Shri Kumar Padma Prasad Vs. Union of India and Others [1992(2) SCC 428] is a case on point. One K.N. Srivastava was appointed a Judge of the Gauhati High Court by a warrant of appointment signed by the President of India. Before the oath of his office could be administered to him, quo warranto proceedings were taken against him in that High Court. An interim order was passed directing that the warrant of appointment should not be given effect to until further orders. A transfer petition was then filed in this Court and was allowed. This Court, on examination of the record and the material that it allowed to be placed before it, held that Srivastava was not qualified to be appointed a High Court Judge and his appointment was quashed. This case goes to show that even when the President, or the Governor, has appointed a person to a constitutional office, the qualification of that person to hold that office can be examined in quo warranto proceedings and the appointment can be quashed.

It was submitted that we should not enter a political thicket by answering the question before us. The question before us relates to the interpretation of the Constitution. It is the duty of this Court to interpret the Constitution. It must perform that duty regardless of the fact that the answer to the question would have a political effect. In State of Rajasthan and Others Vs. Union of India and Others [1977(3) SCC 592], it was said by Bhagwati, J. , But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution, if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political . So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. It is necessary to assert the clearest possible terms, particularly in the context of recent history, that the Constitution is suprema lex, the paramount law of the land and there is no department or branch of Government above or beyond it.

We are satisfied that in the appointment of the second respondent as Chief Minister there has been a clear infringement of a constitutional provision and that a writ of quo warranto must issue.

We are not impressed by the submissions that the writ petitions for quo warranto filed in this Court are outside our jurisdiction because no breach of fundamental rights has been pleaded therein; that the appeal against the decision of the Madras High Court in the writ petition for similar relief filed before it was correctly rejected because the same issue was pending here; and that the transferred writ petition for similar relief should, in the light of the dismissal of the writ petitions filed in this Court, be sent back to the High Court for being heard. Breach of Article 14 is averred in at least the lead writ petition filed in

this Court (W.P.(C) No.242 of 2001). The writ petition which was dismissed by the High Court and against which order an appeal is pending in this Court was filed under Article 226, as was the transferred writ petition. This Court, therefore, has jurisdiction to issue a writ of quo warranto. We propose to pass the order in the lead writ petition, and dispose of the other writ petitions, the appeal and the transferred writ petition in the light thereof.

We are not impressed by the submission that we should not exercise our discretion to issue a writ of quo warranto because the period of six months allowed by Article 164(4) to the second respondent would expire in about two months from now and it was possible that the second respondent might succeed in the criminal appeals which she has filed. We take the view that the appointment of a person to the office of Chief Minister who is not qualified to hold it should be struck down at the earliest.

We are aware that the finding that the second respondent could not have been sworn in as Chief Minister and cannot continue to function as such will have serious consequences. Not only will it mean that the State has had no validly appointed Chief Minister since 14th May, 2001, when the second respondent was sworn in, but also that it has had no validly appointed Council of Ministers, for the Council of Ministers was appointed on the recommendation of the second respondent. It would also mean that all acts of the Government of Tamil Nadu since 14th May, 2001 would become questionable. To alleviate these consequences and in the interest of the administration of the State and its people, who would have acted on the premise that the appointments were legal and valid, we propose to invoke the de facto doctrine and declare that all acts, otherwise legal and valid, performed between 14th May, 2001 and today by the second respondent as Chief Minister, by the members of the Council of Ministers and by the Government of the State shall not be adversely affected by reason only of the order that we now propose to pass.

We are of the view that a person who is convicted for a criminal offence and sentenced to imprisonment for a period of not less than two years cannot be appointed the Chief Minister of a State under Article 164(1) read with (4) and cannot continue to function as such.

We, accordingly, order and declare that the appointment of the second respondent as Chief Minister of the State of Tamil Nadu on 14th May, 2001 was not legal and valid and that she cannot continue to function as such. The appointment of the second respondent as Chief Minister of the State of Tamil Nadu is quashed and set aside.

All acts, otherwise legal and valid, performed between 14th May, 2001 and today by the second respondent acting as Chief Minister of the State of Tamil Nadu, by the members of the Council of Ministers of that State and by the Government of that State shall not be adversely effected by reason only of this order.

Writ Petition (C) No.242 of 2001 is made absolute in the aforesaid terms.

In the light of this order, the other writ petitions, the appeal and the transferred writ petition stand disposed of.

No order as to costs.

..J. (S.P. Bharucha)

..J. (Y.K. Sabharwal)

..J. (Ruma Pal)

September 21, 2001 Brijesh Kumar, J.

Leave granted in SLP © 11763/2001.

I have the advantage of going through the judgment prepared by Brother Bharucha, J. I am in respectful agreement with the same. While doing so, I propose to record my views in addition, on a few

points only, in brief, since such points had been argued at some length and with all vehemence. The points are also no doubt important.

Amongst other points, the learned counsel for the respondents submitted that the appointment of respondent No.2 as Chief Minister by the Governor, could not be challenged, in view of the provisions under Article 361 of the Constitution, providing that the Governor shall not be answerable to any Court for the exercise and performance of the powers and duties of his office. It was also submitted that in appointing the Chief Minister, the Governor exercised his discretionary powers, therefore, his action is not justiciable. Yet another submission is that the Governor had only implemented the decision of the majority party, in appointing the respondent No.2 as a Chief Minister i.e. he had only given effect to the will of the people.

In so far it relates to Article 361 of the Constitution, that the Governor shall not be answerable to any Court for performance of duties of his office as Governor, it may, at the very outset, be indicated that we are considering the prayer for issue of writ of Quo Warranto against the respondent No.2, who according to the petitioner suffers from disqualification to hold the public office of the Chief Minister of a State. A writ of Quo Warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in a proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases Permanent Edition, Volume 35A page 648. It reads as follows:-

The original common-law writ of quo warranto was a civil writ at the suit of the crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the crown. Long before our Revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only; and such, without any special legislation to that effect, has always been its character in many of the states of the Union, and it is therefore a civil remedy only. Ames v. State of Kansas, 4 S.Ct.437, 442,111 U.S. 449,28 L.Ed.482; People v. Dashaway Assn, 24 P.277,278,84 Cal.114.

In the same Volume of Words and Phrases Permanent Edition at page 647 we find as follows:-

The writ of quo warranto is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf.McKittrick v. Murphy, 148.S.W.2d 527,529,530,347 Mo.484. (emphasis supplied)

Information in nature of quo warranto does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex inf. Walsh v. Thatcher, 102 S.W.2d 937,938,340 Mo.865. (emphasis supplied)

In Halsburys Laws of England Fourth Edition Reissue Volume-I Para 265, Page 368 it is found as follows:-

266. In general. An information in the nature of a quo warranto took the place of the absolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order what the right to the office or franchise might be determined. (Emphasis supplied)

Besides the above, many High Courts as well as this Court have, taken the view that a writ of quo warranto lies against a person, who is called upon to establish his legal entitlement to hold the office in question. Reference:

AIR 1952 Trav. Cochin 66, (1944) 48 Cal. W.N. 766, AIR 1977 Noc. 246, AIR 1952 Nag. 330, AIR 1945 Cal.249 and AIR 1965 S.C. 491.

In view of the legal position as indicated above it would not be necessary to implead the appointing authority as respondent in the proceedings. In the case in hand, the Governor need not be made answerable to Court. Article 361 of the Constitution however does not extend any protection or immunity, vicariously, to holder of an office, which under the law, he is not entitled to hold. On being called upon to establish valid authority to hold a public office, if the person fails to do so, a writ of quo warranto shall be directed against such person. It shall be no defence to say that the appointment was made by the competent authority, who under the law is not answerable to any Court for anything done in performance of duties of his office. The question of fulfilling the legal requirements and qualifications necessary to hold a public office would be considered in the proceedings, independent of the fact as to who made the appointment and the manner in which appointment was made. Therefore, Article 361 of the Constitution would be no impediment in examining the question of entitlement of a person, appointed by the Governor to hold a public office, who according to the petitioner/relator is usurper to the office.

The other point which was pressed, with no less vehemence was that in making the appointment of the Chief Minister, the Governor acts in exercise of his discretionary powers. In this connection, learned counsel for the respondents referred to Article 163 of the Constitution to indicate that there shall be a Council of Ministers headed by the Chief Minister to aid and advise the Governor in exercise of his functions except where, under the Constitution the Governor has to discharge his functions in his discretion. Thereafter, Article 164 of the Constitution has been referred to indicate that Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advise of the Chief Minister. It is submitted that the Governor appoints the Chief Minister at a time, when there is no Council of Ministers to aid or advise him. The Governor makes the appointment in his own discretion. Learned counsel for the respondent No.2 submitted that the party in majority by means of a resolution had chosen respondent No.2 as their leader. Accordingly, the respondent No.2 was appointed as the Chief Minister. It has been very categorically submitted, without any ambiguity, that the Governor is bound to appoint any person whosoever is chosen by majority party, as the Chief Minister. This argument cuts against his own submission made earlier that the Governor appoints the Chief Minister in exercise of his discretionary powers. If it is right, that the Governor is bound by the decision of the majority party, the element of discretion of Governor, in the matter, disappears. In the scheme of Constitutional provisions the Governor is to act with the aid and advise of the Council of Ministers headed by the Chief Minister. He is bound to act accordingly. The other functions which the Governor performs in which aid and advice of the Council of Ministers is not necessary, he acts in his own discretion. He is not bound by decision/advice of any other agency. It is no doubt true that even in the written Constitution it is not possible to provide each and every detail. Practices and conventions do develop for certain matters. This is how democracy becomes workable. It is also true that the choice of the majority party regarding its leader for appointment as Chief Minister is normally accepted, and rightly. But the contention that in all eventualities whatsoever the Governor is bound by the decision of the majority party is not a correct proposition. The Governor cannot be totally deprived of element of discretion in performance of duties of his office, if ever any such exigency may so demand its exercise. The argument about implementing the will of the people in the context indicated above is misconceived and misplaced.

----------J. (Brijesh Kumar) September 21 , 2001

CASE NO.: Appeal (crl.) 887 of 1998

PETITIONER: ARVIND SINGH

Vs.

RESPONDENT: STATE OF BIHAR

DATE OF JUDGMENT: 26/04/2001

BENCH: Umesh C. Banerjee & K.G. Balakrishnan

JUDGMENT:

BANERJEE,J. L...I...T.....T.....T.....T.....T.....T.....T..J

The appeal in question tell the tale of a young girl dying out of burn injuries. Whereas the learned Sessions Judge convicted each of the accused being the husband, the father-in-law, the mother-in-law and the brother-in-law under Section 304 B of the Indian Penal Code and 498A/34 together with 120B of the Indian Penal Code and sentenced each of them to undergo imprisonment for life under 304B IPC and a further sentence of 3 years to each of the accused for an offence under 498A IPC and in view of the sentences passed, no need was felt to pass any sentence under Section 120 B IPC. The appeal taken to the High Court stands allowed so far as the appellant Nos.1,2 and 4 are concerned upon taking into consideration of the facts under Section 304 B read with Section 34 of the Indian Penal Code as also under Section 120B of the Code though, however, the conviction under Section 498A read with Section 34 of the Code was confirmed. Arvind Singh, the husband was however, found guilty for murder of the wife Minta Devi and his conviction under 304 B was converted to Section 302 IPC and was sentenced to undergo imprisonment for life besides maintaining the conviction under Section 498A IPC. It is this conviction and sentence which stands challenged in this appeal.

Before adverting to the contentions as raised by the appellant the case of the prosecution can be briefly stated to be as below: On the basis of the fardbeyan of the informant Phulamati the mother of the deceased, that the appellant alongwith other members of the family on the night of 6/7 March, 1991 had set her daughter on fire and on having such information the informant alongwith PWs 3,4 and 7 reached the Muhalla and found that the daughter was lying injured due to burn injuries. The First Information Report recorded that the daughter of the informant disclosed that her husband, father-in-law, mother-in-law and other family members forcibly poured kerosene oil on her body and lighted, on account of which her entire body was burnt. The FIR discloses that all the persuasions for removal to a hospital by reason of the severe burn injuries were negatived by the in-laws and having failed to persuade the in-laws, the parents family themselves wanted to take her back to the hospital but the attempt was not successful since the deceased succumbed to her injuries.

Incidentally, it may be noted that two specific cases have been made out in the FIR, firstly, the girl was ugly looking (though some of the witnesses have stated that she has been a really good looking girl) and secondly this is a case of bride torture and demand of dowry to the extent of Rs.10,000 and a gold ring and since demands could not be fulfilled the accused persons conspired together and committed the offence which has resulted in the death of the girl.

The factual disputes there are not many since the factum of the death and the cause of death being burn injuries are admitted. As regards the dowry death a specific submission was made before the High Court to the effect as below:-

Mr. Verma, learned counsel appearing for the appellants firstly contended that from a bare reference to the FIR it would appear that the Investigating Officer by making interpolation has added

the allegation with regard to demand of dowry. Because the main reason for such an occurrence was that Minta Devi was an ugly lady and, therefore, accused persons used to torture her and ultimately committed her murder. The allegation with regard to demand of dowry etc. was virtually inserted in different hand writing at the end of the fact from which interpolation is apparent. Learned counsel appearing for the State contended that true it is that the allegation with regard to demand of dowry was inserted subsequently, but it cannot be alleged that such an allegation was made after interpolation.

The High Court also in no uncertain terms recorded that the statement of Mr. Verma stands justified by reason of interpolation on the First Information Report. The High Court also came to the conclusion that there is no evidence whatsoever that prior to the date of occurrence, there was any demand for dowry by the accused persons and it is on the basis of the aforesaid the High Court set aside the conviction and sentence of Janardan Singh, Lilawati Devi and Navin Kumar Singh under Section 304 B read with 34 of the Indian Penal Code as also under 120B of the Indian Penal Code. The conviction of 498A however, read with Section 34 was confirmed and the bail bonds granted in favour of the three accused noticed above were directed to be cancelled and they were ordered to be taken into custody forthwith for serving out the remaining sentences. As regards Arvind Singh the husband, the High Court came to the conclusion that his conviction ought to be converted from Section 304B to 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life besides the conviction and sentence of 3 years under Section 498A of the IPC. In the result the criminal appeal was partly allowed so far as the appellant Nos. 1,2 and 4 were concerned but appellant No.3 being the husband (Arvind Singh) subject to the modification of conviction was dismissed and hence the appeal before this Court by the grant of special leave.

Burn injuries are normally classified into three degrees. The first being reddening and blistering of the skin only; second being charring and destruction of the full thickness of the skin; third being charring of the tissues beneath the skin, e.g. fat, muscle and bone.

Be it noted here that if the burn is of a distinctive shape a corresponding hot object may be identified being applied to the skin and thus abrasions will have distinctive patterns but in the event burn injury is a cause of death 60% cases of septicaemia and 34% cases are of bronchopneumonia. Where infection was by Pseudomonas pyocyanea, spread to unburnt skin with ulceration may occur, and internal infection by this organism is especially liable to damage the walls of blood vessels. Gram-negative shock may also occur. The external examination in the normal cases are found in the body being removed from a burnt building and in the event of so removal the cause of death would be inhalation of fumes rather than septicaemia as noticed above. In the event the body is not removed from the room and the same remains in situ an examination of the scene must be attempted, as with any other scene of suspicious death, note being taken as regards the position of the body, clothes remaining if any and identifiable objects in the room and so on. The examination of the burns is also directed to ascertain their position and depth, as to whether they were sustained in life or not, and whether their situation gives any indication of the path taken by the flames or the position of the body when the fire started if the body is very severely burnt then all the skin surface may be destroyed, even sometimes make it rather difficult for identification of the body. A body that is badly burnt assume the appearance known as pulgilistic attitude and this is due to heat stiffening and contraction of the muscles, causing the arms to become flexed at the elbows and the hands clenched, the head slightly extended and the knees bent. The appearance resembles the position adopted by a person engaged in a fight and has led on occasion to suspicion that death has occurred during some violent crime. In fact, of course, the body will assume this position when the fire started. The other aspect of the burn injury is the heat ruptures may be produced. These are splits of the skin, caused by contraction of the heated and coagulated tissues, and the resultant breaches look like lacerated wounds. They are usually only a few inches, but may be upto 1 or 2 ft in length. Normally they lead to no difficulty in interpretation, since they only occur in areas of severe burning, and normally over fleshy areas of the body, like calves and thighs, where lacerations are uncommon. However, when they occur in the scalp they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt, by their appearance, position in areas of maximum burning and on fleshy areas, and by the associated findings on internal examination. (See in this context Taylors Medical Jurisprudence)

Although shock due to extensive burns is the usual cause of death, delayed death may be due to

inflammation of the respiratory tract caused by the inhalation of smoke. Severe damage, at least to the extent of blistering of the tongue and upper respiratory tract, can follow the inhalation of smoke.

Prosecutions definite case in the matter under reference is kerosene was poured in all round and thereafter with lighted match stick the girl was burnt to death alive. The FIR depicts the case of torture in order to attract Section 498A together with ingredients of charge under Section 304B which stands disbelieved by the High Court and we in the contextual facts accept the observations of the High Court pertaining thereto having regard to the fact that the High Court itself has looked into the original FIR and found it to be so interpolated as contended and it is on this score that the High Court acquitted the accused persons under Section 304B: No exception thus can be taken to the order of acquittal of the charge above and we also record our concurrence therewith.

The High Court however, has not delved into the issue of non-examination of Investigating Officer. We are at a loss to find such an omission on the part of the High Court on such a vital issue.

Mr. Verma, the learned senior counsel appearing in support of the appeal contended that conversion of charge under Section 304B to 302, cannot by stretch be maintained. It has been contended that the Court having recorded a finding that the demand for dowry was interpolated and inserted in the FIR, virtually in a different handwriting, which was done subsequently it is submitted that, it is unsafe to rely on the informant PW5 and the Prosecution case is fit to be rejected outright, more so, when the Investigating Officer has been kept out of court. Mr. Verma contended that since the prosecution failed to prove the charges against any of the accused and that the conviction and sentence under the aforesaid charges including that of the appellant having been set aside, the conviction of the appellant under Section 302 IPC is bad in law and untenable. The charge under Section 302 IPC is a major charge and it entails more severe and greater sentence, being death or imprisonment for life and fine, whereas in a charge under Section 304B, there is imprisonment for 7 years which may extend upto life imprisonment and in that case the court having set aside the conviction under Section 304B read with 34 and 120B IPC, it is neither open nor permissible to punish the accused under Section 302 IPC which in all material particular amounts to enhancement of sentence and inflicting greater punishment unless the petitioner is given an opportunity to show cause without which the court shall not inflict greater punishment [refer to Section385 Cr.P.C.]. Mr. Verma contended here again when a distinct offence under Section 302 IPC is made out, charge should have been framed and read out to the accused appellant [refer Section 216 Cr.P.C.] to avoid prejudice and in that case the circumstances brought in evidence should be put to accused in his examination under Section 313 of the Cr.P.C. which has not been done causing serious prejudice in defence. In any event Mr. Verma contended that the evidence on record does not justify such a conversion of charge There is therefore neither any legal nor even any evidentiary support to such a conversion. The High Court in introducing Section 302 in place of Section 304B, it has been submitted not only committed a grave error of law but proceeded totally against even the entire tenor of the evidence on record. Criminal jurisprudence does not warrant such a conversion on facts of the matter under consideration.

Turning attention on to the dying declaration be it noticed at this juncture that the deceased was supposed to have spoken to the mother that there was a conjoint effort of all the accused to pour kerosene on all her body and lit the fire The burn injury resulting therefrom has caused her life to death. Prosecution thus treated the same as a dying declaration.

Though the earlier view of this Court in Ramnaths case [Ram Nath Madhoprasad & Ors. v. State of Madhya Pradesh: AIR 1953 SC 420] stands overruled by a five-Judges judgment in the case of Tarachand Damu Sutar v. State of Maharashtra [AIR 1962 SC 130] but there is no denial of the fact that dying declaration ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. The same is the view taken in a case reported in AIR 1976 SC 2199 [Munnu Raja and Another v. State of Madhya Pradesh] wherein this Court stated:

It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. Thus Court must not look out for corroboration unless it comes to the conclusion that the dying declaration suffered from any infirmity by reason of which it was necessary

to look out for corroboration.

In the same year this Court in the case of K. Ramachandra Reddy & Anr. V. The Public Prosecutor [AIR 1976 SC 1994] observed:

The dying declaration is undoubtedly admissible under Section 32 and not being a statement on oath so that its truth could be tested by cross- examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.

A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of question and answer and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character. In order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties AIR 1958 SC 22: Rel. on.

Be it noted that the dying declaration herein has not been effected before any Doctor or any independent witness but to the mother who is said to have arrived at the place only in the morning the mother admittedly is an interested witness: though that by itself would not discredit the evidence tendered in Court but the fact remains the Doctors evidence considering the nature of the burn posed a considerable doubt as to whether such a statement could be made half an hour before the death of the accused. It is not that the statement of the unfortunate girl was otherwise not clear or there was existing some doubt as to the exact words on the contrary the definite evidence tendered is that there is clear unequivocal statement from the daughter of the family that the conjoint efforts of putting kerosene thereafter with lighted match stick has resulted the burn injury. The severity of the burn injury and its impact on the body speaks volume by reason of the death of the deceased. It is the reliance on such a dying declaration by the High Court shall thus have to be scrutinised with certain degree of caution.

Dying declaration in the instant matter thus we must confess raised certain amount of eyebrows and Mr. Verma also with his usual eloquence did put a strong protest in regard thereto. The evidence of this declaration depicts that just before a few minutes of her death, the deceased would make a declaration quietly to the mother naming therein all the three relations along with the husband who poured kerosene to burn her alive. This is not acceptable, more so having regard to the declaration being made to the mother only. In any event, is it conceivable that the husband along with the father-in-law, mother-in-law, brother-in-law would start pouring kerosene together on to the girl as if each was prepared with a can of kerosene to pour simultaneously This not only would lead to an absurdity but reliance on such a vague statement would be opposed to the basic tenets of law. Further it is in evidence that the deceased had an extensive burn including her mouth, nose and lips if any credence is to be allowed to the same, then and in that event, the evidence of the mother about the confession stands belied by itself. Significantly, the doctors evidence as is available on record would also go a long way in the unacceptability of the evidence of the mother as regards confession. In no uncertain terms the doctor, P.W.8 stated that the death may take place at once and within ten seconds by reason of the extensive nature of the burn and the deceased cannot have survived beyond 10 minutes. Another redeeming feature that the declaration of the deceased was made only to the

mother but before the arrival of the mother, the incident was made known to the Police authorities and, in fact, the Police was present when the mother and the brother arrived. It is highly unlikely that the Police will not make any attempt to have a statement by the deceased but if it was otherwise possible immediately on its arrival rather than wait for the mother to arrive. Two recent decisions of this Court may be of some assistance the first in point of time is the decision of a three judge Bench of this Court in the case of Paparambaka Rosamma and Others v. State of A.P. (1999 (7) SCC 695) wherein this Court in no uncertain terms observed that there ought not to be any hesitancy in the mind of the Court in regard to the truthfulness and voluntary nature of disclosure of the incident. In Rosammas case one Dr. K. Vishnupriya Devi has stated in the Court that the injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It did come on record that the girl has sustained 90% burn injuries and it is in that perspective, this Court held that in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration the medical certification, therefore, was felt to be a primary element in the matter of dying declaration unfortunately we do not have any certification of whatsoever nature, it is only the uncorroborated testimony of the mother to whom the deceased was supposed to have made the declaration as noticed above. In paragraph 9 of the Report in Rosammas case (supra) however, this Court had the following to state:

9. It is true that the medical officer Dr. K.Vishnupriya Devi (PW 10) at the end of the dying declaration had certified patient is conscious while recording the statement. It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post-mortem stated that the injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K. Vishnupriya Devi (PW 10) did not comply with the requirement in as much as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that patient is conscious while recording the statement. In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and as made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly they erred in accepting the said dying declaration (Ex.P-14) as true, genuine and as made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below.

In the similar vein, another three judge Bench of this Court in Koli Chunilal Savji and another v. State of Gujarat (1999 (9) SCC 562) observed that in the absence of the Doctor while recording a dying declaration, the same loses its value and cannot be accepted. In paragraphs 6 and 7 of the Report, this Court observed:

6. In view of the rival submissions made at the Bar, two questions really arise for our consideration:

(1) Whether the two dying declarations can be held to be true and voluntary and can be relied upon or can be excluded from consideration for the infirmities pointed out by Mr. Keswani, appearing for the appellants.

(2) Whether the High Court exceeded its jurisdiction in interfering with the order of acquittal, recorded by the learned Sessions Judge.

7. Coming to the first question, the answer to the same would depend upon the correctness of the submission of Mr. Keswani, that in the absence of the doctor while recording the dying declaration, the said declaration loses its value and cannot be accepted. Mr. Keswani in this connection relies upon the decision of this Court in the case of Maniram v. State of M.P. (1994 Supp (2) SCC 539). In the aforesaid case, no doubt this Court has held that when the declarant was in the hospital itself, it was the duty of the person who recorded the dying declaration to do so in the presence of the doctor and after

being duly certified by the doctor that the declarant was conscious and in his senses and was in a fit condition to make the declaration. In the said case the Court also thought it unsafe to rely upon the dying declaration on account of the aforesaid infirmity and interfered with the judgment of the High Court. But the aforesaid requirements are a mere rule of prudence and the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It is no doubt true that before recording the declaration, the officer concerned must find that the declarant was in a fit condition to make the statement in question. In Ravi Chander v. State of Punjab (1998 (9) SCC 303) this Court has held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court further observed that that the Executive Magistrate is a disinterested witness and is a responsible officer and there is no circumstance or material on record to suspect that the Executive Magistrate had any animus against the accused or was in any way interested in fabricating the dying declaration and, therefore, the question of genuineness of the dying declaration recorded by the Executive Magistrate to be doubted does not arise. In the case of Harjit Kaur v. State of Punjab (1999 (6) SCC 545) this Court has examined the same question and held:

(SCC p.547, para 5)

As regards the condition of Parminder Kaur, the witness has stated that he had first ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect. Merely because that endorsement was made not on the dying declaration itself but on the application, that would not render the dying declartion suspicious in any manner.

Dying declarations shall have to be dealt with care and caution and corroboration thereof though not essential as such, but is otherwise expedient to have the same in order to strengthen the evidentiary value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence. In our view question of the dying declaration to the mother is not worth acceptance and the High Court thus clearly fell into an error in such an acceptance. Significantly, the High Court has set aside the conviction and sentence under Section 304 B read with Section 34 and 120 B of the Indian Penal Code so far as the father-in-law, the mother-in-law and the brother-in-law are concerned though maintained the conviction under 498A. So far as the husband is concerned the High Court converted the charge from 304 B to 302 on the ground that the only motive of the murder could be attributed to the husband who must be interested in committing such offence so that he can perform another marriage This is rather a far-fetched assumption without any cogent evidence available on record. Needless to record here that excepting one of the very keenly interested witness, the episode of the applicant being married again does not come from any other witness and the factum of marriage also though stated but devoid of any particulars even as regards the name, the date of marriage etc. It is on record that on arrival of the mother and the brother of the deceased, they found an assembly of large number of mahalla people but none of them were called to even have a corroboration to this part of the evidence of the accused marrying after the death of the deceased: No independent witness was thought of, though the factum of marriage could have been corroborated by an outside agency. The FIR and the other oral evidence available if read together and full credence is attributed to the same but that itself does not and cannot permit the High Court to come to such an assumption. The assumption is faulty and is wholly devoid of any substance. As a matter of fact no special role was even ascribed to the appellant herein for apart leading any evidence thereon. Presumptions and assumptions are not available in criminal jurisprudence and on the wake of the aforesaid we are unable to lend concurrence to the assumptions of the High Court as recorded herein before in this judgment. Significantly, even the dying declaration whatever it is worth, has implicated all the four accused in the manner similar. There is no additional piece of evidence implicating the husband which would permit the High Court to convert the charge of 304 B to 302 True punishment of life imprisonment is available under 304 B but that is the maximum available under the Section and for Section 302 the same is the minimum available under the Section. Though discretion to a further award minimum cannot be taken away from the Court. Section 302 is a much more heinous offence and unfortunately there is no evidence of such heinous activities attributable to the husband. The factum of the husband, if interested in committing such offence so that he can perform another marriage has not been put to the witnesses and in the absence of which, assumption to that effect, cannot be said to be an acceptable assumption since without any

evidentiary support. The assumption by itself in our view is untenable.

Mr. H.L. Agrawal, learned senior Advocate , however, emphatically contended that considering the hour of the day and the factum of the wife being burnt and no other explanation coming forth, question of the husband escaping the liability of murder does not and cannot arise. We are however unable to lend our concurrence to the aforesaid. While it is true that husband being the companion in the bedroom ought to be able to explain as to the circumstances but there exist an obligation on the part of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Criminal jurisprudential system of the country has been to that effect and there is neither any departure nor any escape therefrom.

The defence story of early morning/burst by reason of warming up of milk from the kitchen has not been accepted as true and plausible explanation for the injury by either of the courts but does that mean and imply that necessarily therefore the husband was guilty of murder The answer cannot be in the affirmative. As the experience goes this unfortunate trend has turned out to be a growing menace in the society and does not warrant any sympathy whatsoever but that does not however mean non adherence to even the basics of the law. When the parents arrived the girl was lying on the bed and without there being any evidence as the state of the linen, the cot and the surroundings. Is this an omission without having any impact on the entire prosecution case?

Let us, however, scrutinise the evidence in little more greater detail: the mother was informed about the daughters burn injury at night the parents arrived in the morning finds the daughter in the bed room with excessive burn injuries without however any mention of the impact on the surroundings the deceased supposed to have made a statement to the mother that the in-laws and the husband on a conjoint move poured kerosene on to her and threw a lighted match stick so as to cause burn injuries last of the evidence is that the deceased immediately after such communication passed away without any medical assistance would this evidence be sufficient to prove the charges even under Section 304B and 498A for apart the conversion thereof to 302 by the High Court? We are afraid the evidence is not sufficient enough to reach an irresistible conclusion of the involvement of the husband as the murderer or even being charged with an offence under Section 304B IPC.

We do feel it expedient to record that the conviction and sentence as imposed against the husband-appellant cannot be sustained. The sentence of imprisonment for life thus under Section 302 stands set aside. There is no evidence, convincing, so as to even render the accused appellant suffer such a conviction. There is no challenge by the State as against the order of acquittal of other three accused persons under Section 304B as such we are not inclined to delve into the matter as regards the involvement of the other three persons but the appellants explanation of stove- burst being the cause of the event cannot be brushed aside. It is undoubtedly a social and heinous crime to have the wife burnt to death but without any proper and reliable evidence, the law court can not by itself also justify its conclusion in the matter of involvement of the husband: Direct evidence may not be available but circumstantial evidence with reasonable probity and without a snap in the chain of events would certainly tantamount to a definite evidence about the involvement but not otherwise. What is the evidence available in the matter To put it shortly, there is none! The factum of burn injury cannot be doubted and the subsequent unfortunate death but that is about all. Why was the Investigating officer not examined No answers are forthcoming even at this stage but why not? Is it a lacuna? We need not dilate thereon but the fact remains there is not a whisper in regard thereto! Coming back to Section 498A the requirement of the statute is acts of cruelty by the husband of a woman or any relative of the husband. The word cruelty in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing. The same would be within the meaning of the Section. In the instant case there is no evidence whatsoever. It is on this score Mr. Verma contended that there is no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. No outside person has been called to give evidence and even the witnesses being in the category of interested witnesses also restricted their version to sufferings of burn injury and the purported dying declarations to the matter as noticed herein before apart therefrom nothing more is available on record to attribute any act or acts on the part of the husband or on the part of husbands relatives is that evidence sufficient to bring home the charge under Section 498A? The answer

obviously cannot be in the affirmative having regard to the non-availability of any evidence in the matter. Significantly however, upon recording of the fact of no dowry demand prior to the date of occurrence the High Court thought it fit to record that charge under Section 498A stands proved and as such passed the sentence. We are however unable to record our concurrence therewith - torture is a question of fact there must be proper effort to prove that aspect of the matter, but unfortunately not even an attempt has been made nor any evidence tendered to suggest the same excepting the bold interpolated allegations which stand disbelieved and ignored by the High Court, and in our view rightly.

On the wake of the aforesaid, charge under Section 498A also cannot be sustained! Both the learned Trial Judge and the High Court are clearly wrong in not considering this aspect of the matter and thus fell into a serious and clear error. In that view of the matter the conviction and sentence stand set aside. The appeal stands allowed accordingly. The appellant is acquitted. The appellant be set at liberty forthwith unless required in any other case.

CASE NO.: Appeal (crl.) 749 of 2000

PETITIONER: UKA RAM

Vs.

RESPONDENT: STATE OF RAJASTHAN

DATE OF JUDGMENT: 10/04/2001

BENCH: K.T. Thomas, R.P. Sethi & S.N. Phukan

JUDGMENT:

SETHI,J. L...I...T.....T.....T.....T.....T.....T.....T..J

Solely relying upon the dying declaration of Parveena, the deceased, the trial court held the appellant guilty for the murder of his wife and daughter Kumari Dharmistha aged 16 months. Upon conviction for the offences under Sections 302, 326 and 498A of the Indian Penal Code, the appellant was sentenced to imprisonment for life for the main offence. Appeal against the aforesaid conviction and sentence was dismissed by the High Court vide judgment impugned herein.

The facts of the case are that on the intervening night of 6/7th May, 1994, Nonji (PW1) submitted a complaint before the incharge of the police station Bheenmal to the effect that when he was at the Chakki of Tararam at about 11.30-12.00 in the midnight he heard voice raising the noise saying Mare Mare from the side of the house of the appellant. On hearing the noise, the informant came out from the Chakki and saw Smt.Parveena, wife of appellant in blazes rushing out from her house. She tore her clothes and was sitting in naked position. After sometime the appellant also came out of his house. On being asked Parveena told that the appellant had burnt her by sprinkling kerosene oil. After registering the case under Sections 324 and 498A IPC, the police commenced the investigation. Parveena who was admitted in the hospital died on 8.6.1994 and the daughter of the appellant died on 2.7.1994 whereafter the offence was changed to Section 302 IPC.

To prove its case, the prosecution examined 21 witnesses at the trial, most of whom turned hostile and did not support the case of the prosecution. Before her death the deceased had made dying declarations Exhibit P-20 which was recorded by the police at about 3.30 a.m. and Exhibit P-27 which was recorded by Judicial Magistrate at 3.55 a.m. on 7.5.1994. The oral dying declarations, allegedly made by the deceased, were sought to be proved by the testimony of PWs 1, 2, 3, 4 and 5. PWs 1, 2 and 4 have not supported the prosecution.

In his statement recorded under Section 313 of the Code of Criminal Procedure, the appellant stated that on 6.5.1994 between 11.30 and 12.00 p.m. he was sleeping outside his house whereas his wife and daughter were sleeping inside the house. After hearing weeping of his daughter he went inside the house and saw his daughter in the state of burning along with his wife. He made an attempt to save their lives. He thought that his wife had burnt his daughter, hence he started abusing her upon which she went outside at Chabutra while burning. He brought his mother on the scene of occurrence who was living separately. He went to the hospital along with the burnt wife and the daughter. According to him his wife was insane and he has been getting her treated for insanity.

From the record it appears that the FIR was received in the police station on 7.5.1994 at about 1.30 a.m. The statement Exhibit P-20, obviously under Section 161 of the Code of Criminal Procedure, is stated to have been made by the deceased at about 3.30 a.m. and dying declaration Exhibit P-27 was recorded by the Magistrate at about 3.55 a.m. For convicting and sentencing the appellant, both the trial as well as the High Court have relied upon dying declaration, Exhibit P-27.

Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts under the circumstances enumerated under sub-sections (1) to (8) of Section 32 of the Act. When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question is admissible in evidence being relevant whether the person was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Such statements in law are compendiously called dying declarations. The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a mans mind the same feeling as that of a conscientious and virtuous man under oath - Nemo moriturus praesumuntur mentiri. Such statements are admitted, upon consideration that their declarations made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. The principle on which the dying declarations are admitted in evidence, is based upon the legal maxim Nemo moriturus praesumitur mentire i.e., a man will not meet his maker with a lie in his mouth. It has always to be kept in mind that though a dying declaration is entitled to great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross- examination, it is essential for the court to insist that dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence.

In Tapinder Singh v. State of Punjab [1970 (2) SCR 113] this Court held:

The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under Section 32(1) of the Indian Evidence Act in a case in which the cause of that persons death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, imposing on it an obligation to closely scrutinise all the relevant attendant circumstances.

This Court in Dandu Lakshmi Reddy v. State of A.P. [1999 (7) scc 69] observed that on the fact-situation of a case a judicial mind would tend to wobble between two equally plausible hypothesis - was it suicide, or was it homicide? If the dying declaration projected by the prosecution gets credence the alternative hypothesis of suicide can be eliminated justifiably. For that purpose a scrutiny of the dying declaration with meticulous circumspection is called for. It must be sieved through the judicial cullendar and if it passes through the gauzes it can be made the basis of a conviction, otherwise not. It was further held that in view of the impossibility of conducting the test on the version in the dying declaration with the touchstone of cross-examination, the court has to adopt other tests in order to satisfy its judicial conscious that the dying declaration contained nothing but the truth.

Ms.Minakshi Vij who appeared as amicus curaie in this case vehemently argued that the trial court as well as the High Court was not justified in relying upon the dying declaration (Exhibit P-27) to base the conviction, as, according to her, the said declaration was not made by a mentally sound and normal person. It is submitted that the deceased was suffering from a mental illness which might have prompted her to end her life. Alternatively, it is argued knowing that Parveena was a mental patient, the prosecution should have taken steps to ascertain that while making the statement she was not suffering from any such illness. In rebuttal Sh.Sushil Kumar Jain submitted that as despite taking such a

plea the appellant has not chosen to lead any defence evidence, the genuineness of the dying declaration cannot be doubted. He has further submitted that because before recording the statement (Exh.P-27) the doctor had declared the deceased to be fit to make the statement vide Exhibit P-26, no doubt can be created about the mental faculties of the deceased at the time of making the statement.

There is no dispute that the prosecution is under a legal obligation to prove its case beyond all reasonable doubts and the accused is only to probabilise his defence. From the evidence on record we find that the plea regarding the mental condition and illness of the deceased was not an after-thought in the instant case. It is evident that during the whole trial, the appellant has been trying to cross-examine the witnesses to probabilise that the deceased was suffering from mental illness which could be a reason for her to commit suicide or alternatively the statement Exhibit P-27 cannot be held to be voluntarily made or not made under any extraneous influences. Nonji (PW1), the first informant in reply to a court question had stated that Parveena was mad but added that he had heard about her madness. In cross-examination Lal Singh (PW3) had stated I do not know that Parveena was mad or not. Villagers were saying that Uka Ram had brought her for medical treatment. Pabu (PW4) in her cross-examination had stated Parveena was mentally made and my son had brought her for medical treatment. Masra (PW10), the father of the deceased was also cross-examined on this subject wherein he had stated that It is wrong to say that previous son-in-laws of Sathu and Abu Road say that Pravina is insane and it is also wrong that due to above reasons they left Parvina. I am ill for 5 years. It is wrong to say that my son Prabhu got treatment of insanity at Palanpur. It is wrong to say that treatment of insanity of my two daughters is going on. Prabhu (PW11), who is the real brother of the deceased has stated that It is true that the mental treatment of my sister Pravina was going on. She was suffering from lunatic attack. On this subject statement of accused under Section 313 has already been noticed. In her dying declaration the deceased had not referred to any reason which allegedly prompted the appellant to commit the crime.

After going through the whole of the evidence, perusing the record and hearing the submissions of the learned counsel for the parties, we are of the opinion that the prosecution had not proved, beyond doubt, that the dying declaration was true, voluntary and not influenced by any extraneous consideration. Despite knowing the fact that the deceased was a mental patient, the investigating agency did not take any precaution to ensure that the incident was suicidal or homicidal. The probability of the deceased committing suicide has not been eliminated. There also exist a doubt about the mental condition of the deceased at the time she made dying declaration (Exhibit P- 27). Exhibit P-26, the medical certificate only states to her physical condition to make a statement but does not refer to her mental condition even at that time. The trial as well as the High Court appear to have ignored this aspect of the matter while convicting and sentencing the appellant. We are satisfied that it is a fit case in which the appellant is entitled to the benefit of doubt.

As the dying declaration, the sole evidence upon which the conviction is based, is not reliable beyond all reasonable doubts, the conviction and sentence of the appellant is not justified. Accordingly, the appeal is allowed by setting aside the impugned judgment. The appellant is acquitted of all the charges and is directed to be set at liberty forthwith unless required in some other case.

CASE NO.: Appeal (crl.) 453 of 2001

PETITIONER: NARSINGH PRASAD SINGH

Vs.

RESPONDENT: RAJ KUMAR @ PAPPU & ORS.

DATE OF JUDGMENT: 04/04/2001

BENCH: M.B. Shah & S.N. Variava

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..J J U D G M E N T

Shah, J.

Leave granted.

It is virtually a matter of shame to the civilization that indiscriminate attacks and violence are directed against married women in certain quarters including so-called educated for obnoxious and anti-social demand of dowry and the accused are let off for various reasons. Result is violence against women continues unabated as law looses its deterrent effect. In some cases, flee bite sentence till rising of the Court or sentence already undergone is awarded without verifying whether the accused has undergone any sentence.

The prosecution case in nutshell is thaton 1.4.1994 at 11 a.m. Bilasa Devi and Neelam, mother in law and sister in law respectively of Kusum Kumari started beating complainants daughter with a burning wooden stick and she remained lying for some time at in-laws house. Thereafter, the mother-in-law again said burn her face, on which Kusum got scared and ran away from the place and reached the house of her Bua (fathers sister) at about 4 p.m. From there, message was sent to her parents house. Thereafter her father-PW1 reached Kanpur and gave a written complaint at the Police Station through his son. After appreciating the entire evidence, by judgment and order dated 12.11.1999, 1st Additional Chief Judicial Magistrate, Kanpur City convicted respondents for the offence punishable under Section 498A of the IPC each and sentenced them to suffer RI for one year and to pay a fine of Rs.1000/-, in default in payment of fine to further undergo RI for 3 months each, by holding that accused persons asked Kusum to bring money from her fathers house and when she could not arrange for money, all the accused mercilessly beat and planned to burn her with a burning wooden stick.

Against that order, accused preferred Criminal Appeal No.96 of 1999 which was heard by the 7th Additional Sessions Judge, Kanpur City, who after appreciating the entire evidence dismissed the appeal filed by the present respondents but allowed the appeal of Smt. Neelam and set aside her conviction order. That order was challenged by the respondents by filing Criminal Revision No.1548 of 2000 in the High Court of Allahabad.

The Revision Application was heard by Mr. B.K. Rathi, J., who by cryptic order allowed the revision by holding as under: - Applicant no.1 is the husband and applicants no.2 and 3 are father-in-law and mother-in-law. The learned counsel for the applicants has not challenged the conviction and has argued only on the question of sentence.

In the circumstances, by maintaining the conviction for the offence under Section 498-A IPC, I modify the sentence and they are sentenced to undergo RI for the period for which they had been in jail and a fine of Rs.1000/- each. They shall be released forthwith on deposit of fine.

That order is under challenge. It has been submitted by the learned counsel that the order passed by the High Court is nothing but a mockery of justice. Without appreciating any evidence and recording any reasons, the High Court modified the sentence only on the ground that the learned counsel for the respondents has not challenged the conviction and has argued only on the question of sentence.

In our view, there is much substance in the contention raised by the learned counsel for the appellant. It is apparent that the High Court has modified the sentence without recording any reasons and without considering the crime prevalent in the society for unjustified demand of dowry. In any case, before exercising its revisional jurisdiction, the Court ought to have considered the facts and applied its mind as to whether it was a fit case for exercise of its revisional jurisdiction and for reducing the sentence. It has also been pointed out that without verifying the fact that respondents have not undergone any sentence, the Court has passed the order of reducing the sentence for the period for which they had been in jail. This Court has reiterated in a series of cases that it is the duty of the Court to pass appropriate order of sentence and not raising of any argument by counsel for the accused for acquittal is hardly any ground for reduction of sentence.

In the result, the appeal is allowed and the impugned order passed by the High Court is set aside. The High Court to decide the revision application afresh on merits.

CASE NO.: Appeal (crl.) 324 of 2001

PETITIONER: PRAHLAD SINGH BHATI

Vs.

RESPONDENT: N.C.T., DELHI & ANR.

DATE OF JUDGMENT: 23/03/2001

BENCH: K.T. Thomas & R.P. Sethi.

JUDGMENT:

SETHI,J.

Leave granted. L...I...T.....T.....T.....T.....T.....T.....T..J

Respondent NO.2, who is alleged to have murdered his wife and against whom FIR No.566/92 was registered in the Police Station Lajpat Nagar under Section 302 of the Indian Penal Code, was released on bail by the Metropolitan Magistrate, New Delhi on 22nd August, 2000. The revision filed against the aforesaid order has been dismissed by a learned Single Judge of the High Court by passing a telegraphic order to the effect "having considered the case before me I am of the opinion no ground has been made for cancellation of bail". Not satisfied with the order of the Magistrate and that of the High Court, the father of the deceased has approached this Court in this appeal by special leave.

The deceased and the respondent No.2 were married on 24.11.1984. She is alleged to have been subjected to ill-treatment on account of demand for dowry. Huge amounts are stated to have been paid by the appellant to the accused on various occasions. On 18.3.1999 the respondent No.2 is alleged to have brought the deceased to her parental house on Scooter No.DL 9SC-0680 where he poured kerosene oil and burnt her alive in the presence of her parents. As no case was registered against the accused, the appellant approached higher authorities including the Prime Minister of India, Home Minister of India and Commissioner of Police, Delhi, with the result that Deputy Commissioner of Police (South District) directed the registration of case under Sections 306 and 498A IPC. After registration of the case on 3.6.1999, the investigating officer recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure. The accused-respondent moved an application for grant of anticipatory bail in terms of Section 438 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). As the bail application was not seriously opposed by the Investigating Agency, the Additional Sessions Judge, New Delhi granted interim bail on 16.6.1999. Applications for cancellation of the anticipatory bail were dismissed. However, while dismissing such an application on 13.9.1999, the Additional Sessions Judge observed that if on facts a case under Section 302 is made out against the accused, the State shall be at liberty to arrest him. On 1.7.2000 a charge- sheet was filed against the accused under Sections 302, 406 and 498A IPC by the investigating agency and he was directed to appear before the Metropolitan Magistrate, New Delhi on 8.8.2000. As he did not appear on that date in that court, non bailable warrants were issued against him for 22nd August, 2000. In the meanwhile the respondent filed a criminal miscellaneous application under Section 482 of the Code in the High Court without impleading the appellant as a party. The High Court kept the order of the Magistrate dated 8.8.2000 in abeyance till 22nd August, 2000. In his petition filed in the High Court, the accused suppressed the fact that a charge-sheet under Section 302 has been filed against him. Notice to the appellant was issued on 17th August, 2000 but in the meantime the respondent moved an application under Section 438 of the Code for anticipatory bail before the Additional Sessions Judge, Delhi for which no order was passed and direction was issued to the accused to first appear before the Magistrate on 22nd August, 2000 and pray for bail in accordance with law. When he appeared before the Magistrate, he was admitted on bail even in a case under Section 302 IPC. The revision petition

filed in the High Court was dismissed in the manner as noticed hereinbefore.

From the facts, as narrated in the appeal, it appears that even for an offence punishable under Section 302 IPC, the respondent-accused was never arrested and he manipulated the prevention of his arrest firstly by obtaining an order in terms of Section 438 of the Code and subsequently a regular bail under Section 437 of the Code from a Magistrate.

Chapter XXXIII relates to the provisions as to bails and bonds. Section 436 provides that when any person accused of a bailable offence is arrested or detained without warrant by an officer incharge of the police station, or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person shall be released on bail. Under Section 437 of the Code when a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court, he may be released on bail by a court other than the High Court and Sessions subject to the conditions that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment for life. The condition of not releasing the person on bail charged with an offence punishable with death or imprisonment for life shall not be applicable if such person is under the age of 16 years or is a woman or is sick or infirm, subject to such conditions as may be imposed. It does not, however, mean that persons specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. The proviso is an enabling provision which confers jurisdiction upon a court, other than the High Court and the court of Sessions, to release a person on bail despite the fact that there appears reasonable ground for believing that such person has been guilty of an offence punishable with death or imprisonment for life. There is no gainsaying that the discretion conferred by the Code has to be exercised judicially. Section 438 of the Code empowers the High Court and the Court of Sessions to grant anticipatory bail to a person who apprehends his arrest, subject to the conditions specified under sub-section (2) thereof.

Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a court of Sessions yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Sessions for the purposes of getting the relief of bail. Even in a case where any Magistrate opts to make an adventure of exercising the powers under Section 437 of the Code in respect of a person who is, suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negtivate the existence of reasonable ground for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case, where the Magistrate has no occasion and in fact does not find, that there were no reasonable grounds to believe that the accused had not committed the offence punishable with death or imprisonment for life, he shall be deemed to be having no jurisdiction to enlarge the accused on bail.

Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Sessions, Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted , at this stage,

to have the evidence establishing the guilt of the accused beyond reasonable doubt.

In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed a irregularity by holding that "I do not agree with the submission made by the Ld.Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent- accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

Despite the involvement of important questions of law, the High Court failed in its obligation to adjudicate the pleas of law raised before it and dismissed the petition of the appellant by a one sentence order. The orders of the Magistrate as also of the High Court being contrary to law are liable to be set aside.

While allowing this appeal and setting aside the orders impugned we permit the respondent-accused to apply for regular bail in the trial court. If any such application is filed, the same shall be disposed of on its merits keeping in view the position of law and the observations made hereinabove. We would reiterate that in cases where the offence is punishable with death or imprisonment for life which is triable exclusively by a court of Sessions, the Magistrate may, in his wisdom, refrain to exercise the powers of granting the bail and refer the accused to approach the higher courts unless he is fully satisfied that there is no reasonable ground for believing that the accused has been guilty of an offence punishable with death or imprisonment for life.

CASE NO.: Appeal (crl.) 1386 of 1999

PETITIONER: PAWAN KUMAR

Vs.

RESPONDENT: STATE OF HARYANA

DATE OF JUDGMENT: 13/03/2001

BENCH: Umesh C. Banerjee & K.G. Balakrishnan

JUDGMENT:

BANERJEE.J L...I...T.......T.......T.......T.......T.......T..J

The appellants, charged for the offences under Sections 306, 498A, 201 and 193 of the Indian Penal Code, were found guilty of offences by the Additional Sessions Judge Kurukshetra under Sections 306 and 498(A) of the Code and were sentenced to undergo R.I. for six years. The High Court though dismissed the appeal qua appellant No.1, Pawan Kumar but as regards the appellant Nos. 2 and 3, sentences were reduced to six months under both counts respectively and it is this order of dismissal which is under challenge before this Court in the appeal by the grant of special leave.

Before adverting to the rival contentions, be it noted that the entire matter hinges on circumstantial evidence.@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ There is also however existing on record, a dying@@ JJJJJJJJJJJJJJJJ declaration, but its effect on the matter, shall be discussed shortly hereafter in this judgment. Incidentally success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While however, it is true that there should be no missing links, in the chain of events so as far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without however any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting however, noting the observations of this Court in the case of State of U.P. Vs. Ashok Kumar Srivastava (AIR 1992 SC 840) wherein this Court in paragraph 9 of the report observed:-

The Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.

The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this

Court in the case of Balwinder Singh Vs. State of Punjab (AIR 1987 SC 350) lends concurrence to the above.

Referring to the prosecution case at this stage it appears that Ekta, the sister of Sudarshan Kumar was married to Pawan Kumar appellant No.1. After four months of the marriage, Ekta went to Sudarshan Kumar alongwith her husband Pawan Kumar and told him that a sum of Rs.10,000/- was being demanded by Pawan Kumar, his father and mother. Sudarshan promised to pay that amount after a couple of days after arranging for it. Accordingly, three days thereafter Sudarshan accompanied by one Jag Pal Saini went to the house of the accused at Shahbad and paid the amount of Rs.10.000/- to Smt. Kaushalya Devi. After about one year, Ekta again came to the house of Sudarshan with a definite grievance about being pestered for money by her husband and parents-in-law. At that time, she stayed at the house of Sudarshan for eight months and never wanted to go back by reason of consistent harassment with beating. As a matter of fact, a feeling of being fed up together with despondency has completely over-powered her. Subsequently, a panchayat was held and at the asking of village Panchayat, Sudarshan agreed to send and did send Ekta with Ram Asra to the house of her parents-in-law at Shahbad. However, the appellants continued harassing Ekta for dowry. Sudarshan came to know of this fact whenever he visited Ekta at Shahbad and as and when she came to meet her parents at karera Khurd. It is further the case of the prosecution that about two months prior to the occurrence, Sudarshan booked a maruti van for himself and appellant-Pawan Kumar came to know about it. He went to the house of Sudarshan and told him that either the said van be given to him or he may book another van for him. Sudarshan however, refused to accede to the demand. Pawan Kumar went back leaving the impression that it would not bring good result. On 17.9.1985, Sudarshan received a telephonic message that Ekta was burnt. Sudarshan, accompanied by Dr. Krishan Lal, Sham Sunder and mother of Ekta went to Shahbad. On reaching Shahbad, they came to know that Ekta had been taken to P.G.I., Chandigarh by the accused. Sudarshan along with his companions reached P.G.I., Chandigarh and found that Ekta had died. He took the dead body and brought it to Shahbad and lodged a report to the police. The report was recorded by ASI Fateh Singh and he took up the investigation of the case. He reached at the spot. At that time, the kitchen of the house was locked and one ASI was put on guard. The dead body along with the inquest report was sent for post mortem examination. On the next day, the spot and the dead body were got inspected by the team summoned from Forensic Science Laboratory, Madhuban. Thereafter, the ASI inspected the spot himself and prepared a rough site plan. He took into possession certain articles, which were sealed. The statements of other witnesses were recorded. The appellants were arrested. On the completion of investigation, challan was filed. Thereafter the case was committed to the Court of Sessions where the learned Additional Sessions Judge tried it and the conviction as above was made by him.

Incidentally, the defence has also led evidence to show that Ekta died of an accident and not a suicidal death and on this score strong reliance was placed on the dying declaration by Ekta made before the Police Officer. Though, however, dying declaration is stated to be a got up document and not worth even the paper on which it was written. The same is however noted herein below.

I was married with Pawan Kumar S/o Ram Asra caste Arora R/o Sainda Mohalla, Shababad about 4-5 years before. My husband is cloths dealer and his shop is situated in Main Bazar Shahabad. We live together with our parents-in-law. Today in morning at about 8.30 AM my husband and my father-in-law Ram Asra had already been gone at shop and my mother-in-law Smt. Kaushalaya Devi also had gone to the house of neighbour for visit. I was alone at house. Today at about 10 AM I was boiling the Milk in Kitchen on a stove kerosene Oil was finished from the stove. It had taken a bottle of kerosene oil which was lying in kitchen for filling up in stove. Then that bottle of kerosene oil fell down from my hands and broken. The kerosene oil from the bottle fell upon my cloths and on the burns stove, so that reason my cloths get on fire on this I started crying on this a number of persons and women came to the spot. They put off the fire from my clothes and from body. Later on my husband reached there. I was brought in Civil Hospital Shahabad for treatment. This fire set on due to broken the bottle of kerosene. No body have fault in this matter. This fire was put on by chance and not I had put on fire by anybody. Statement heard and it is correct.

Attested LTI, Ekta Rani Sd/- Arun Kumar,ASI, PS Shahabad W/o Pawan Kumar 17.9.85

Mr. Sushil Kumar, learned Senior Advocate contended that the sole issue in the matter under

consideration is whether the death of Ekta can be ascribed to be an accidental death or a case of suicide? Needless to record that the High Court negated the case of accidental death and held the appellants guilty of abetment to the act of suicide and it is on this count that the appeal of the appellant No.1 before the High Court was rejected whereas the two other appellants had their sentences reduced.

In support of the appeal it has rather emphatically been contended that the dying declaration itself would negate any suicidal act, but depicted a clear accidental incident resulting in the death. It is this dying declaration which the learned Trial Judge, as also the High Court ascribed it to be not worth the paper on which the same was written and does not deserve the credence of acceptance of the same. Peculiarities are the ways which can however, easily be noticed: The kerosene on the stove got finished as a result of which further filling of kerosene was required and hence a bottle was taken, which accidentally slipped out and broken. But the factum of the stove not having any kerosene, has been ignored, since absence of kerosene would put off the ignition and there would be total extinguishment of fire: The resultant effect of such an extinguishment mean and imply that one would require a match stick to ignite the kerosene- since there is no automatic flow of fire available. The fact, Ekta died of burn injuries stands admitted which has been stated to be accidental and not suicidal. It is on this score however, the prosecution laid evidence to depict that the accident could not have happened as stated in the dying declaration and it has been an evidence created to cover up the suicide. Strong reliance has been placed on the evidence of Senior Scientific Officer Shri J.L. Gaur (PW.2) who in no uncertain terms ruled out any accidental burn injury in the matter. On an examination of the body it was observed that a part of the scalp, hair on the top of head eye brow, eye lashes and public hair were burnt and singed. However hairs on the sides and back of the head had escaped any injury. The body was burnt practically all over excepting the feet and their soles. Three kerosene stoves were available in the kitchen, two being with sufficient fuel for use and the other one lying totally idle in another corner of the room with accumulation of dust on them. In any event, the third stove lying in the other corner was not having even a smell of kerosene. Pieces of broken glass bottle with no smell of kerosene were available in the kitchen and one of the bottom piece of bottle had fungus like deposit clearly indicating non user of the bottle as a container of kerosene for quite sometime. Significantly, there was a match box, a broken match box lying on the floor at a distance of about four feet from the stove. The used sticks of match box were available near the stove. The match box emitted smell of kerosene. PW.2 has also spoken of non-availability of any milk or milk container even in the kitchen. The further finding of PW.2 is that both the stoves were in working condition and the air pressure valves of the stove were found in open position having the lids of the tanks of the stove dry and tightly closed. PW 2 further spoke of an unused funnel lying on the floor of the room which also did not have any kerosene smell.

It is for reasons as above that learned Sessions Judge and the High Court refused to put any credence on the defence of accidental burn injury. If the accidental injury is ruled out and which we also feel the same way as that of the other two Courts, the obvious conclusion would be suicidal death and on that issue a further question arises as regards abetment. An analysis of the evidence of PW.3, Sudarshan Kumar (brother of the deceased) depicts the behavioural pattern received at the in-laws place by Ekta. Occasional demand for money and failure to meet the same, however resulted in beating up of the girl, Ekta, and as a matter of fact in September 1985 she came back to the house of complainant all alone and this arrival, the complainant described as the aftermath of torture which in fact did put her up in a bad shape. Definite evidence is available on record that Ekta stayed with the complainant for about 8 months and it is only thereafter the appellant No.2 wanted to take back Ekta. The brother of complainant PW.3 however, pointedly refused though after some persuasion and assurance of the father-in-law, in the presence of some other members of the family, of proper treatment to the daughter-in-law, the complainant agreed and Ekta thus went back to the in-laws place. Further evidence however, records that there has been no improvement of the behavioural pattern and she was subjected to dowry torture as also various abusive treatment by reason of not being able to bear a child. Incidentally, the two families, namely the brides and grooms, related to each other and it is on this score that learned Senior Advocate in support of the appeal contended that dowry torture or even user of any abusive language were all figments of imagination : The evidence however tell a different story - The torture continued and reached its peak in July 1985 by reason of a booking of a Maruti Van by the complainant which was asked to be delivered to the accused/appellant, on refusal however, to comply with the demand for delivery of the van by the

complainant, the relationship was further estranged and PW 3 was given a warning as regards the events to follow and it is only thereafter this incident of burn injury took place. A number of relatives were also examined and their evidence corroborate this state of affairs as narrated by the complainant PW.3.

The learned Senior Advocate in support of the appeal further contended that the factum of the hospitalization of Ekta in any event negates any ill treatment or torture, but to be treated as a positive evidence of goodwill and affection. We are however unable to record our concurrence therewith having due regard to the evidence and other materials available on record. There is thus preponderance of evidence of dowry torture and it is on this count that Section 113(A) of the Evidence Act ought to be taken note of Section 113(A) reads as below:-

113(A). Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation;- For the purposes of this Section, cruelty shall have the same meaning as in Section 498-A of the Indian Penal Code (45-1860).

Incorporation of Section 113(A) of the Evidence Act in the statute book, depicts a legal presumption though however the time period of within seven years of marriage is the pre-requisite for such a presumption. The circumstances as noticed hereinbefore in the contextual facts and the materials on record substantiate the requirements of Section 113 (A) and having regard to the language used in Section 498 A of the Indian Penal Code there cannot be any hesitation in coming to a finding that cruelty is written large as regards the conduct of the appellant herein towards Ekta. Needless to state that Section 113(A) itself by way of an explanation provides that cruelty shall have the same meaning as is attributed under Section 498(A) of the Indian Penal Code which reads as below:-

(a) any willful 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.

On the wake of the aforesaid and by reason of the fact and the death of Ekta was caused by burn injuries only and having considered the nature of injuries and since one can not but rule out an accidental death as discussed herein before, the death of Ekta cannot but be attributed to be suicidal on the basis of the circumstances as is available on record with the situation existing and having regard to statutory presumption, this Court can not but lend concurrence to the opinion expressed by the High Court. The decisions of this Court as relied upon by Mr. Sushil Kumar (viz. : Balwinder Singh v. State of Punjab [AIR 1996 SC 607]: Lakhjit Singh & Anr. V. State of Punjab [(1994) Supp (1) SCC 173]: State of Punjab v. Gurdip Singh & Ors.[1996 (7) SCC 163] Sharad Birdhichand Sarda v. State of Maharashtra [1984 (4) SCC 116) do not however, advance the matter any further since each case shall have to be dealt in the light of its own factual sphere and judicial precedents do not render any assistance whatsoever by reason of the peculiar factual matrix. In the facts of the matter under consideration, the circumstances pointedly point out the accused as a guilty person as abettors and on the wake of the aforesaid the order of conviction cannot be interfered with. The High Court has been lenient enough in dealing with the appellant Nos.2 and 3 by reducing the sentence, but since there is no cross appeal, we do not wish to record any contra view as regards the sentence as well.

In that view of the matter, this appeal fails and thus stands dismissed.

CASE NO.: Special Leave Petition (crl.) 9325-9326 of 2000

PETITIONER: STATE OF PUNJAB & ORS.

Vs.

RESPONDENT: BHAJAN SINGH & ANR.

DATE OF JUDGMENT: 27/02/2001

BENCH: K.T.Thomas, R.P.Sethi

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J

SETHI,J. Leave granted. Election process was scuttled and the democratic values throttled by a bureaucrat who happened to be Principal Secretary of the Local Government Department (hereinafter referred to as "the said Secretary") of the State of Punjab at the relevant time. Flouting all norms, violating statutory provisions and showing scant respect to the principles of law, the said Secretary deprived respondent No.1, the elected representative of the people, to perform his duties firstly as Member and then as the President of the Municipality, obviously to oblige his political opponents who incidentally happened to belong to the ruling parties (Shiromani Akali Dal and BJP) in the State of Punjab. Inaction attributable to the said Secretary in performance of his statutory obligations and instead ill-action taken by him is a matter of concern not only for the respondent No.1 but all those who believe in the rule of law and the preservance, development and conservation of democratic institutions with their values in the country. There is no gainsaying that free, fair, fearless and impartial elections are the guarantee of a democratic polity. For conducting, holding and completing the democratic process, not only a potential law based upon requirements of the society tested on the touchstone of experience of times, but also an independent, impartial apparatus for implementing and giving effect to the results of the election is the sine qua non for ensuring the compliance of statutory provisions and thereby strengthening the belief of the common man in the rule of law, assured to be given to the people of this country. Any attempt made to weaken the system, particularly when its intention is likely to affect the socio-political fabric of the society, if not checked and curtailed, may result in consequences which could not be else but disastrous to the system. No person, much less a civil servant, can be permitted to frustrate the Will of the people expressed at the elections, by his acts of omission and commission. The law relating to the elections is the creation of the statute which has to be given effect to strictly in accordance with the Will of the Legislature. The respondent NO.1 was a candidate to the elections of the Muncipal Council, Samrala (Punjab) held on 2.1.1998. He was a candidate of the CPI (M) and was elected as a Municipal Councillor along with 12 others. A meeting was called by the Sub-Divisional Magistrate on 6.4.1998 for administering the oath of allegiance to the elected members of the Municipal Council and for election of its President and Vice President. It appears that all the elected members, with the exception of those belonging to BJP and Shiromani Akali Dal attended the meeting and took the oath. Congress Members proposed the name of respondent No.1 and the Returning Officer declared him elected as President of the Municipal Council (Annexure P-6). Despite election of the President and the Vice President, the notification in terms of Section 24 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act") was not issued by the State Government. Aggrieved by the inaction of the appellants, particularly the said Scretary, the respondent No.1 on 15.5.1998 filed a writ petition being Writ Petition No.7105 of 1998 praying therein for the issuance of a writ of mandamus directing the appellants to issue notification regarding his election as President of the Municipal Council, Samrala in the meeting held on 6.4.1998. Written statement in the said writ petition was filed in the High Court on 13th August, 1998. In the meanwhile a show cause notice dated 1.7.1998 was issued to the respondent NO.1 proposing to take action against him under Section 16(1)(e) of the Act and removing

him from the Membership of Nagar Panchayat/Council, Samrala (Ludhiana). The show cause notice was accompanied by the details of the allegations wherein it was stated: "Regional Deputy Director, Local Government, Ludhiana has intimated vide his letter No.DDLG/S3/ 2258 dated 21.4.1998 before the issuance of the notification for the President in accordance with the instructions of the Government you have interfered in the working of the Nagar Council and did not behave properly. By doing so you have misused the powers vested under Section 16(1)(e) of the Punjab Municipal Act, 1911. Therefore, it is proposed to take action under Section 16(1)(e) of the Punjab Municipal Act, 1911 and to remove him from the membership."

The respondent No.1 submitted his reply on 23rd July, 1998 and the said Secretary vide his notification No.6/16/980-3LGIII/4498 dated 9.4.1998 removed the respondent No.1 not only from the Presidentship but also from the Membership of the Nagar Council, Samrala. Feeling aggrieved, the respondent No.1 filed a writ petition in the High Court which was allowed vide the order impugned by quashing the impugned notification and issuance of directions to the respondents therein to notify the name of the respondent No.1 herein within a week. The respondent No.1 was also held entitled to the payment of costs which was quantified at Rs.10,000/-. Assailing the judgment of the High Court, Mr.Rajiv Dutta, Senior Advocate who appeared for the appellants submitted that as the respondent No.1 had not been properly elected as President of the Municipal Council, he by assuming the charge of that post abused his position and incurred a disqualification to be a member of the Municipal Council. Referring to Sections 16 and 24 of the Act, the learned Senior Advocate submitted that the action of the said Secretary was legal, valid and according to law. The judgment of the High Court has been termed to be contrary to law. According to him, the State Government had the discretion to notify or not to notify the election of the President in terms of sub-section (2) of Section 24 of the Act. It is contended that as the respondent No.1 was proved to have 'flagrantly abused' the position as Member of the Council, he had incurred a disqualification under clause (e) of sub-section (1) of Section 16 which justified the action by the appellants for his removal. Chapter III of the Act deals with the constitution of Council which has been defined under Section 2(4) to mean a Municipal Council or a Nagar Panchayat, as the case may be, constituted under Section 12 of the Act. Under Section 13A, the State Government has been empowered to direct holding of general elections of the members of the Municipalities or an election to fill the casual vacancy by the issuance of notification. As soon as a notification is issued, the Election Commissioner is mandated to take necessary steps for holding such elections. It may be noticed at this stage that the general elections to the Panchayat and the Municipalities are to be conducted by the State Election Commission constituted under the Punjab State Election Commission Act, 1994 (Punjab Act No.19 of 1994). After the general elections of the Municipality, election of President and Vice President is to be conducted in terms of Section 20 of the Act. The term of the office of the President of a Municipality is co-terminus with the term of Municipality under Section 21 of the Act. No elected member of a Municipality can enter upon his duties as such member until he has taken or made, at a meeting of the Municipality, an oath or affirmation of his allegiance to India in the form prescribed under sub-section (1) of Section 24. Sub-section (2) of Section 24 of the Act provides: "The State Government shall notify in the Official Gazette every election of a President of a Municipality and no President shall enter upon his duties as such until his election is so notified:

Provided that the State Government may refuse to notify the election as President of any person who has incurred a disqualification under this Act or under any other law for the time being in force, subsequent to his election as member of the Municipality;

Provided further that the State Government shall not refuse to notify the election of the President without giving an opportunity of being heard to the concerned person."

It is not disputed that despite the election of respondent No.1 as President on 6.4.1998, a notification in terms of sub-section (2) of Section 24 of the Act was not issued forcing the respondent NO.1 to file Writ Petition No.7105 of 1998 in the High Court on 15.5.1998. We do not agree with the argument of Mr.Dutta that the State Government or the said Secretary had an unbriddled power or option to notify or not to notify the election of the President in the Official Gazette. Such an argument will not only be contrary to the concept of democracy and the rule of law but in fact flagrant violation of the mandate of the Act as incorporated in Sub-section (2) of Section 24 of the Act. A duty is cast upon the Government to notify in the Official Gazette every election of President of Municipality

as is evident from the words "shall notify in the Official Gazette" used in the sub- section. The State Government has the authority to refuse to notify the election of a President, of any person who has incurred a disqualification under the Act or under any other law for the time being in force, subsequent to his election as Member of the Municipality provided that before refusing to notify the elections the State Government gives an opportunity of being heard to the concerned person. Admittedly, the State Government has failed to notify the election of the President in the Official Gazette without assigning any reason, much less "giving an opportunity" to the respondent No.1. The omission and inaction of the said Secretary cannot be made a basis for frustrating the provisions of law and thereby nullifying the peoples' verdict returned in an election conducted in accordance with the provisions of law applicable in the case. Even if the respondent No.1 had allegedly incurred some disqualification, the State Government was obliged to inform him that his election as President of the Municipality could not be notified for the aforesaid reason. In the absence of such intimation, the omission to nofity cannot be justified on such ground. It has been contended that as the respondent No.1 had allegedly incurred a disqualification in terms of clause (e) of sub-section (1) of Section 16 of the Act, the State Government was not obliged to notify his election as President and was justified in removing him from the Membership of the Municipal Council. Section 16(1)(e) provides: "Powers of the State Government as to removal of members: (1) The State Government may, by notification remove any member of a committee other than an associate member

xxx xxx xxx

(e) if, in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee."

It may be noticed that Section 16 deals with the powers of the State Government to remove a member under the circumstances mentioned therein and does not refer to the disqualification mentioned in proviso (1) to sub-section (2) of Section 24 of the Act. We also do not agree with Mr.Dutta that Section 16 prescribes the disqualification referred to in the aforesaid proviso. It is also not correct to say that no other disqualifications are prescribed under the Act or under any other law and Section 16 of the Act is the only provision upon which the State Government can rely for taking action under sub-section (2) of Section 24 of the Act. It appears that the appellants have overlooked the provisions of the Punjab State Election Commission Act, 1994 which deals with the constitution of the State Election Commission and for vesting the superintendence, direction and control of the preparation of the electoral rolls for and in the conduct of all elections to the Panchayat and Municipalities in the State of Punjab and to provide for all matters relating to or ancillary or in connection with the provisions of the Panchayat and Municipalities in terms of the provisions of Part IX and IXA of the Constitution. Chapter IV in general and Section 11 in particular deals with the disqualifications for Membership of a Panchayat or Municipality. Section 11 reads: "Disqualifications for membership of a Panchayat or a Municipality - A person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality, -

(a) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or

(b) if he is of unsound mind and stands so declared by a competent court; or

(c) if he is an undischarged insolvent; or

(d) if he has, in proceedings for questioning the validity or regularity of an election, been found guilty of any corrupt practice; or

(e) if he has been found guilty of any offence punishable under Section 153A or Section 171E or Section 171F or Section 376 or Section 376A or Section 376B or Section 376C or Section 376D or Section 498A or Section 505 of the Indian Penal Code, 1960 or any offence punishable under Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction; or

(f) if he holds an office of profit under a Panchayat or a Municipality; or

(g) if he holds an office of profit under the Government of India or any State Government; or

(h) if he is interested in any subsisting contract made with, or any work being done for, that Panchayat or Municipality except as a share-holder (other than a Director) in an incorporated company or as a member of a co-operative society; or

(i) if he is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner, or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Panchayat or the Municipality is interested or concerned; or

(j) if he, having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any Government company or any corporated body owned or controlled by the State Government or Government of India, has been dismissed from service, unless a period of four years has elapsed since his dismissal."

Disqualification contemplated "under any law for the time being in force" under proviso to sub-section (2) of Section 24 are, therefore, the disqualification as mentioned in Section 11 of the Punjab State Election Commission Act, 1994. The appellants have nowhere stated or alleged any such disqualifications attributable to the respondent No.1. We also do not accept the plea of the appellants that by assuming his duties as President, the respondent had allegedly, "flagrantly abused" all his position as a member, thereby incurring the wrath of the State Government in terms of Section 16(1)(e) or Section 20 of the Act. The clause "flagrantly abused of his position as member" means the doing of such act or acts by a member of a committee in disregard of his duty which would shock a reasonable mind. The nature of the 'abuse' before it could be termed as 'flagrant', must, in the circumstance be glaring, notorious, enormous, scandalous or wicked. There is nothing on record to show or suggest that the respondent No.1 in his capacity as member or President took any undue advantage of his position or under the colour of his office committed any particular irregularity or reprehensive acts. Any alleged contravention of the provisions of the Act cannot be categorised as "flagrant abuse of power" by a member of the Committee. The mere contravention, if any, (which was not in this case) in respondent No.2 entering upon his office as President before his name was approved and published in the Official Gazette, particularly on account of wilful omission of the State Government cannot be called either a 'flagrant abuse of position' as a member or 'abuse of power' within the contemplation of Section 16(1)(e) and Section 20 of the Act. The appeal which is bereft of any merit is liable to be dismissed. We are at pain to note that by his acts of omission and commission the said Secretary has consistently and persistently deprived the respondent No.1 of the duty to assume and discharge his duties as member and President of the Municipal Council, despite his election from 2.1.1998 till date. The term of the office of the Municipality is a fixed term out of which three years of the respondent No.1 have been wasted in uncalled for and forced litigation upon him. No law can compensate the loss of opportunity provided to the respondent No.1 for serving the people after his election as Member and President of the Municipality. We find it a fit case to award exemplary costs and are of the firm view that such costs should not be burdened upon the State exchequer. The said Secretary who is responsible for the violation of the statutory provisions and weakening the concept of rule of law, is, therefore, personally liable to pay the costs from his own pockets. While dismissing this appeal we direct the said Secretary to personally pay the costs of Rs.25,000/- to the respondent No.1 within a period of two months.

CASE NO.: Appeal (crl.) 907 of 1998

PETITIONER: SHAMNSAHEB M.MULTTANI

Vs.

RESPONDENT: STATE OF KARNATAKA

DATE OF JUDGMENT: 24/01/2001

BENCH: B.M.Agarwal, K.T.Thomas

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J

J U D G M E N T THOMAS, J. A bride in her incipient twenties was whacked to death at her nuptial home. After gagging her mouth the assailants treated her for some time as a football by kicking her incessantly and thereafter as a hockey puck by lambasting her with truncheons until she died of bilateral tension haemothorax. Her husband and his brother and father were indicted for her murder. But when all the material witnesses turned hostile to the prosecution the trial court, being foreclosed against all options, acquitted them. Undeterred by the said acquittal the State of Karnataka made a venture by filing an appeal before the High Court of Karnataka. A Division Bench of the High Court, looking at the factual matrix of the case, lamented O Tempora O Mores as the learned judges said by way of prologue that it is virtually a matter of shame that in this day and date, indiscriminate attacks and abnormally high degree of violence are directed against married women in certain quarters and that the law is doing little to curb this type of utterly obnoxious and anti-social activities. Learned Judges after reaching a cul de sac, swerved over to a different offence i.e. dowry death and convicted one of them (the husband) under section 304B of the Indian penal Code and awarded the maximum sentence of life imprisonment prescribed thereunder on him besides Section 498A IPC. However, the High court found helpless to bring the other two accused to the dragnet of any offence.

Thus, for the appellant (husband of the deceased) this appeal became one of right under Section 379 of the Code of Criminal Procedure (for short the Code) and under Section 2 of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

During the course of arguments a question of law cropped up as the appellant was not charged under Section 304B, IPC. The question raised is this: Whether an accused who was charged under Section 302 IPC could be convicted alternatively under Section 304-B IPC, without the said offence being specifically put in the charge. The answer appeared, at the first blush, ingenuous particularly in the light of Section 221 of the Code. But as we proceeded further we noticed that the question has intricate dimensions, more so when this Court held divergent views on two occasions though not on the identical point. This case was, however, referred to be heard by a larger Bench and thus it came up before a bench of three judges.

To assist us in this matter we appointed Sri Uday Umesh Lalit, advocate as amicus curiae. He with his meritorious efforts helped us considerably in the task. We are beholden to him for the assistance rendered to us.

Before we proceed to the question of law it is necessary to delineate the synopsis of the case. The

bride was Tanima, whose marriage with the appellant was solemnized only a few months prior to her tragic end. It appears that Tanimas father had died much earlier. A certain amount, not much, was given to the bridegroom at the time of the marriage, though the expenses of the wedding were borne by the brides people. After marriage Tanima lived in the house of her husband for a couple of months. But when she paid her first visit to her natal home she reported to her mother and brothers that she was being subjected to pressures and harassment by her husband and by the other two accused for wangling a further amount of Rupees twenty thousand from her people. She complained to her brother that she was threatened that if the amount was not brought she would be asked to leave the nuptial home once and for all.

On completion of her furlough at her parental house the appellant went to take her back. Then her brother (PW1- Mahaboobsab Ammarngi) gave a sum of rupees five thousand to the appellant and pleaded with him to be satisfied with it. Though with displeasure, as the amount was insufficient, appellant collected it and allowed Tanima to escort him to his house. A few days later Tanima conveyed to her mother that she was again persecuted for not making up the whole amount demanded. Once again appellant brought her back to her parental home after subjecting her to physical assaults. PW1-Mahboobsab Ammarngi, on being told that the assaults were meant for meeting the demand for dowry, pleaded with the appellant to desist from torturing his young sister. After some haggling PW1 was able to pay a sum of rupees two thousand more. At that time also appellant, though not fully satisfied with the pelf given, took her back to his house.

Within two months thereafter Tanima was killed. On hearing the news on 17.10.1992 PW1 along with some of his close relatives set out to the house of the appellant. On the way they met the appellant. When they tried to confront him with what they heard he skirted the subject and slipped away. When they reached the house of the appellant they saw the mangled dead body of Tanima.

Dr. Tawaraj (PW7) conducted the autopsy on the dead body of Tanima. Though externally there were only a few abrasions and contusions the inside was found very badly mauled. The rib on the right side was fractured, both the lungs were collapsed, the thorasic cavity contained 200 ml. of blood. The peritoneum was soaked in blood, liver and spleen were massively lacerated and ruptured at three places. Though prosecution examined PW3 and PW4 who were neighbours to say that they saw the three accused inflicting incessant assaults on Tanima and PW6 was examined to say that appellant made an extra-judicial confession to him, they all turned hostile and did not speak as prosecution expected. The remaining evidence was not sufficient to establish that all or any of the accused had inflicted the injuries on Tanima. Consequently, prosecution failed to prove that the accused caused the death of the deceased. The trial court did not make any other endeavour and hence found the accused not guilty and acquitted them.

Learned Judges of the High Court found that there is no evidence against A-2 Meerasaheb Karim Saheb and A-3 Mahaboom Meerasaheb. However, in the case of A-1 (appellant) the Division Bench was in confusion as it found that prosecution proved beyond all reasonable doubt that it was appellant who killed Tanima. The relevant portion of paragraph 14 of the judgment of the Division Bench delivered by Saldana, J, is extracted below: We hold that there is sufficient direct and circumstantial evidence in this case to prove beyond all reasonable doubt that A-1 was responsible for tying deceased Tanima and assaulting her with the metal rod as also brutally and mercilessly kicking her in the course of this assault all of which resulted in her death. The nature of the incident and the fact that she succumbed to the cruelty would clearly bring this case within the ambit of Section 304 IPC.

But the operative portion of the judgment reads thus: The appeal partially succeeds. The order of acquittal passed in favour of original accused Nos.2 and 3 stands confirmed. As far as the original accused No.1 is concerned, the order of acquittal passed in his favour by the Trial Court is set aside. A-1 stands convicted of the offence punishable under Section 498-A IPC and is sentenced to RI for 3 years. He is also convicted of the offence punishable under Section 304-B IPC and is sentenced to RI for life, substantive sentence to run concurrently.

Initially we thought that there might have been some typographical or other errors in the above first extracted portion of the judgment produced before us but we found the said portion remaining the same even in the judgment sent up by the High Court along with the records. We may take it that

learned Judges did not intend to speak what is seen recorded in the paragraph 14 of the judgment (extracted above) and that the High Court only proposed to convict the appellant under Sections 304-B and 498-A IPC. But even on that aspect Saldana, J, made an observation which is, unfortunately, not true to facts. That observation is this: Coming to the charge under Section 304-B IPC, this section was incorporated in the year 1986 by the legislature for the purpose of dealing with instances of dowry death. Counsel for both sides submitted that no charge was framed against the accused for the offence under Section 304-B IPC. We perused the original charge framed by the Sessions Court and noticed that there was no such count included in the charge at all. If so, we may say, euphemistically, that learned Judges committed a serious error in assuming that Section 304-B IPC was included in the charge framed against the appellant.

Be that as it may. The question raised before us is whether in a case where prosecution failed to prove the charge under Section 302 IPC, but on the facts the ingredients of section 304-B have winched to the fore, can the court convict him of that offence in the absence of the said offence being included in the charge.

Sections 221 and 222 of the Code are the two provisions dealing with the power of a criminal court to convict the accused of an offence which is not included in the charge. The primary condition for application of section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the section permits to convict the accused of the offence of which he is shown to have committed though he was not charged with it. But in the nature of the acts alleged by the prosecution in this case there was absolutely no scope for any doubt regarding the offence under Section 302 IPC, at least at the time of framing the charge.

Section 222(1) of the Code deals with a case when a person is charged with an offence consisting of several particulars. The Section permits the court to convict the accused of the minor offence, though he was not charged with it. Sub-section (2) deals with a similar, but slightly different, situation. When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

What is meant by a minor offence for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.

The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (Husband or relative of husband of a women subjecting her to cruelty). As the word cruelty is explained as including, inter alia, 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.

So when a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless all other ingredients necessary for the offence under Section 304-B IPC would stand established. Can the accused be convicted in such a case for the offence under Section 304-B IPC without the said offence forming part of the charge?

A two Judge Bench of this Court (K. Jayachandra Reddy and G.N. Ray, JJ) has held in Lakhjit Singh and anr. vs. State of Punjab {1994 Supple. (1) SCC 173} that if a prosecution failed to establish the offence under Section 302 IPC, which alone was included in the charge, but if the offence under Section

306 IPC was made out in the evidence it is permissible for the court to convict the accused of the latter offence.

But without reference to the above decision, another two Judge Bench of this Court (M.K. Mukherjee and S.P. Kurdukar, JJ) has held in Sangaraboina Sreenu vs. State of A.P. {1997 (5) SCC 348} that it is impermissible to do so. The rationale advanced by the Bench for the above position is this: It is true that Section 222 CrP.C. entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC within the meaning of Section 222 Cr.P.C. for the two offences are of distinct and different categories. While the basic constituent of an offence under Section 302 IPC is homicidal death, those of Section 306 IPC are suicidal death and abetment thereof.

The crux of the matter is this: Would there be occasion for a failure of justice by adopting such a course as to convict an accused of the offence under Section 304B IPC when all the ingredients necessary for the said offence have come out in evidence, although he was not charged with the said offence? In this context a reference to Section 464(1) of the Code is apposite: No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. (emphasis supplied)

In other words, a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice.

We often hear about failure of justice and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression failure of justice would appear, sometimes, as an etymological chameleon (The simile is borrowed from Lord Diplock in Town Investments Ltd. vs. Department of the Environment {1977(1) All England Report 813}. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.

One of the cardinal principles of natural justice is that no man should be condemned without being heard, (Audi alterum partem). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice.

We have now to examine whether, on the evidence now on record the appellant can be convicted under Section 304-B IPC without the same being included as a count in the charge framed. Section 304-B has been brought on the statute book on 9-11-1986 as a package along with Section 113-B of the Evidence Act. Section 304-B(1) IPC reads thus: 304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have caused her death.

In the Explanation to the Section it is said that the word dowry shall be understood as defined in the Dowry Prohibition Act, 1961.

The postulates needed to establish the said offence are: (1) Death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading section 113B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected

by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances the court shall presume that such person had caused dowry death.

Under Section 4 of the Evidence Act whenever it is directed by this Act that the Court shall presume the fact it shall regard such fact as proved unless and until it is disproved. So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross- examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

At this stage, we may note the difference in the legal position between the said offence and section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute book without any practical use till 1983. But by the introduction of Section 113A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage- related offence. Section 113A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can persuade the court against drawing a presumption adverse to him.

But the peculiar situation in respect of an offence under Section 304B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it.

Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts on to him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304B IPC and sentenced to the serious punishment prescribed thereunder, which mandates a minimum sentence of imprisonment for seven years.

The serious consequence which may ensue to the accused in such a situation can be limned through an illustration:- If a bride was murdered within seven years of her marriage and there was evidence to show that either on the previous day or a couple of days earlier she was subjected to harassment by her husband with demand for dowry, such husband would be guilty of the offence on the language of Section 304-B IPC read with Section 113-B of the Evidence Act. But if the murder of his wife was actually committed either by a decoit or by a militant in a terrorist act the husband can lead evidence to show that he had no hand in her death at all. If he succeeds in discharging the burden of proof he is not liable to be convicted under Section 304B, IPC. But if the husband is charged only under Section 302 IPC he has no burden to prove that his wife was murdered like that as he can have his traditional defence that the prosecution has failed to prove the charge of murder against him and claim an order of acquittal. The above illustration would amplify the gravity of the consequence befalling an accused if he was only asked to defend a charge under Section 302 IPC and was alternatively convicted under Section 304B IPC without any notice to him, because he is deprived of the opportunity to disprove the burden cast on him by law.

In such a situation, if the trial court finds that the prosecution has failed to make out the case under

Section 302 IPC, but the offence under Section 304-B IPC has been made out, the court has to call upon the accused to enter on his defence in respect of the said offence. Without affording such an opportunity to the accused, a conviction under Section 304-B IPC would lead to real and serious miscarriage of justice. Even if no such count was included in the charge, when the court affords him an opportunity to discharge his burden by putting him to notice regarding the prima facie view of the court that he is liable to be convicted under Section 304B IPC, unless he succeeds in disproving the presumption, it is possible for the court to enter upon a conviction of the said offence in the event of his failure to disprove the presumption.

As the appellant was convicted by the High Court under Section 304-B IPC, without such opportunity being granted to him, we deem it necessary in the interest of justice to afford him that opportunity. The case in the trial court should proceed against the appellant (not against the other two accused whose acquittal remains unchallenged now) from the stage of defence evidence. He is put to notice that unless he disproves the presumption, he is liable to be convicted under section 304-B IPC. To facilitate the trial court to dispose of the case afresh against the appellant in the manner indicated above, we set aside the conviction and sentence passed on him by the High Court and remand the case to the trial court.

CASE NO.: Appeal (crl.) 688-90 of 1993

PETITIONER: KANS RAJ

Vs.

RESPONDENT: STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 26/04/2000

BENCH: G.B. Pattanaik, R.P. Sethi, & Shivaraj V. Patil.

JUDGMENT:

SETHI,J. L...I...T.....T.....T.....T.....T.....T.....T..J Sunita Kumari married on 9th July, 1985 was found dead on 23rd October, 1988 at the residence of her in-laws at Batala in Punjab. The death was found to have occurred not under the ordinary circumstances but was the result of the asphyxia. On post-mortem it was found that the deceased had injuries on her person including the ligature mark 20 cm x 2 cm on the front, right and left side of neck, reddish brown in colour starting from left side of neck, 2 cm below the left angle of jaw passing just above the thyroid cartil-age and going upto a point 2 cm below the right angle of jaw. The parents of the deceased were allegedly not informed about her death. It was a shocking occasion for Ram Kishan, PW5 when he came to deliver some customary presents to her sister on the occasion of Karva Chauth, a fast observed by married women for the safety and long life of their husbands, when he found the dead body of his sister Sunita lying at the entrance room and the respondents were making preparations for her cremation. Noticing ligature marks on the neck of her sister, Ram Kishan PW5 telephonically informed his parents about the death and himself went to the police station to lodge a report Exh.PF. On the basis of the statement of PW5 a case under Section 306 IPC was registered against the respondents. After investigation the prosecution presented the charge-sheet against Rakesh Kumar, husband of the deceased and Ram Piari, the mother-in-law of the deceased. Ramesh Kumar, brother-in-law and Bharti, sister-in-law of the deceased were originally shown in Column No.2 of the report under Section 173 of the Code of Criminal Procedure. After recording some evidence, Ramesh Kumar and Bharti were also summoned as accused. The appellant, the father of the deceased, filed a separate complaint under Section 302 and 304B of the Indian Penal Code against all the respondents. The criminal case filed by the appellant was also committed to the Sessions Court and both the appellant's complaint and the police case were heard and decided together by the Additional Sessions Judge, Gurdaspur who, vide his judgment dated 28th August, 1990, convicted the respondents under Section 304B IPC and sentenced each of them to undergo 10 year Rigorous Imprisonment. He also found them guilty for the commission of offence under Section 306 and sentenced them to undergo rigorous imprisonment for 7 years besides paying a fine of Rs.250/- each. The respondents were also found guilty for the commission of offence punishable under Section 498A IPC and were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.250/- each. All these sentences were to run concurrently. The respondents herein filed an appeal in the High Court against the judgment of conviction and sentence passed against them by the Trial Court and the appellant, father of the deceased, filed a revision petition against the said judgment praying for enhancement of the sentence to imprisonment for life on proof of the charge under Section 304B of the IPC. Both the appeals and the revision were heard together by a learned Single Judge of the High Court who vide her judgment impugned in this appeal acquitted the respondents of all the charges. The revision petition filed by the father of the deceased was dismissed holding that the same had no merits.

Ms.Anita Pandey, learned Advocate appearing for the appellant has vehemently argued that the judgment of the High Court suffers from legal infirmities which requires to be set aside and the respondents are liable to be convicted and sentenced for the commission of heinous offence of dowry death, a social evil allegedly commonly prevalent in the society. She has contended that the judgment

of the High Court is based upon conjectures and hypothesis which are devoid of any legal sanction. The High Court is alleged to have not properly appreciated the evidence led by the prosecution in the case which, according to the learned counsel, had proved beyond doubt that the respondents were guilty of the commission of the offences with which they were charged and convicted by the Trial Court. Relying upon the provisions of Section 113B of the Evidence Act, the learned counsel has contended that as the death of Ms.Sunita Kumari had occurred within 7 years of marriage and the prosecution had established her harassment on account of demand of dowry, a legal presumption was to be drawn against the respondents for holding them guilty and sentencing them for the offences committed. Supporting the case of the respondents Shri U.R. Lalit, Senior Advocate appearing for@@ JJJJJJJJJJJJJJJJJJJJJ them has submitted that there being no direct evidence@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ regarding the cause of the death or circumstances leading to death, particularly in the absence of demand of dowry soon before the death, none of the respondents could be held guilty for the offences with which they were charged, convicted and sentenced by the Trial Court. According to the learned counsel the statements made by the deceased before her death were not admissible in evidence even under Section 32(1) of the Evidence Act and in the absence of demand of dowry immediately before the alleged occurrence no inference or presumption could be drawn against the respondents.

We have heard the learned counsel for the parties at length and perused the record. We have also minutely examined the original record of the Trial Court and critically analysed the statements of the witnesses produced by the prosecution.

We agree with the learned counsel for the respondents 3 to 5 that his clients, namely, Ramesh Kumar, brother of the husband, Ram Pyari, mother of the husband and Bharti sister-in-law of the husband-accused cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the appellant worth the name against the aforesaid respondents. Even PW Nos.5 and 6 have not brought on record any incriminating circumstance attributable to the aforesaid accused which could be made the basis for their conviction. Ram Kishan, PW5 in his deposition before the Court had stated that "after the marriage Rakesh Kumar, accused raised a demand of Rs.15,000/- for a scooter and refrigerator. We fulfilled that demand by giving Rs.20,000/- to him for scooter and refrigerator..... Rakesh Kumar used to threaten Sunita that she would be done to death because of having inadequate dowry. On 21st September, 1988 Sunita had come to my younger brother Tarsem in connection with a ceremony concerning his son. She also visited us as the house of Tarsem Kumar is close to our house. She stayed with us for the night. We gave her customary present i.e. clothes etc. and cash amount of Rs.500/-. She apprehended danger to her life in the house of her in-laws and was not willing to go there". He has not referred to any demand of dowry or harassment by the respondents except Rakesh Kumar. Tarsem Kumar, the other brother of the deceased at whose residence she had gone on 21st September, 1988 has not been produced as a witness in the case. Kans Raj PW6, the father of the deceased stated before the Trial Court that Sunit Kumari had told him that she was being taunted by her mother-in-law Ram Piari, accused Ramesh Chander and his wife Bharti accused besides her husband Rakesh Kumar. The details of the alleged taunting have not been spelt out. The only thing stated is that the accused used to tell the deceased that she being the daughter of BJP leader, who used to boast about his financial position had brought inadequate dowry. He further stated that various sums of money and the colour TV was given to Rakesh Kumar on his demand. Amar Nath and Janak Raj, President and General Secretary of Mahajan Sabha respecively and one Kundan Lal Gaba were taken by him to the residence of the accused persons. The deceased was alleged to have been taunted again in presence of the aforesaid witnesses. However, none of the aforesaid witnesses supported the case of the prosecution. In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that respondents 3 to 5 were roped in the case only on the ground of being close relations of respondent No.2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have

been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.

We, however, find that there is reliable legal and cogent evidence on record to connect Rakesh Kumar, respondent No.2 with the commission of the crime. There is evidence showing that immediately after his marriage with the deceased the respondent-husband started harassing her for the demand of dowry. We do not find substance in the submission of the learned defence counsel that the statements made before her death by the deceased were not admissible in evidence under Section 32(1) of the Evidence Act and even if such statements were admissible, there does not allegedly exist any circumstance which could be shown to prove that the deceased was subjected to cruelty or harassment by her husband for or in connection with any demand of dowry soon before her death. It is contended that the words "soon before her death" appearing in Section 304B has a relation of time between the demand or harassment and the date of actual death. It is contended that the demand and harassment must be proximately close for the purposes of drawing inference against the accused persons.

The offence of "dowry death" was incorporated in the Indian Penal Code and corresponding amendment made in the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Evidence Act by way of insertion of Section 113B vide Act@@ JJJJJJJJJJJJJJJJJJJJJJJJJ No.43 of 1986. In fact the Dowry Prohibition Act, 1961 being Act No.28 of 1961 was enacted on 20th May, 1961 with an object to prohibit to giving or taking the dowry. The insertion of Section 304B of the Indian Penal Code and Section 113B in the Evidence Act besides other circumstances was also referable to the 91st Report dated 10th August, 1983 of the Law Commission. In the Statement of Objects and Reasons to Act No.28 of 1961 it was stated:

"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 of 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 enures 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."

Realising the ever increasing and disturbing proportions of the evil of dowry system, the Act was again amended by Act No.63 of 1984 taking note of the observations of the Committee on Status of Women in India and with a view to making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity, the Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth in its proceedings and after noting the observations of Pt.Jawaharlal Nehru, recommended to examine the working of Act No.28 of 1961 and after considering the comments received on the Report from the State Governments, Union Territories, Administrations and different administrative Ministries of the Union concerned with the matter, decided to modify the original definition of "dowry" with consequential amendment in the Act. Again finding that the Dowry Prohibition Act, 1961 has not been so deterrent, as it was expected to be, the Parliament made amendments in the Act vide Act No.43 of 1986. In the Statement of Objects and Reasons of the said Act it was stated: "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 House 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:

(a) 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 up to fifteen thousand rupees.

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

(f) Provisions has also been made for 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."

The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected to soon before her death. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113B of the Evidence Act. It has to be kept in mind that presumption under Section 113B is a presumption of law. We do not agree with the submissions made by Mr.Lalit, learned Senior Counsel for the accused that the statement made by the deceased to her relations before her death were not admissible in evidence on account of intervening period between the date of making the statement and her death.

Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured

without an amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. The phrase "circumstances of the transaction" were considered and explained in Pakala Narayana Swami v. Emperor [AIR 1939 PC 47]:

"The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular persons, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae". Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that "the cause of (the declarant's) death comes into question".

The death referred to in Section 32(1) of the Evidence Act includes suicidal besides homicidal death. Fazal Ali, J. in Sharad Birdhichand Sarda v. State of Maharashtra [1984 (4) SCC 116] after referring to the decisions of this Court in Hanumant v. State of Madhya Pradesh [1952 SCR 1091], Dharambir Singh vs. State of Punjab[Criminal Appeal No.98 of 1958, decided on November 4, 1958], Ratan Gond v. State of Bihar [1959 SCR 1336], Pakala Narayana Swami (supra), Shiv Kumar v. State of Uttar Pradesh [Criminal Appeal No.55 of 1966, decided on July 29, 1966], Mahnohar Lal v. State of Punjab[1981 Cri.LJ 1373 (P&H)] and other cases held:

"We fully agree with the above observations made by the learned Judges. In Protima Dutta v. State [1977 (81) Cal WN 713] while relying on Hanumant Case the Calcutta High Court has clearly pointed out the nature and limits of the doctrine of proximity and has observed that in some cases where there is a sustained cruelty, the proximate may extend even to a period of three years. In this connection, the high Court observed thus:

The 'transaction' in this case is systematic ill- treatment for years since the marriage of Sumana and incitement to end her life. Circumstances of the transaction include evidence of cruelty which produces a state of mind favourable to suicide. Although that would not by itself be sufficient unless there was evidence of incitement to end her life it would be relevant as evidence.

This observation taken as a whole would, in my view, imply that the time factor is not always a criterion in determining whether the piece of evidence is properly included within 'circumstances of transaction'...'In that case the allegation was that there was sustained cruelty extending over a period of three years interspersed with exhortation to the victim to end her life'. His Lordship further observed and held that the evidence of cruelty was one continuous chain, several links of which were touched up by the exhortations to die. 'Thus evidence of cruelty, ill- treatment and exhortation to end her life adduced in the case must be held admissible, together with the statement of Nilima (who committed suicide) in that regard which related to circumstances terminating in suicide'.

Similarly, in Onkar v. State of Madhya Pradesh [1974 Cri.LJ 1200] while following the decision of the Privy Council in Pakala Narayana Swami case, the Madhya Pradesh High Court has explained the nature of the circumstances contemplated by Section 32 of the Evidence Act thus:

The circumstances must have some proximate relation to the actual occurrence and they can only include the acts done when and where the death was caused....Thus a statement merely suggesting motive for a crime cannot be admitted in evidence unless it is so intimately connected with the transaction itself as to be a circumstance of the transaction. In the instant case evidence has been led about statements made by the deceased long before this incident which may suggest motive for the crime.

In Allijan Munshi v. State [AIR 1960 Bom 290] the Bombay High Court has taken a similar view.

In Chinnavalayan v. State of Madras [1959 Mad LJ 246] two eminent Judges of the Madras High Court while dealing with the connotation of the word 'circumstances' observed thus:

The special circumstances permitted to transgress the time factor is, for example, a case of prolonged poisoning, while the special circumstances permitted to transgress the distance factor is, for example, a case of decoying with intent to murder. This is because the natural meaning of the words, according to their Lordships, do not convey any of the limitations such as (1) that the statement must be made after the transaction has taken place, (2) that the person making it must be at any rate near death, (3) that the circumstances can only include acts done when and where the death was caused. But the circumstances must be circumstances of the transaction and they must have some proximate relation to the actual occurrence.

Before closing this chapter we might state that the Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English Law where only the statements which directly relate to the cause of death are admissible. The second part of clause (1) of Section 32, viz., "the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law. This distinction has been clearly pointed out in the case of Rajindra Kumar v. State [AIR 1960 Punj 310] where the following observations were made:

Clause (1) of Section 32 of the Indian Evidence Act provides that statements, written or verbal, of relevant facts made by a person who is dead,....are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question... It is well settled by now that there is difference between the Indian Rule and the English Rule with regard to the necessity of the declaration having been made under expectation of death.

In the English Law the declaration should have been made under the sense of impending death whereas under the Indian Law it is not necessary for the admissibility of a dying declaration that the deceased at the time of making it should have been under the expectation of death.

Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:

(1) Section 32 is an exception of the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement

regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3- 4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

In Ratan Singh vs. State of Himachal Pradesh [1997 (4) SCC 161] this Court held that the expression "circumstances of transaction which resulted in his death" mean that there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death. Relying upon Sharad Birdhichand Sarda's case (supra) the Court held that:

"It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death."

In view of this legal position statements of Ms.Sunita made to her parents, brother and other acquaintances, before@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ her death are admissible in evidence under Section 32 of the@@ JJJJJJJJJJJJ Evidence Act.

It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non existence of such treatment is not brought on record, before the alleged such treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of

dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.. No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on Sham Lal v. State of Haryana [1997 (9) SCC 579] is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up between the two sides for which Panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a Panchayat was shown to have held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home and her tragic end. Such is not the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved. Mr.Lalit, learned Senior Counsel has further contended that as the prosecution@@ JJJJJJJJJJ had failed to prove the cruelty or harassment for or in@@
JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ connection with the demand of dowry, the High Court was justified in acquitting the accused persons including Rakesh Kumar, respondent No.2. He also pointed out to some alleged contradictions in the statements of PWs 5 and 6. Having critically examined the statements of witnesses, we are of the opinion that the prosecution has proved the persistent demand of dowry and continuous cruelty and harassment to the deceased by her husband. The contradictions pointed out are no major contradictions which could be made the basis of impeaching the credibility of the witnesses. Reference to different sums of money demanded by Rakesh Kumar in the statements of PWs5 and 6 cannot, in any way, be termed to be contradictory to each other. At the most some of the amounts referred by one witness and not mentioned by the other can be termed to be an omission which in no case amounts to a major contradiction entitling the respondent No.2 of any benefit. Ram Kishan, PW5 has categorically stated that Rakesh Kumar accused had raised a demand of Rs.15,000/- for scooter and refrigerator immediately after the marriage which was fulfilled by giving him a sum of Rs.20,000/-. His demand of a colour TV was also fulfilled. The continuous harassment connected with the demand of dowry is shown to be in existence till 21st September, 1988 when the deceased is reported to have come to her brother's house and met her parents. Thereafter she is not shown to have met anyone and no intervening circumstances showing the resolvement or settlement regarding demands of dowry is brought on record. She was admittedly found dead on 23rd October, 1988. Kans Raj, PW6 has stated that a colour TV, clothes and jewellery were given to the accused husband as dowry. He has deposed that his daughter had told him that the accused wanted her to bring further cash amount. The deceased, on persistent demands of the accused, had withdrawn the total sum of Rs.26,000/- from the accounts which was opened by the father in her name. He was also given a new Colour TV in lieu of the TV set given to him at the time of marriage as the same had allegedly gone out of order. It is contended that as there was no Karva Chauth on 23rd October, 1988, the whole of the statement of PW6 should not be believed because he is alleged to have stated that his son had gone to the house of accused on 23rd October, 1988 which was the day of Karva Chauth. The submission is based upon the wrong assumption of fact. It appears that the statement of PW6 has wrongly been translated in English wherein it is mentioned: "On 23.10.1988 on the day of Karva Chauth my son Ram kishan went to the house of the accused with customary presents. He telephoned me to inform that Sunita Kumari has died in the house of the accused. I and my wife went to Batala. The police came to the spot and I was examined inquest proceedings also. My separate statement was also recorded."

We have examined the original record and found that the statement of the witness which were recorded in Punjabi/ Gurmukhi script states that Ram Kishan had gone to the residence of the accused at the occasion of Karva Chauth (Mauke Te) and not on the date of Karva Chauth. Relying upon the evidence in the case, the Trial Court had rightly concluded: "The sum and substance of the above discussion is that the prosecution has adduced best available evidence to prove the charge against the accused. The statement of Kans Raj (PW6) and Ram Kishan (PW5) inspire confidence. It is not disputed that Sunita Kumari committed suicide about 3-1/2 years after the marriage. The accused have not given any satisfactory account of even high probability as to how Sunit Kumari died. There is

a presumption under Section 113A of the Evidence Act that the suicide has been abetted by the husband or other relative of the husband of the deceased. The accused have not been able to rebut that presumption. It is also proved that Sunit Kumari was treated with cruelty on account of dowry."

It is established that the death of Sunita Kumari by suicide had occurred within 7 years of her marriage and such death cannot be stated to have occurred in normal circumstances. The term "normal circumstances" apparently means not the natural death. This Court in Smt.Shanti & Anr.v. State of Haryana [AIR 1991 SC 1226] held that: "....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 the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called 'dowry death' and the husband or relatives shall be deemed to have caused her death and shall be punishable with imprisonment for a minimum of seven years but which may extend to life imprisonment."

In other words the expression 'otherwise than under normal circumstances' would mean the death not in usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury.

The High Court appears to have adopted a casual approach in dealing with a specified heinous crime considered to be a social crime. Relying upon minor discrepancies and some omissions, the court has wrongly acquitted the accused-husband, namely, Rakesh Kumar. The charges framed against respondent No.2 had been proved by the prosecution beyond reasonable doubt and there was no justification for interferring with the conviction recorded and sentence passed against him by the Trial Court.

Under the circumstances the present appeal is partly allowed by setting aside the judgment of the High Court in so far as it relates to respondent No.2, namely, Rakesh Kumar, the husband of the deceased and confirmed so far as it relates to other accused persons. The judgment of the Trial Court regarding conviction of Shri Rakesh Kumar under Section 304B is upheld but the sentence is reduced to seven years Rigorous Imprisonment. His conviction under Section 306 is also upheld but his sentence is reduced to five years besides paying a fine as imposed by the Trial Court. In default of payment of fine the respondent No.2 shall suffer Rigorous Imprisonment for one month more. Confirming his conviction under Section 498A IPC, the respondent No.2 is sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.250/-, in default of payment of fine he will further undergo Rigorous Imprisonment for one month. All the sentences are directed to run concurrently. The bail bonds of respondent No.2, who is on bail, are cancelled and he is directed to surrender to serve out the sentence passed on him.

PETITIONER: ASOKAN

Vs.

RESPONDENT: STATE REP. BY PUBLIC PROSECUTOR, MADRAS.

DATE OF JUDGMENT: 05/04/2000

BENCH: G.B.Pattanaik, S.V.Patil

JUDGMENT:

PATTANAIK,J.

These three appeals arise out of one Sessions Trial, wherein the four accused persons viz. Rajammal Accused No. 1, Balasubramaniam Accused No. 2, Murugesan accused No. 3 and Asokan Accused No. 4 stood charged for different offences. Accused Nos. 1 to 3, Rajammal, Balasubramaniam and Murugesan were charged under Sections 302/34 IPC, 498A IPC and 201 IPC. Accused Nos. 1 and 3 stood further charged under Section 4 of the Dowry Prohibition Act and Accused No. 4 was charged under Section 498A IPC alone. Prosecution case in nutshell is that Accused No. 4 Asokan is the husband of deceased Porkodi and they were married on 24th of March, 1985. A1 and A3 are the parents of Asokan and A2 is his younger brother. It was alleged that on 18.6.1985 at 10 A.M. in furtherance of their common intention, they committed murder of deceased Porkodi by manual strangulation and the motive behind the strangulation was that the demand of dowry was not satisfied by the parents of the deceased. It was also alleged that the deceased had been subjected to cruelty and harassment by making unlawful demand and further after causing the murder of the deceased Porkodi, the accused persons attempted to cause disappearance of the evidence by setting up a case that Porkodi had committed suicide. The defence is one of denial. Prosecution examined several persons to establish the charges against the accused persons. PWs 3 and 4 are the two witnesses, who were residing upstairs of the house, where the accused persons were residing and the incident itself occurred. According to the evidence of PWs 3 and 4 at 10.30 A.M., on the date of occurrence the noise of deceased Porkodi was heard and soon thereafter accused Balasubramaniam (A2) came upstairs and wanted them to come down since his mother wanted so. When they went downstairs, they found accused Rajammal, Balasubramaniam and Murugesan were in the room, next to the hall and Porkodi was lying on the ground with the face upward and there were injuries on her neck. While Rajammal, initially told that her daughter-in-law had committed suicide by hanging but on being further questioned, the accused persons told that they had committed mistake unknowingly but if any people ask PWs 3 and 4, then they should tell that she has committed suicide by hanging and they were pleading to save them. Soon thereafter, PW4 left the house for office. PW14, who is the neighbour, also heard the death news of Porkodi and came out of his house, when Balasubramaniam conveyed him that she died on account of heart attack. In the meanwhile, PW11 had come to the house of the accused to meet Murugesan, but he found the house to be locked from inside and when he knocked the door, it is the Balasubramaniam, who opened it. A1 Rajammal was also standing near him and Murugesan asked PW11 to come after two or three days. Asokan was working in Ashok Leyland Workshop and was not available in the house and he was only informed by Murugesan about the death of Porkodi. He, therefore, left the factory and came back to his house. Balasubramaniam in the meanwhile came to the house of PW7 and told him that Porkodi had a heart attack and her condition was serious. On getting such information, PWs 1, 2 and 7 left for the house of the deceased and found Porkodi lying dead. They also found contusions on both sides of her neck and when PW1 asked the accused persons as to what had happened, the reply was that Porkodi had committed suicide by hanging. PW1 however entertained some doubt as to the cause of death and, therefore, went to Tiruvottiyur Police Station along with PW2 and lodged a report, which was recorded by the Sub Inspector PW22 and the said Sub Inspector registered a case of suspicious death. The Police Officer then sent information to the Tahsildar and then left for the scene of occurrence and on reaching the

place of occurrence, prepared a sketch map and also made some seizure. The Tahsildar PW21, arrived at the place of occurrence at 4 p.m. and held inquest over the dead body and made some inquiry. In course of such inquiry, he examined PWs 2, 3 and 8 and then after making Inquest Report as per Exh. P.16, he sent the dead body for post mortem examination. PW22, thereafter made some seizure and then PW23 the Inspector of Police arrived at the scene of occurrence. He examined PWs 1 and 7, who were present. He also made some seizure. PW4 who had left for his house, soon after the occurrence, came back at 11.30 p.m. and the accused 1, 2 and 3 informed PW4 that they have informed Tahsildar about the fact that Porkodi has committed suicide by hanging. Doctor PW5, who conducted the post mortem examination, found two injuries and there was no evidence of any ligature mark around the neck. He gave the opinion that the deceased died of asphyxia due to manual strangulation (throttling) and death must have been almost instantaneous. After receipt of the post mortem report, Exh. P4 and on completion of investigation, the Investigating Agency altered the case to one under Section 498A and 302 IPC. The materials during investigation having revealed that the death has occurred on account of non-payment of dowry, the District Registrar accorded sanction to prosecute the accused persons under Section 4 of the Dowry Prohibition Act, as per Exh. P.20. The Deputy Superintendent of Police, realising the seriousness of the crime, took up the investigation and re-examined many of the witnesses, already examined and finally charge-sheet was filed under Sections 302/34, 201, 498A of the IPC and Sec. 4 of the Dowry Prohibition Act.

The learned Sessions Judge, after a thorough scanning of the entire evidence, came to hold that the prosecution has been able to establish the charges for the offences under Sections 302 read with 34 and 498A as well as Section 201 of the IPC and Section 4 of the Dowry Prohibition Act against the accused No. 1 Rajammal and Accused No. 3 Murugesan and sentenced them to life imprisonment under Section 302/34, R.I. for 6 months under Section 4 of the Dowry Prohibition Act, R.I. for three years for the offence under Section 498A and three years R.I. for the offence under Section 201 IPC with the further direction that the sentences would run con-currently. Accused No. 2 Balasubramaniam, however was given benefit of doubt and was acquitted of all the charges. The only charge under Section 498A to A4 Asokan was held not to have been established and A4 was also acquitted accordingly. While the two convicted accused persons namely A1 and A3 preferred appeals, assailing their conviction and sentence, the State also preferred an appeal against the order of acquittal of A2 and A4. The informant also had preferred a revision against the order of acquittal, recorded by the Sessions Judge as against A2 and A4 and all these appeals and the revision were heard together and disposed of by a common Judgment of the High Court. The conviction of accused Nos. 1 and 3 was upheld and their appeal stood dismissed. The acquittal of Balasubramaniam A2 was set aside so far as the charges under Section 302/34 and 201 is concerned and he was sentenced to imprisonment for life for the conviction under Section 302/34 and three years R.I. for the offence under Section 201 IPC. The order of acquittal under Section 498A however was upheld, so far as accused A2 Balasubramaniam is concerned. So far as Accused A4 is concerned, the High Court set aside the order of acquittal and convicted him under Section 498A IPC and sentenced him to R.I. for three years and thus all the four accused persons are in this Court in three different appeals.

Mr. Natarajan, the learned senior counsel, appearing for the appellants contended that the High Court committed serious error in interfering with the order of acquittal recorded by the Sessions Judge, so far as Accused Nos. 2 and Accused No. 4 are concerned inasmuch as the sound and convincing reasons given by the learned Sessions Judge in acquitting them have not been adverted to and this has vitiated the impugned order of conviction. According to Mr. Natarajan, there is no evidence of cruelty and harassment, so far as husband Asokan is concerned, and therefore, his conviction is wholly unwarranted in law. The learned counsel further contended so far as the conviction of A1 and A3 are concerned, though the High Court affirmed the same, yet in view of the earlier statement of the witnesses before the Tahsildar, accused No. 3 undoubtedly, deserves separate consideration and it must be held that the subsequent version is an exaggerated version by roping in accused No.3 also, and consequently the conviction of accused No. 3 is liable to be interfered with. The learned counsel also further urged that the delayed examination of the witnesses by the Police affect their substantive evidence in Court and the entire case must be viewed with suspicion. The learned counsel also contended that an undue interest has been shown by CB.C.I.D. and it is only thereafter, witnesses have made improvement in their version and prosecution case must fail on that score.

The learned counsel appearing for the respondent, on the other hand contended that the High Court

in its Appellate Jurisdiction, while dealing with an appeal at the instance of the convicted accused persons as well as an appeal at the instance of the Government against the order of acquittal of two of the accused persons having scrutinized and re-appreciated the entire evidence and having recorded its conclusion that the accused persons are guilty of different offences, there has been no error in the matter of exercising jurisdiction nor has there been any error in appreciation of the evidence and, therefore, the impugned judgment remains un-assailable and cannot be interfered with.

Since two of the accused persons were acquitted by the Sessions Judge and their acquittal was set aside by the High Court, we thought it appropriate to re- examine the evidence on record to find out whether there has been any miscarriage of justice by erroneous appreciation of evidence by the High Court. In this context, it may be stated that in view of the provisions contained in Section 176 of the Code of Criminal Procedure and the Investigating Officer, entertaining reasonable suspicion as to the cause of death of deceased Porkodi, having intimated the Executive Magistrate, as required under Section 174 of the Code of Criminal Procedure, the Tahsildar who was duly empowered, held an inquiry against the cause of death and while holding such inquiry had also recorded the evidence of witnesses, including PW3, which statement of PW3 has been exhibited as Exh. D1. Coming to the question as to whether High Court was justified in interfering with the order of acquittal of accused No. 2, it may be noticed, the role ascribed by the two star witnesses PWs 3 and 4 to the accused No. 2 is that it is he, who went upstairs, called them downstairs and it is he, who opened the door when PWs 3 and 4 knocked the door. The learned Sessions Judge examined the evidence pertaining to the demand of dowry and came to the conclusion that there has not been an iota of evidence that A2 demanded dowry at any time directly or indirectly nor is their any evidence that he ill treated the deceased at any point of time. The only evidence of ill treatment established by the prosecution through the evidence of PW7 is that when deceased had given coffee to Balasubramaniam once, he threw it at her and such act would not amount to cruelty or harassment. So far as charge under Section 302/34 is concerned, the Sessions Judge found that evidence of PWs 3 and 4 is merely to the effect that they have seen accused No. 2 along with his parents and according to the learned Sessions Judge, that cannot be held to be establishing the charge of murder so far as accused No. 2 is concerned. The High Court however relying upon the evidence of PWs 3 and 4 came to the conclusion that since accused Nos. 1, 2 and 3 were present inside the house when the deceased was killed and accused No. 2 is not coming forward with any explanation as required under Section 106 of the Evidence Act, it must be held that all three of them had caused the murder of deceased Porkodi and, therefore all three of them must be convicted under Section 302/34 IPC. According to the High Court since Balasubramaniam accused No. 2 was present, who went upstairs and called PWs 3 and 4 to come down and it is he, who had given prevaricated version regarding the death of Porkodi, he cannot be absolved of his liability and there is no reason to hold that he did not participate in the crime. That the deceased Porkodi died of manual strangulation, is established through the evidence of doctor who had conducted the post mortem examination and that conclusion has not been assailed before us. Apart from the fact that the prosecution evidence does not establish anything further than the fact that the accused Balasubramaniam went and called PWs 3 and 4 and when they came down, they found that the deceased was lying dead, with injuries on her neck. There is no prosecution evidence that Balasubramaniam was present inside the house when the deceased was strangulated nor the evidence of PWs 3 and 4 on whose evidence the prosecution relies upon to establish the charges of murder as against Balasumbramaniam, establishes in any manner that Balasubramaniam participated in causing the strangulation of the deceased. In this view of the matter and having examined the reasons and grounds advanced by the Sessions Judge in acquitting Balasubramaniam of the charge under Section 302/34, we have no hesitation to come to the conclusion that the High Court was in error in interfering with the said order of acquittal. In our opinion, the charge of murder as against A2 Balasubramaniam cannot be said to have been established beyond reasonable doubt and therefore, Sessions Judge had rightly given him the benefit of doubt.

So far as the two other accused persons are concerned viz. Accused Nos. 1 and 3, the learned Sessions Judge convicted them of the said charges, essentially relying upon the evidence of PWs 3 and 4 and the High Court has affirmed the said conviction. But one important item of evidence which has been lost sight of, is the statement of PW3 made to the Tahsildar, while Tahsildar was holding an inquiry as required under Section 176 of the Code of Criminal Procedure and in the said statement the name of Accused No. 3 had not been mentioned. At the outset, it must be stated that Tahsildar in fact was required to hold the inquest, since the investigation had entertained suspicion about the cause of death

of the deceased and in that connection, was holding an inquiry. Non- mentioning of the name of Accused No. 3 by PW3, in our opinion, cannot be the sole basis for discarding the evidence of PW3 in toto. That apart, PW4 has fully established the prosecution case, so far as accused Nos. 1 and 3 are concerned and we see no infirmity with the impugned Judgment of the High Court, affirming the conviction of accused Nos. 1 and 3 of the charge under Section 302/34 IPC. So far as the charge under Section 201 is concerned, as regards Accused No. 2, we also entirely agree with the submission made by Mr. Natarajan that the order of acquittal recorded by the learned Sessions Judge has been erroneously interfered with by the High Court without proper discussion of evidence on record and without discussions on the reasons advanced by the Sessions Judge in giving benefit of doubt. In our view the acquittal of accused No. 2 Balasubramaniam recorded by the Sessions Judge on the evidence on record was fully justified and the same could not have been interfered with by the High Court and that also in a perfunctory manner in which the High Court has re- appreciated the evidence. We accordingly set aside the conviction of Accused No.2 Balasubramaniam of the charge under Sections 302/34 and 201 IPC and acquit him of all the charges. Needless to mention that order of acquittal, so far as Sec. 498A is concerned, the same has been upheld by the High Court in appeal.

So far as the order of acquittal of Asokan is concerned, the learned Sessions Judge considered materials against him in paragraph 13 of his Judgment and came to hold that excepting the evidence of PW7 that Porkodi had told him that Asokan had demanded a scooter, there is no other evidence, establishing the demand of dowry by accused Asokan. PWs 3 and 4 have not in any way implicated Asokan with regard to demand of dowry and in the absence of any such evidence, on the oral statement of PW7 that Porkodi had told him about the so called demand of Asokan about the scooter, the Sessions Judge has acquitted him of the charge under Section 498A IPC, which was the only charge against him. We have also examined the evidence of PWs 3, 4 and 7. The High Court however interfered with the same on the evidence of PWs 3 and 4 to the effect that it was a regular feature of the house where in-laws would be finding fault with the deceased for not bringing adequate dowry. Further, the High Court has relied upon the evidence of PW2, who categorically stated that Porkodi had told him that her husband and mother-in-law are beating her for not getting a scooter. The evidence of PW7 is also relied upon, who had stated that Asokan has scolded his wife for not bringing a cot as dowry. The evidence of PW7 is to the effect that Porkodi had shown her the injuries and complained that accused No. 4 had inflicted the injuries on the ground that scooter had not been given to him as present. The learned Sessions Judge had lost sight of the aforesaid material evidence on record. In our view, therefore, the High Court was fully justified in interfering with the order of acquittal and convicting the accused Asokan under Section 498A IPC. So far as conviction under Section 498A of Accused Nos. 1 and 3 are concerned, the evidence is rather clinching and both the Sessions Judge as well as the High Court have upheld the conviction and sentence and no justified ground has been shown for our interference with the same.

In the net result, therefore, the appeal of accused No. 2 Balasubramaniam is allowed and he is acquitted of all the charges and be set at liberty forthwith. The appeals of other three accused persons against their conviction and sentences respectively fail and are dismissed.

PETITIONER: KOLI CHUNILAL SAVJI & ANR.

Vs.

RESPONDENT: STATE OF GUJARAT

DATE OF JUDGMENT: 29/09/1999

BENCH: G.B.Pattanaik, N.Santosh Hedge, M.Srinivasan

JUDGMENT:

PATTANAIK, J.

These two appeals arise out of Judgment dated 21/24.6.1996 of the High Court of Gujarat at Ahmedabad in Criminal Appeal Nos. 236 and 105 of 1989 and are being disposed of by this common Judgment. The two appellants were tried for having committed an offence under Section 302/34 IPC on the allegation that on 28.6.84 at 4 A.M., while deceased Dhanuben was sleeping on her bed, the two accused persons namely her husband and mother-in-law poured kerosene and set fire with match box. Along with the deceased, her son Ajay was also there and both, the deceased and Ajay were burnt. They were taken to the hospital for treatment. In the hospital, Police recorded the statement of Dhanuben which was treated as F.I.R. and then after registering the case, investigation started. In the hospital, both Dhanuben and her son Ajay died and as such the accused persons stood charged for offence under Sections 498A and 302/34 of the IPC. Apart from the statement by deceased Dhanuben to PW 14, which was treated as F.I.R., a Magistrate also recorded her statement which was treated as a dying declaration. On scrutiny of the prosecution evidence, the learned Sessions Judge did not rely upon the dying declaration made by the deceased Dhanuben and in the absence of any other evidence to connect the accused appellants with the murder of the deceased, acquitted them of the charge under Section 302/34 IPC. The learned Sessions Judge however came to the conclusion that the offence under Section 498A has been established beyond reasonable doubt and as such convicted them under the said Section and sentenced them to rigorous imprisonment for two years and imposed a penalty of Rs.250/-, in default, further imprisonment for two months. The State of Gujarat preferred an appeal against the acquittal of the accused persons of the charge under Section 302/34 IPC and the accused persons preferred appeal against their conviction under Section 498A. The High Court by the impugned Judgment set aside the order of acquittal, relying upon the two dying declarations Exh. 45 and Exh. 41 and convicted the appellants of the charge under Section 302/34 IPC and States appeal was allowed. The appeal filed by the accused persons, assailing their conviction under Section 498A however stood dismissed and the conviction under Section 498A and the sentence passed thereunder was maintained. It may be stated that while admitting the appeal of the accused persons against their conviction under Section 498A, the High Court had suo motu issued notice as to why the sentence imposed for the offence punishable under Section 498A should not be enhanced. But while disposing of the criminal appeals, the High Court did not think it proper to enhance the sentence and accordingly notice of enhancement stood discharged.

On the basis of the post-mortem report conducted on the dead bodies of Dhanuben and her son Ajay and the evidence of doctor PW9, who conducted the autopsy over the dead bodies, the conclusion is irresistible that both the persons died on account of burn injuries but the defence however raised a contention that the two persons died on account of suicide and the house was set fire by the deceased herself. The prosecution witnesses to whom deceased had made oral dying declaration, implicating the accused persons, did not support the prosecution during trial and, therefore, with the permission of the Court the Public Prosecutor cross- examined them. The High Court accordingly, placed no reliance on their testimony. The High Court however examined the two dying declarations namely Exh.45, recorded by the Sub-Inspector PW14 and the dying declaration Exh.41, recorded by the Magistrate PW12 and came to the conclusion that both these dying

declarations are truthful and voluntarily made and, therefore, can safely form the basis of conviction of the accused persons under Section 302/34 IPC. With the aforesaid conclusion the order of acquittal passed by the learned Sessions Judge of the charge under Section 302/34 was set aside and the accused appellants were convicted of the said charge and were sentenced to imprisonment for life. The High Court also relying upon the dying declaration and other materials, further came to the conclusion that the prosecution case, so far as the charge under Section 498A IPC is concerned, has been proved beyond reasonable doubt and, therefore, upheld the conviction and sentence passed thereunder by the learned Sessions Judge.

Mr. Keshwani, the learned counsel appearing for the appellants argued with vehemence that the two dying declarations cannot be relied upon inasmuch as the doctor was not present while the dying declaration was recorded by the Magistrate and further, there is no endorsement by the doctor, indicating the mental condition of the deceased to the effect that she was in a fit condition to make the statement. The learned counsel also further urged that the doctor himself has not been examined in this case which makes the position worse. Mr. Keshwani also made a submission that the deceased was surrounded by her own relations before the dying declaration was recorded by the Magistrate and as such had sufficient opportunity to be tutored and consequently the dying declaration recorded by the Magistrate becomes vitiated. Mr. Keshwani also submitted that the incident having taken place at 4 A.M. and the dying declaration having been recorded by the Magistrate at 9 A.M., five hours after the occurrence, there has been gross delay which makes the dying declaration doubtful and as such should not have been accepted. Mr. Keshwani lastly submitted that the learned Sessions Judge having recorded an order of acquittal, the same should not have been interfered with by the High Court without justifiable reasons and on this score also the conviction of the appellants under Section 302/34 IPC cannot be sustained.

The learned counsel appearing for the respondent State, on the other hand submitted that the dying declaration which has been relied upon by the High Court in the facts and circumstances, has been rightly held to be truthful and voluntary one and, therefore, in law, can form the sole basis of conviction. She also contended that though endorsement of the doctor and presence of the doctor is ordinarily looked for but merely on that score the dying declaration recorded by the Magistrate cannot be held to be an untruthful one. Besides, the learned counsel submitted that the doctor did make an entry in the Police yadi, indicating that the deceased was in a fit condition to make any statement and it is he, who took the Magistrate to the deceased and non-endorsement by the doctor on the statement recorded by the Magistrate cannot be held to be fatal nor can any doubt arise on that score. The learned counsel further contended that the power of the High Court against an order of acquittal is the same as against an order of conviction and while setting aside an order of acquittal, it is necessary for the Appellate Court to look at the reasoning given by the trial Judge and be satisfied whether those reasoning are just and proper or not. The reasoning given by the learned Sessions Judge to discard the two dying declarations having been found by the High Court to be wholly unreasonable and, therefore, the High Court was fully entitled to interfere with the conclusion of the learned Sessions Judge and no infirmity can be found out on that score.

Coming to the affirmation of conviction under Section 498A, while Mr. Keshwani, appearing for the accused appellants submitted that on this scanty evidence, the Courts could not have convicted the accused persons of the said charges, the learned counsel for the respondent submitted that both the Courts have analysed the evidence fully and having found that the charge under Section 498A IPC has been proved beyond reasonable doubt, question of interfering with the said conviction does not arise.

In view of the rival submissions made at the Bar, two questions really arise for our consideration. (1) Whether the two dying declarations can be held to be true and voluntary and can be relied upon or can be excluded from consideration for the infirmities pointed out by Mr. Keshwani, appearing for the appellants. (2) Whether the High Court exceeded its jurisdiction in interfering with the order of acquittal, recorded by the learned Sessions Judge.

Coming to the first question, the answer to the same would depend upon the correctness of the submission of Mr. Keshwani, that in the absence of doctor while recording the dying declaration, the said declaration loses its value and cannot be accepted. Mr. Keshwani in this connection relies upon the

decision of this Court in the case of Maniram vs. State of Madhya Pradesh, AIR 1994 SC 840. In the aforesaid case, no doubt this Court has held that when the declarant was in the hospital itself, it was the duty of the person who recorded the dying declaration to do so in the presence of the doctor and after duly being certified by the doctor that the declarant was conscious and in senses and was in a fit condition to make the declaration. In the said case the Court also thought it unsafe to rely upon the dying declaration on account of aforesaid infirmity and interfered with the Judgment of the High Court. But the aforesaid requirements are mere a rule of prudence and the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It is no doubt true that before recording the declaration, the concerned officer must find that the declarant was in a fit condition to make the statement in question. In Ravi Chander and Ors. vs. State of Punjab, 1998 (9) SCC 303, this Court has held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court further observed that the Executive Magistrate is a disinterested witness and is a responsible officer and there is no circumstance or material on record to suspect that the Executive Magistrate had any animus against the accused or in any way interested in fabricating the dying declaration and, therefore, the question of genuineness of the dying declaration recorded by the Executive Magistrate to be doubted does not arise. In the case of Harjit Kaur vs. State of Punjab 1994(4) SCALE 447, this Court has examined the same question and held:

..As regards the condition of Parminder Kaur, the witness has stated that he had first ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect. Merely because that endorsement was made not on the Dying Declaration itself but on the application, that would not render the Dying Declaration suspicious in any manner.

In view of the aforesaid decisions of this Court, we are unable to accept the submission of Mr. Keshwani that the two dying declarations cannot be relied upon as the doctor has not been examined and the doctor has not made any endorsement on the dying declaration. With regard to the condition of the deceased, the Magistrate who recorded the dying declaration has been examined as a witness. She has categorically stated in her evidence that as soon as she reached the hospital in the Surgical Ward of Dr. Shukla, she told the doctor on duty that she is required to take the statement of Dhanuben and she showed the doctor the Police yadi. The doctor then introduced her to Dhanuben and when she asked the doctor about the condition of Dhanuben, the said doctor categorically stated that Dhanuben was in a conscious condition. It further appears from her evidence that though there has been no endorsement on the dying declaration recorded by the Magistrate with regard to the condition of the patient but there has been an endorsement on Police yadi, indicating that Dhanuben was fully conscious. In view of the aforesaid evidence of the Magistrate and in view of the endorsement of doctor on the Police yadi and no reason having been ascribed as to why the Magistrate would try to help the prosecution, we see no justification in the comments of Mr. Keshwani that the dying declaration should not be relied upon in the absence of the endorsement of the doctor thereon. In this particular case, the police also took the statement of the deceased which was treated as F.I.R., and the same can be treated as dying declaration. The two dying declarations made by the deceased at two different point of time to two different persons, corroborate each other and there is no inconsistency in those two declarations made. In this view of the matter, we have no hesitation to come to the conclusion that the two dying declarations made are truthful and voluntary ones and can be relied upon by the prosecution in bringing home the charge against the accused persons and the prosecution case must be held to have been established beyond reasonable doubt. Consequently, we have no hesitation in rejecting the first submission of Mr. Keshwani. In this connection, it may be appropriate for us to notice an ancillary argument of Mr. Keshwani that there has been an inordinate delay on the part of the Magistrate to record the dying declaration and, therefore, the same should not be accepted. As we find from the records, the incident took place at 4 A.M. and the Magistrate recorded the dying declaration at 9 A.M., in our opinion, it cannot be said that there has been an inordinate delay in recording the statement of the deceased. Mr. Keshwani had also urged that when the Magistrate recorded the dying declaration, the deceased had been surrounded by her relations and, therefore, it can be assumed that the deceased had the opportunity of being tutored. But we fail to understand how this argument is advanced inasmuch as there is no iota of evidence that by the time the Executive Magistrate went, the deceased was surrounded by any of her relations. No

doubt the Magistrate herself has said that three or four persons were there near the deceased whom she asked to go out but that they were the relations of the deceased, there is no material on record. We, therefore, have no hesitation to reject the said submission of Mr. Keshwani.

Coming now to the second question, the law is well settled that the power of the High Court while sitting in appeal against an order of acquittal is the same, as the power while sitting in appeal against the conviction and the High Court, therefore would be fully entitled to re-appreciate the materials on record and in coming to its own conclusion. The only compulsion on the part of the Appellate Court is to bear in mind the reasons advanced by the learned Sessions Judge, while acquitting the accused and indicate as to why those reasons cannot be accepted. This being the parameter for exercise of power while entertaining an appeal against the order of acquittal and in view of our conclusion and finding that the two dying declarations were truthful ones and voluntarily made, we see no infirmity with the impugned judgment of the High Court in setting aside an order of acquittal. On going through the Judgment of the Sessions Judge, we find that the learned Sessions Judge erroneously excluded the two dying declarations from purview of consideration and therefore, the High Court was justified in interfering with the order of acquittal. If the order of acquittal is based upon the grounds not sustainable, the Appellate Court would be justified in interfering with the said order of acquittal. Consequently, we are of the opinion that in the facts and circumstances of the present case, the High Court was fully justified in interfering with the order of acquittal recorded by the Sessions Judge and as such the conviction of the appellant under Section 302/34 IPC is unassailable. Coming to the question of conviction under Section 498A IPC, as has been stated earlier, the learned Sessions Judge also convicted the appellant of the said charge and the High Court on re-appreciation, has affirmed the conviction and sentence passed thereunder and nothing has been brought to our notice to take a contrary view. In the net result, therefore, these appeals fail and are dismissed.

PETITIONER: SHRIPATRAO

Vs.

RESPONDENT: STATE OF MAHARASTRA

DATE OF JUDGMENT: 04/08/1999

BENCH: G.T.Nanavati, S.N.Phukan

JUDGMENT:

The following Judgment of the Court was delivered NANAVATI. J

The appellant has been convicted under Sections 302 and 498A IPC, for causing death of his wife by pouring kerosene over her body and setting her abiaze. The High Court dismissed the appeal as it did not find any good reason to interfere with the judgment of the trial Court.

U) have gone through the evidence and we find that a1l the eight dying declarations are almost consistent. One of them was made to Doctor H.S. Maharaj (P.W.-1) to whom she was taken for treatment. He has clearly deposed that soon after Meena was admitted in the hospital at 7.30 a.m., she had told him that her husband had poured kerosene on her clothes and set her ablaze. This was told to the doctor when he had tried to ascertain from her how she had received burns. The doctor made a note of it in the case papers (Ex.14). The

evidence of Dr. Meharaj thus receives support from contemporaneous document. The doctor had no reason to falsely depose against the accused or to prepare false case papers.

The doctor has further stated that he had informed Police Sub-inspector of Umri Police station that Meena was brought to the hospital with burns at 7.20 a.m. and thereafter had also written a letter (Ex. 13) to the P.S.I. for getting her dying declaration recorded. The said letter (Ex. 13) was written at 8.50 a.m. The police after receiving the same had forwarded the same to the Special Executive Magistrate, Shri Sharma(P.W.-8) who received it at 10 a.m.. Mr. Sharma had then proceeded to Umri dispensary and after ascertaining fitness of Meena from Dr. Maharaj (P.W.I) and also after ascertaining it himself had recorded her dying declaration (Ex. 32). In his cross-examination, he admitted that the said dying declaration was not in his hand but in fact it was written by one constable as it was difficult to write with his trembling hand. Merely because that fact is not mentioned in. the dying declaration it cannot be regarded as suspicious. It bears signature of the doctor and also that of the Executive Magistrate. It is also true as contended by the learned counsel for the appellant that no time is mentioned in the said dying declaration. That cannot also affect genuinness of the said dying declaration as there is nothing to show that the Executive Magistrate was not telling the truth. The Executive Magistrate had received the requisition at 10.00 a.m. and Meena was shifted at 11.00 a.m. from Umrl to Civil Hospital at Nanded. Therefore, her statement was recorded between 10.00 and 11.00 a.m..

At Nanded, her dying declaration was recorded by Sub-Judicial Magistrate Shrl Sahdev (P.W. 2) at about 3.30 p.m.. We do not find any infirmity either in his evidence or in trie manner of recording the dying declaration. The only suggestion made to this witness was that he had prepared the dying dec1aration(Ex. 21) as desired by one Laxman and the Police Patil. This suggestion was denied by him. We do not find any material on record to suggest that Sub-Judicial Magistrate was under any influence of those persons or he had any reason to oblige them. These three dying declarations, 6part from other dying declarations, being reliable and truthful were rightly relied upon by the Courts below.

The High Court was therefore right in confirming the conviction of the appellant and dismissing his appeal. As we do not find any sustance in this appea) it 1s dismissed.

PETITIONER: S.HANUMANTHA RAO

Vs.

RESPONDENT: S.RAMANI

DATE OF JUDGMENT: 31/03/1999

BENCH: V.N.Khare, R.P.Sethi

JUDGMENT:

J U D G E M E N T

V.N.KHARE, J.

The appellant is the husband who is in appeal. The respondent is his wife. The appellant and the respondent were married according to Hindu rites and customs on 26-8-88 at Hyderabad. The marriage was also consumated. During October 1988, while the couple were in a honeymoon, it is alleged that the respondent told the appellant that she was forced into marriage by her parents, while she was more interested in her career rather than a married life, as she had studied M.Sc. in electronics. It is also alleged by the appellant that on 15.10.88, on a petty quarrel, the respondent walked out of his house and it was after great persuasion she was brought back to his house. The very next day of the said incident, the respondent was taken by her parents to their house and despite request by the appellant and members of his family, she did not return for about two-and-a-half months to the house of the appellant. During that period, there was a reconciliation, as a result of which the respondent was sent to the house of the appellant on the condition that she should be sent to the house of her parents on every Thursday and taken back on Saturday to facilitate her to perform Santoshimata Puja on every Friday. According to the appellant, this arrangement also did not suit the respondent and all the time she complained of deprivation and expressed her desire to return to her parents house permanently. On 8-3-89, it is alleged that the respondent in privacy took out her Mangalsutra and threw it at the appellant, and on the very next day, she went to her parents place and thereafter she never returned to the appellants house, despite several requests.

Thereafter, there were several meetings for reconciliation which failed. It is also alleged that the respondent got a complaint lodged through her uncle who was then posted as Superintendent of Police, with the Womens Protection Cell, CID, Hyderabad against him and his father and other members of his family as a result of which they had to seek anticipatory bail from the court. Subsequently, again, efforts were made for reconciliation but they did not fructify and under such circumstances, the appellant filed a petition before the Judge, City Civil Court, Hyderabad for dissolution of marriage by granting decree of divorce on the grounds of mental cruelty and desertion. The grounds of cruelty were attributed to three acts of the respondent. Firstly, while in privacy, the respondent took out her Mangalsutra and threw it at the appellant; secondly, the respondent kept, maintained and preserved the copies of the letters sent by her to the appellant which shattered the mutual confidence between the couple; and thirdly, that the respondent lodged a complaint through her uncle against the appellant and the other members of his family u/s 498A IPC with the Womens Protection Cell, Hyderabad, for which they had to obtain anticipatory bail from the court. According to the appellant, all these three acts of the respondent constituted mental cruelty upon him and thus was entitled to a decree of divorce. The wife filed counter affidavit to the petition filed by her husband wherein she admitted that while in privacy she took out Mangalsutra and that she maintained and preserved the copies of letters sent by her to her husband. However, she denied having lodged any complaint with the Womens Protection Cell, Hyderabad or threw Mangalsutra at the face of her

husband. The appellant examined himself as well as his witnesses in support of his allegation and filed the letters sent by the respondent to him which were exhibited as Exts. A1 to A10. The Fourth Additional District Judge, City Civil Court, found that the acts of the respondent in taking out Mangalsutra and throwing it at the husband, keeping and maintaining the copies of letters sent to her husband and lodging of complaint with the Women Protection Cell constituted mental cruelty upon the husband and as such the appellant was entitled to decree of divorce. However, the trial court found that the wife did not desert the appellant.

Aggrieved, the respondent filed an appeal before the Andhra Pradesh High Court. The High Court, on appreciation of evidence found, that the incidents alleged by the appellant were blown out of proportion and in fact those incidents did not constitute mental cruelty. Consequently, the decree of the trial court was reversed and the appeal was allowed. It is against this judgment the appellant is in appeal before us.

Learned counsel appearing for the appellant urged that the view taken by the High Court that since the parties after the incident of 8th March, 1989, cohabited and it therefore amounts to condonation of guilt of the wife is based on no evidence, and as such the said finding suffers from legal infirmity. It is true that the High Court recorded the following finding in its judgment - the very admission in the petition of the respondent that he did not make an issue of the incident and cohabited with the appellant, thereafter constituted condonation.

On a perusal of the petition filed by the appellant, what we find is that in the petition for divorce, the appellant has alleged that on 8th March, 1989, his wife took out her Mangalsutra and threw it at him and thereafter finally deserted him. We further find that the appellant and his witness in their testimony nowhere admitted that after the date of the incident i.e. on 8th March 1989 the wife and the husband cohabited. The respondent also in her evidence never stated that she cohabited with her husband after the date of incident. It is, however, correct that the appellant in connection with the incident of 8th March, 1989 stated that he did not make an issue out of the said incident as it would have disturbed the peaceful life of his family. But, he would never forgive his wife for the said act. We, therefore, do not find any evidence of the fact that the parties cohabited after 8th March, 1989, as the wife stated to have left the house of the appellant after that date. In the absence of such evidence, the finding of the High Court that since the parties cohabited after 8th March, 1989 and as such same would constitute condonation of guilt, is unsustainable.

It was then urged that the view taken by the High Court that the incident of throwing of Mangalsutra by the wife as alleged by the appellant has not been substantiated and further the removal of Mangalsutra by his wife would not amount to mental cruelty within the meaning of Section 13(1)(ia) of Hindu Marriage Act, is erroneous. The appellant in his petition as well as in his evidence, alleged that his wife after taking out her Mangalsutra threw at him. The wife in her counter affidavit and statement admitted that she removed the Mangalsutra but denied that she had ever thrown the Mangalsutra at her husband. As stated above this incident took place in privacy. There was no other witness to the incident. The respondent very well could have denied the alleged incident. But she admitted to have removed the Mangalsutra only to please her husband. Moreover, when the wife was being cross-examined before the trial court no question was put to her about throwing of Mangalsutra at the appellant. For all these reasons we find that testimony of the respondent was rightly believed by the High Court while disbelieving the incident of throwing of Mangalsutra by the respondent, as alleged by the appellant.

Coming to the second limb of the argument whether the removal of Mangalsutra by the respondent constituted mental cruelty upon the husband, learned counsel for the appellant submitted that Mangalsutra around the neck of a wife is a sacred thing which symbolises the continuance of married life and Mangalsutra is removed only after the death of husband. Thus, the removal of Mangalsutra by the respondent-wife was an act which reflected mental cruelty of highest order as it caused agony and hurt the sentiments of the appellant.

Before we deal with the submission it is necessary to find out what is mental cruelty as envisaged under section 13(1)(ia) of the Act. Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result

of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party. It is in this background we have to test the argument raised by the learned counsel for the appellant. The respondent after having admitted the removal of Mangalsutra stated, that while in privacy the husband often used to ask her to remove the chain and bangles. She has also stated that in her parents house when her aunt and mother used to go to bathroom they used to take out Mangalsutra from their neck and therefore she thought that she was not doing anything wrong in removing Mangalsutra when she was asked to do so by her husband. She also stated that whenever she removed Mangalsutra, she never thought of bringing an end to the married life and was still wearing her Mangalsutra; and it is when her husband made hue and cry of such removal of Mangalsutra, she profusely apologized . From all these evidence the High Court concluded that the incident was blown out of proportion and the appellant attempted to take advantage of the incident by picturising the same as an act of cruelty on the part of the wife. The question, therefore, arises whether the removal of the Mangalsutra by the wife at the instance of her husband would amount to mental cruelty within the meaning of Section 13(1)(ia) of the Act. It is no doubt true that Mangalsutra around the neck of a wife is a sacred thing for a Hindu wife as it symbolises continuance of married life. A Hindu wife removes her Mangalsutra only after the death of her husband. But here we are not concerned with a case where a wife after tearing her Mangalsutra threw at her husband and walked out of her husbands house. Here is a case where a wife while in privacy, occasionally has been removing her Mangalsutra and bangles on asking of her husband with a view to please him. If the removal of Mangalsutra was something wrong amounting to mental cruelty, as submitted by learned counsel for the appellant, it was the husband who instigated his wife to commit that wrong and thus was an abettor. Under such circumstances the appellant cannot be allowed to take advantage of a wrong done by his wife of which he himself was responsible. In such a case the appellant cannot be allowed to complain that his wife is guilty of committing an act of mental cruelty upon him, and further by such an act, has suffered mental pain and agony as a result of which married life has broken down, and he is not expected to live with his wife. It also appears to us that, whenever the appellant asked her wife for removal of her Mangalsutra, the respondent never comprehended that her husband at any point of time would react to such occurrences in the way he did. Under such circumstances, the appellant was not expected to have made an issue out of it. We are, therefore, of the view that removal of Mangalsutra by the respondent would not constitute mental cruelty within the meaning of Section 13(1)(ia) of the Act.

The next ground of act of cruelty attributed to the wife relates to her preserving and maintaining copies of her letters sent to her husband. Learned counsel urged that the act of the wifes preserving copies of such letters has shaken the confidence of the husband which amounts to mental cruelty upon her husband, as according to him, copies of such letters were preserved knowingly to use them as evidence in future and such an action definitely amounts to mental cruelty.

The view taken by the High Court was that mere retention of copies of the letters would not amount to mental cruelty. We also find that if the wife had any intention to use copies of those letters she would have filed the same before the trial court. Excepting filing a counter affidavit the respondent-wife did not file any copy of the letters sent to her husband, whereas the husband has filed all the letters sent to him by his wife in the court which were exhibited. The respondent wife in her testimony stated that she wrote several letters to her husband, but her husband did not reply any of them and as such she started preserving the copies of the letters sent by her to her husband. This act of the respondent, according to us, is a most natural behaviour of human being placed in such circumstances. Thus, we find mere preserving the copies of the letters by the wife does not constitute an act which amounts to mental cruelty, and a result of which it becomes impossible for the husband to live with his wife. We, therefore, reject the submission of learned counsel for the appellant.

The last act of the respondent, which according to the learned counsel for the appellant, amounts to mental cruelty is that she lodged a complaint with the Women Protection Cell, through her uncle and as a result of which the appellant and the members of his family had to seek anticipatory bail. The respondent in her evidence stated that she had never lodged any complaint against the appellant or any members of his family with the Women Protection Cell. However, she stated that her parents sought help from Women Protection Cell for reconciliation through one of her relative who, at one time, happened to be the Superintendent of Police. It is on the record that one of the functions of the

Women Protection Cell is to bring about reconciliation between the estranged spouses. There is no evidence on record to show that either the appellant or any member of his family were harassed by the Cell. The Cell only made efforts to bring about reconciliation between the parties but failed. Out of panic if the appellant and members of his family sought anticipatory bail, the respondent cannot be blamed for that. Thus, we are of the opinion, that representation made by the parents of the respondent to the Cell for reconciliation of the estranged spouses does not amount to mental cruelty caused to the appellant.

For all these reasons, we do not find any merit in this appeal. The appeal is accordingly dismissed. There shall be no order as to costs.

PETITIONER: RAJAYYAN

Vs.

RESPONDENT: STATE OF KERALA & ANR.

DATE OF JUDGMENT: 03/03/1998

BENCH: M.K. MUKHERJEE, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT: THE 3RD DAY OF MARCH, 1998 Present: Hon'ble Mr, Justice M.K. Mukherjee Hon'ble Mr, Justice S.S. Mohammed Quadri M.P. Vinod , Adv. for the appellant E.M.S. Anam, G. Prakash, Advs. (M.T. George) Adv (N.P) for the Respondents. J U D G M E N T The following Judgment of the Court was delivered: M.K Mukherjee, J. Within 3-2/2 years of her marriage Sanalkumari, a young housewife, met with her death on October 5, 1987 by falling in a well in her matrimonial home. Alleging that it was a `dowry death' and that her husband (the appellant before us), mother-in-law and two sisters-in-law were responsible for the same a case was registered against them. Following the charge-sheet (challan) submitted by the Police and the committal enquiry held by a Magistrate, they were placed on trial before the Sessions Judge, Thiruvananthapuram to answer a charge under Section 304B I.P.C. The trial ended in an acquittal of all of them; and aggrieved thereby the State of Kerala filed an appeal and the mother of the deceased filed an appeal and the mother of the deceased filed a revision petition in the High Court. In disposing of them by a common judgment the High Court reversed the acquittal of the appellant and convicted him for the above offence. The acquittal of others was however upheld. The above judgment of the High Court is under challenge in these appeal preferred by the appellant. The prosecution case briefly stated is as follows: The appellant married the deceased, daughter of P.Ws. 1 (Leela Bai) and 2 (Madhavan Nadar) on June 7, 1984 in the Malamkara Syrian Catholic Church, Kanjiramkulam. At the time of the marriage he obtained by why of dowry 20 cents of land and 2 gold ornaments wroth 20 sovereigns. The document for the transfer of the land was executed by P.Ws 1 and 2 on the date of the betrothal. Even on the 3rd day after marriage the appellant started expressing dis-satisfaction on the quantum of dowry. As he had by then started construction of a building on a land belonging to his father availing a loan and the loan amount was exhausted, he approached P.Ws. 1 and 2 for the balance amount required to construct the building. Since P.Ws. 1 and 2 failed to meet his demand he and the other members of his family started harassing and ill-treating the deceased. In the meantime, the deceased had become pregnant. She was, however, not allowed to go to her parents' house prior to the delivery; and even after she was admitted in the hospital for the delivery, they were not intimated about it. The deceased gave birth to a female child on July 6, 1985. As a result of the mental torture during pregnancy, she developed post partum psychosis and was under the treatment of P.W. 12 (Dr. M.S Sivakaumar). Finding the pitiable predicament of the deceased P. Ws. 1 and 2 gave Rs. 50,000/- in case to the appellant as demanded and obtained a release of the 20 cents of land transferred in his name. Thereafter, the appellant put forth a demand for an additional amount of Rs. 10,000/- and 3 sovereigns. As that demand was not immediately met by P.Ws. 1 and 2 the appellant and other members of his family continued to torture and harass the deceased. When mt he torture became unbearable she committed suicide by jumping into the well in the house of the appellant. The appellant pleaded not guilty to the charge levelled against him and denied the prosecution story of demand of dowry and torture and harassment on that score. He asserted that he had a happy conjugal life and that her death was owing to an accidental fall in the well. Though during cross-examination of P.Ws. 1 and 23 it was not even suggested to them that the deceased was not his wife, in his examination under Section 313 Cr. P.C. he denied that fact

also. In support of their respective cases the prosecution examined 20 witnesses and the defence examined 6 witnesses. On consideration of the evidence adduced by the parties the trial Court first recorded the following findings:- (i) the deceased was the legally married wife of the appellant; (ii) she committed suicide on October 5, 1987; (iii) there was a demand of dowry in the form of landed property, cash and gold ornaments for the marriage between the appellant and the deceased; and (iv) a dowry problem was involved in the marriage relationship between he appellant and the deceased. The trial Court proceeded to consider whether the requirements of Section 304B(1) I.P.C. were factually established in the case with the following observations :- " As noticed above the demand for Rs. 50,000/- could not have continued beyond September, 1986. But P. Ws. 1 and 2 state that immediately after the transaction evidenced by Exhibit P3 and Exhibit D1 the Ist accused made a demand for a further payment of Rs. 10,000/- as given to the elder daughter and also wanted the deficit of 3 sovereigns in gold ornaments. P. W. 2 says that his daughter was in tears hearing this and she stated that if further amounts were to be paid to the Ist accused her younger brother and sisters would not get even 10 cents. If there had been such a demand for payment of Rs. 10,000/- or for 3 sovereigns gold ornaments and cruelty and harassment on that account till Sanalkumari's death, then it will be a "dowry death"." and answered the same in favour of the accused with the following words:- "Here the evidence shows that the squabbles between the parties over allotment of the dowry could have caused mental pain to the deceased before September, 1986. But there is no acceptable proof of demands for dowry thereafter and harassment on that account. The evidence about the incident in 1987 only indicate that the mother-in-law and the daughter-in-law possibly could not get along well but there is no proof of a rift between the Ist accused and the deceased. Thus the prosecution has not succeeded in proving that the accused persons were guilty of cruelty or harassment as contemplated by Sections 304B and Section 498A I.P.C. and that the death of Sanalkumari was a dowry death." In appeal the High Court concurred with all the findings recorded by the trial Court against the appellant but disagreeing with the above quoted finding in his favour passed the impugned judgment. Keeping in view the well settled principle of law that an order of acquittal ought not to be set aside unless it is found to be patently wrong and wholly unsustainable we have perused the entire evidence and the judgments of the Courts below. Our such exercise persuades us to hold, at the outset, that the concurrent findings of fact recorded b y the Courts below in favour of the prosecution are unassailable and need no interference whatsoever. We are therefore left with the question whether the High Court was justified in reversing the finding of the trial Court that there was no satisfactory evidence to prove that the deceased was subjected to cruelty or harassment by the appellant for or in connection with any demand for dowry. It stands established from the evidence, both oral and documentary, that since before the date of marriage the appellant had had been insisting upon dowry and on the betrothal day itself certain land had to be transferred in his favour. The evidence further establishes that at the time of marriage some gold ornaments were given to the deceased. Then again it si the concurrent finding of the Courts below that since the 3rd day after marriage the appellant was making further demands of dowry which ultimately compelled P.Ws. 1 and 2 to give him a sum of Rs. 50,000/- on September 10, 1986. The evidence on record also demonstrates that from before marriage and even till two years thereafter t he appellant was continuing with his demand for dowry and that the deceased was subjected to cruelty, both mental and physical, on that score since marriage. If in the background of the above facts and circumstances, the relevant evidence of P.Ws. 1 & 2 and P.W. 5 (Sudhakaran), a cousin of the deceased, is read there cannot be escape from the conclusion that the appellant continued with his demands for dowry and ill-treated the deceased till the month of September 1987. The patent infirmity in the judgment of the trial Court in this regard is that it considered the demand subsequently made in isolation and also failed to notice material evidence on record. P. Ws. 1 and 2 categorically stated that even after the sum of Rs. 50,000/- was paid the appellant made a demand for further payment of Rs. 10,000/- on the specious plea that they (P.Ws. 1 and 2) had at the time of the marriage of their elder daughter given Rs. 60,000/- as dowry and that he was yet to receive gold ornaments worth 3 sovereigns, as promised at the time of his marriage. It is also the evidence of P.W.2 that his daughter was in tears hearing this. The evidence of P.Ws.1 and 2 in this regard stands amply corroborated by the evidence of P.W. 5. He testified that on September 27, 1987 the appellant, accompanied by the deceased went to his house and told him that he (the appellant) was to get a sum of Rs. 10,000/- and 3 sovereigns as the balance of dowry and that he should intervene into the matter and persuade P.Ws. 1 and 2 to handover the same. In view of the insistence of the appellant he gave an assurance to him that he would talk of P.Ws. 1 and 2 and ensure that the money is paid and ornaments given to him. Thereafter, P.W.5 met P.WS. 1 and 2 and asked them to accede to the demand of the appellant. Before,

however, he could communicate to the appellant the outcome of his talk with P.Ws. 1 and 2 the deceased met with her death. The trial Court disbelieved the evidence of P.W. 5 as in the statement recorded under Section 161 Cr. P.C. he did not mention that he agreed to request P.Ws. 1 and 2 to meet the demand of the appellant nor did he mention that he went to the house of P.Ws. 1 and 2 and they told him that they would accede to the demand. Even if it is assumed that P.W.5's omission to make such statements amount to material contradictions, still then, it would not in any way impair his unrebutted evidence that the appellant came to his house and asked for the additional dowry. Having carefully gone through his evidence we find no reason whatsoever to disbelieve. The evidence of cruelty and harassment for non-payment of additional dowry is also furnished by C.W.1 (Sister Veronica), who at the material time was the Mother Superior of the local 'Daughters of Mary' Convent and known to the parties from before and P.W.6 (Gangadharan Nadar), an Advocate practising in the Courts at Nayyattinkara. C.W.1's good offices were requisitioned by P.Ws. 1 and 2 to bring harmony into the life of the deceased subsequent to September 10, 1986, and when C.W.1 was approached by them P.W.6 was present. Both of them stated that P.W.1 told them that the appellant was quarrelling with the deceased for getting more money as dowry. Both these witnesses are independent witnesses and there is no reason whatsoever to disbelieve them. While on this point we cannot also ignore t he stand taken by the appellant in the statement made by him under Section 313 Cr. P.C. that the deceased was not his wife. Obviously because his continuous and persistent demands for dowry were not being met by P.Ws. 1 and 2, the appellant went to the extent of even disowning the deceased. Needless to say such conduct of the appellant is an eloquent proof of his having subjected the deceased to mental cruelty. Unfortunately, all these aspects of the matter were not considered by the trial Court from a proper perspective. Having analysed the entire evidence on record we are in complete agreement with the High Court that the deceased was subjected to cruelty by the appellant for payment of dowry soon before her death for which she committed suicide. The conviction of the appellant under Section 304B I.P.C. must, therefore, be upheld. Since the sentence of rigorous imprisonment for seven years awarded to the appellant for his conviction is the minimum prescribed, the question of interfering with the same also does not arise. We, therefor, do not find any merit in these appeals dismiss the same.

PETITIONER: MEKA RAMASWAMY

Vs.

RESPONDENT: DASARI MOHAN AND ORS

DATE OF JUDGMENT: 08/01/1998

BENCH: G.T. NANAVATI, S.S.M. QUADRI

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T Nanavati. J. This appeal is filed by the father of Rajeeva, who was married to respondent No.1, in the month May, 1987 and who committed suicide within four months. This appeal is filed against three respondents who were tried for the offences punishable under Sections 306, Part B and 498A IPC and acquitted by the trial court and whose acquittal is confirmed by the High court. The fact that marriage of Rajeeva with respondent No.1 took place on 18.5.87 is not in dispute. It is also not in dispute that she committed suicide on 4.9.87. It was the prosecution case that she had committed suicide as a result of cruelty practiced by the respondents. It was alleged that respondent No.1 - the husband was having an affair with another woman and for that reason he also used to beat her often. It was also alleged that respondent Nos. 2 and 3 were demanding dowry from her and her father and as the articles demanded were not given they were ill- treating her. In order to prove its case, the prosecution examined the Parents of Rajeeva, her sister and her friend. The trial court after appreciating that evidence came to the conclusion that their evidence was not consistent and it did not inspire any confidence as regards the demand of dowry and ill-treatment. The trial court also held that the act of coming late at night by the husband did not amount to an act of cruelty, It, therefore, accredited the accused of all the charges levelled against them. The High court after reappreciating the evidence confirmed those findings. The High Court has held that the whole story regarding demand of dowry was unnatural and improbable in view of the fact that Rajeeva was married to respondent No.1 at the instance of respondent Nos. 2 and 3 that before or at the time of marriage they had not demanded any dowry and that they also knew that financial condition of the father of Rajeeva was not such that he could have given a scooter, a fridge, and almirah, a water filter and cash of Rs.2000/-. On going through the judgments of both the courts and the evidence, We find that the reasons given by the two courts for not placing reliance upon the aforesaid two witnesses are not at all improper, PW l - father of Rajeeva, happened to be a friend of respondent Nos. 2 and 3. His daughter was married to respondent No. 1 at the instance of respondent Nos.2 and 3. It was also not disputed that while fixing the marriage, no demand for dowry was made. In view of these facts and circumstances, it is not believable that within seven days of the marriage, they would have started demanding such articles. Even in the letter, Ex.P.4 produced by the friend of Rajeeva - PW 5, there is no mention of demand of dowry or ill-treatment, by any of respondents. The appeal is, therefore, dismissed. The bail bonds are ordered to be concealed.

PETITIONER: STATE OF MAHARASHTRA

Vs.

RESPONDENT: ASHOK CHOTELAL SHUKLA

DATE OF JUDGMENT: 01/08/1997

BENCH: G.N. RAY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T NANAVATI,J. This appeal, by the State of Maharashtra is Directed against the common judgment and order passed by the Bombay High Court, in Confirmation Case No. 4 of 1986 and Criminal Appeal No. 288 of 1986. The High Court reversed the Judgment of the Court of Sessions for Greater Bombay in Sessions Case No. 585 of 1984 convicting the respondent under section 498A IPC for subjecting his wife Vibha to cruelty and under section 302 IPC for causing her death. The respondent married Vibha on 29.5.1981. Vibha was the daughter of Chandrakant Shukla, an uneducated person, who started his life as a salesman, but eventually switched over to business and in due course of time became an owner of 15 flour mills and 3 buildings. He had four daughters including Vibha. Vibha had studied upto first year B.Sc.. Vibha's family was staying at Jogeshwari. At the time of his marriage the respondent was staying with his father Chotelal who was then an Assistant Commissioner of police in Bombay. They were staying in a Government flat at Dadar. The respondent was then serving in local concern. He had obtained some qualification in engineering from a foreign private institution. It was the prosecution case that the proposal had come from the respondent's side for the hand of Vibha an during further negotiations respondent's father had demanded dowry of Rs. 1,50,000. Ultimately, Chandrakant had agreed to pay Rs. 1,00,000 as dowry inclusive of jewellery, utensils and clothes. After their marriage the respondent and Vibha had started staying in a flat at Mulund which belonged to the respondent's father. Vibha's father chandrakant was required to pay money for utensils, gas connection and other articles required for setting up respondent's home at Mulund. It was also the prosecution case that on the very first visit by the parents of Vibha to the respondent's father's flat at Dadar, the respondent's father had insulted Vibha's mother Pushpa. He considered it belows his dignity and status to talk to the parents of vibha as they were uneducated. The prosecution case further was that in September or October, 1981 the respondent decided to give up the job and set up a plastic factory of his own. He wanted Vibha's father to give money for that purpose. Vibha's father to be a guarantor and also obtained his signatures on some loan papers. The respondent, however, did not invite him on the opening day of the factory; but, when he went on his own to the factory after about 10 days the respondents had told him that he needed more money to run his factory. thereupon he had paid Rs. 30,000 to the respondent. That was in November or December, 1981. Vibha was by that time pregnant so she went to her parent's house at Jogeshwari in January, 1982 for delivery. she gave birth to a female child on 27.3.1982. She had to undergo a Caesarean operation. even though the respondent and his parents were informed about the operation and birth of the female child none of them visited the hospital at the time of the operation. even thereafter the parents of the respondent did not visit the hospital to inquire about the health of Vibha or to see the female child. None of them remained present on 7th April, 1982 the day on which her naming ceremony was performed. The female child was named Rachna. After about four or five days Rachna became ill and was admitted in a hospital for about 15 days. Only on the next day the respondent had gone to the hospital but his parents had not visited the hospital at all. In may, 1982 the respondent had visited Vibha's father's house at jogeshwari and demanded rs. 5,000 as that amount was needed by him, vibha's father had paid that amount. On the same day vibha along with her

daughter Rachna and sister Sushma had gone to Vibha's in law's house at Dadar. Vibha was allowed to stay but the respondent had told sushma to take Rachna back and when Sushma had shown her inability to take the child back the respondent had told her to place the child under tyres of a car. On vibha's request not to quarrel Sushma had gone back with the child who was brought up thereafter by the parents of Vibha. It was also the prosecution case that by this time at the instance of the respondent Vibha had withdrawn rs. 15,000 from her bank account and paid to the respondent. During one of his visits to Vibha's parent's house the respondent had stated to them that he had no love and affection for Rachna or even for Vibha and that he was more interested in money. Right from September-October, 1981 the respondent and his parents were harassing her for money but she was tolerating the harassment with the hope of better days in future. On 26.11.1983 possibly because the situation became intolerable Vibha had telephoned her father that she was being harassed by the respondent and his parents and that he should come and take her and back immediately. When Vibha's father had gone there she was found crying. When he had inquired about the reason, respondent's father had replied that the respondent was in need of Rs. 30,000 and that he should pay that amount. When Vibha's father had told him to take his daughter back. He was thus forced to take Vibha back to his house at Jogeshwari. It was only because of the apology and assurance given by the respondent on the Next day, that he would treat her well that Vibha's parents had sent her back, even though she was not willing to go. Between 27.11.1983 and 22.6.1984 Vibha had visited her parent's house on 3 or 4 occasions to see her child and on all those occasion she had complained about the harassment given to her for the sake of money. On 22.6.1984 she had sent a telephonic message to her parents that her mother should be sent with her daughter at Mulund on the next day as she was thereafter to go to Dadar and stay there for few days. Therefore, on 23.6.1984, Vibha's mother Pushpa (PW-8) and her sister Usha (PW -2) along with the child went in their jeep to Mulund. the driver and Rachna first went up in a lift. The respondent did not allow the driver to enter the flat. By the time Pushpa and Sushma reached the flat child Rachna had started crying so they told the driver to take her down. Sushma pressed the bell for about 10 minutes but the respondent did not open the door. They could hear the respondent uttering abusive words from inside the flat. When the respondent opened the door and they entered the flat they found that Vibha was burning in flames and was lying on the floor of the drawing room. The respondent was found not taking any initiative for extinguishing the fire. So Sushma pulled a curtain and extinguished the fire. Thereafter when Pushpa inquired as to what had happened Vibha had told her that Ashok Ne Mujhe Jala Diya (Ashok has burnt me). Pushpa then requested he respondent at least to call a doctor. Thereupon the respondent went down, sat in the jeep of Vibha's father, went to a hospital and got himself admitted there instead of sending a doctor for treatment of Vibha. One of the neighbours of the respondent called a doctor who gave some preliminary treatment to Vibha. One of the neighbours of the respondent called a doctor who gave some preliminary treatment to Vibha and took her to Sion Hospital. By that time Dr. Shah made arrangements for Getting her admitted Vibha's father had also arrived thee and when he inquired from Vibha as to what had happened she told him that she was burnt by Ashok. The police was informed, a case was registered and ultimately the respondent was chargesheeted and tried for committing the offences punishable under Sections 498A and 302 IPC. The defence of the accused was that because he had become fat and bulky and his face was disfigured because of an attack of small pox after the marriage and as the parents of Vibha believed that he had taken to smoking and drinking and was in a bad company, they thought that they had committed a mistake in getting their daughter married with him and therefore wanted her to take a divorce. That was the reason why the parents of Vibha were not sending Rachna to his house even though he w as willing to keep her. As regards the incident or 23.6.1984, his version was that while he was talking with Prakash Tambe (PW-9) and Maheshchandra Tiwari (PW-10) in the drawing room driver Vijay Gari Yadav (PW-11) came there with Rachna. As Rachna started crying he shouted for Vibha. At that time Vibha rushed into the drawing room in burning condition. On seeing Vibha burning Tambe, Tiwari and Yadav ran out of the flat. At that moment Pushpa and Sushma entered the flat and started shouting 'Aag Laga Gaya'. While extinguishing the fire with the help of a curtain he received burn injuries on his hands and face, so he went to a private hospital and got himself admitted there. He did not explain the other incriminating circumstances. In order to prove the charge of cruelty, prosecution had relied upon the following circumstances and incidents, as disclosed from the evidence of Chandrakant (PW-7), Pushpa (PW-8), Usha (PW-2), Sushma (PW-12) and Mrs. Wagle (PW-13):- 1) insult of Vibha's parents by respondent's father when they had gone to the house of respondent's parents at Dadar, first time after the marriage of Vibha; 2) attitude of the parents of the respondent at the time of delivery of Vibha; 3) attitude of the parents of the respondent at the time of delivery of Vibha: 4) attitude of the parents of the

respondent while Rachna was required to be Hospitalised for a fortnight; 5) not allowing rachna to remain in their house when vibha returned after delivery; 6) no love and affection shown by the respondent ad his parents for rachna; 7) incident of 26th November, 1983 when the respondent and his father told Vibha's father to take her back; 8) demand of dowery and payments made by Vibha's father Chandrakant (PW-7); 9) not giving utensils and other household articles to Vibha by the parents of the respondent when she and the respondent started staying at the Mulund flat and requiring the parents of Vibha to purchase such articles; and 10) demands for money made by the respondent and his father for the business of the respondent. On the basis of first seven incidents/circumstances it was contended by the state that the respondent had by his wilful conduct caused Cruelty to Vibha. The remaining three circumstances were relied upon in support of it s contention that the respondent had harassed Vibha with a view to coerce her and her father to meet the unlawful demands for money and/or that the harassment was on account of failure by her and her father to meet such demands. The trial court held the first incident as not proved. Circumstance number 2 was held as no circumstance against the respondent. As regards the third circumstance the trial court, in absence of consistent evidence as to how the invitation was extended to the parents of the respondent and in view of the fact that they were not personally invited but the invitation was extended only over telephone, held that their not attending the function, was not indicative of any intention to harass. The trial court further held that in any case their indifference and improper attitude could not be regarded as a circumstance against the respondent. In absence of any evidence to show that the respondent himself was informed about the naming ceremony, the trial court held that his remaining absent could not be regarded as a wilful conduct intended to cause cruelty. Incidents/circumstances at serial numbers five six and seven were held proved. Fifth circumstance was held sufficient to establish cruelty under section 498A IPC. Sixth circumstance was held an act of torture amounting to cruelty. Seventh circumstance was held an act of cruelty. the trial court further held that merely because the respondent had apologised on the next day and assured good treatment to Vibha in future, the said act of cruelty did not get wiped out. Thus relying upon circumstances/incidents at serial numbers 5, 6 and 7 the trial court held that cruelty as explained by Explanation No. 1 of Section 498A was satisfactorily proved by the prosecution. Out of circumstances numbers 8,9 and 10 circumstance number 8 was held not proved. Circumstance number 9 was not considered as an unlawful demand amounting to cruelty. Only circumstance number 10 was held proved and the trial court considered such demands as acts of harassment contemplated by the second Explanation to section 498A IPC. In order to prove the charge of murder prosecution had relied upon:- i) Motive, as disclose by the evidence of Chandrakant (PW- 7), Pushpa (PW-8), Usha (PW-2), Sushma (PW-12) and Mrs. Wagle (PW-13); ii) evidence of Usha (PW-2) and Pushap (PW-8) as regards the events which took place on 23.6.1984; iii) evidence of hostile witnesses Prakash Tambe (PW-9), Maheshchandra Tiwari (PW-10) and Vijay Hari Yadav (PW- 11); IV) The circumstances disclosed by the scene of offence- panchnama; v) Immediate conduct of the respondent; and vi) Dying declarations and medical evidence. The trial court believed that the respondent was in need of money for his business, that he was harassing Vibha with a view to coerce her to get money from her father and that Vibha's father had shown his unwillingness to give more money to him. It, therefore, held that, after having lost hope of getting money from Vibha's father, the respondent had enough motive to kill her. The trial Court believed that the hostile witnesses Tambe (PW-9) and Tiwari (pw-10) had gone to the respondent's flat on 23.6.1984 at about 2.15 P.M. but held that it was not possible to accept their version about the main incident as they were not telling the truth. It disbelieved their version that when driver Yadav (PW-11) came, they opened the door of the flat whereupon Yadav came inside and talked with the respondent, and that when Rachna started crying the respondent shouted 'Vibha- Vibha' and at that time Vibha came into the drawing room in flames. After considering their evidence along with the evidence of driver Yadav (PW-11), who had also turned hostile, the trial court held that ; (i) driver Yadav had not entered the flat along with Rachna, (ii) Vibha had come to the drawing room in burning condition and thereafter Tambe and Tiwari had rushed out of the flat, and (iii) when tambe and Tiwari rushed out of the flat, driver Yadav , who had by that time reached the flat along with Rachna, had pressed the door bell, but the respondent closed the door and did not allow him to enter into the flat. The trial Court found the evidence of Usha (PW-2) and Pushpa (PW-8) as reliable and true and held that when they reached the 5th floor they saw tow persons hastily going down stairs, that they told driver Yadav to take rachna down stairs as she was crying that Usha pressed the door bell for about ten minutes, but the respondent did not open the door, that when he opened the door and they entered the flat they saw vibha burning and lying in the drawing room, that Usha (PW-2) pulled a curtain and tried to extinguish the fire and that Pushpa (PW-8) had to request the respondent to call a doctor. Considering their

evidence together will the picture emerging from the scene of offence Panchnama the trial court held as under:- "Considering the scene of offence it appears that Vibha was burnt not in the drawing room but major part of the burning has taken place in the passage between the drawing room and the bed room,. It is also in evidence of PW. 2 Mrs. usha that the oil can Court Article 4 was lying in drawing room and it is argued by the learned counsel for the prosecution that it is impossible to believe that a burning lady would carry oil can in her hands carrying it from bedroom to drawing room. therefore, it can safely be inferred that 5 or 10 minutes after P.W. 9 and P.W.. 10 Tiwari left the flat Vibha was burning and ultimately she fell down burning in the drawing room on the carpet due to which partly carpet was burnt and at that stage the fire must have been at its fag end and at that time the door was opened and therefore, curtain was used to extinguish the fire with the result that a very small patch of the curtain is found burnt. If the fire was in such huge flames at the time when P.W.. 8 were to extinguish it, the whole curtain would have got burnt. That also pre-supposes that earlier to that no attempt seems to have been made with the use of that curtain to extinguish the fire. Nothing can be said about the use of abusive words or shouts of Vibha witnesses it does appear that they had entered in the flat when Vibha was in the last stage of her burning. Because of which both these witnesses did not get any burn injuries The fact that sofa chair was also partly burnt court Article 1 is proved and there is no reason why we should disbelieve P.W. 2 Mrs. usha when she stated that accused received burn injuries on his own while extinguishing sofa chair. According to me the fire appeared to be so extensive coupled with the fact that Vibha appears to have burnt in the passage and as well as she had gone to the bath room and her saree was in pieces in the passage itself. If really any attempt was made to extinguish the fire the accused could have received extensive burn injuries. i, therefore, find that the evidence of P.W.. 2 Mrs. Usha and P.W.. 8 Mrs. Pushpa about the last fag end of the incident appears to be true and they could be believed to that extent." The trial court also believed the evidence of Usha and Pushpa that the respondent had not made any attempt to extinguish the fire or helped Usha in doing so and had not shown any initiative to call a doctor. It also held on the basis of the other evidence on record that instead of sending a doctor for treatment of Vibha he went to Dr. Mukhi's hospital, got himself admitted there even though he had only seven percent injuries, and made a false statement to the doctor that Vibha was already admitted in a hospital. The trial court also believed the two dying declarations. It, therefore, held that the respondent had killed her by pouring kerosene and setting her on fire. It further held that in view of the cruel treatment given to Vibha and the ghastly manner in which the respondent had committed the murder, proper punishment to be imposed was the sentence of death. It, therefore, convicted the respondent under Section 302 IPC and imposed the sentence of death. It also convicted the respondent under Section 498A IPC and order him to suffer rigorous imprisonment of three years. The High Court proceeded on the basis that, in order to prove the motive, prosecution had relied upon the following three circumstances; (i) unsuccessful effort of the respondent and his parents to extort as much money as they could from the deceased and her father Chandrakant; (ii) begetting a female instead of a male child by the deceased; and (iii) the treatment given to the deceased and her family by the respondent and his parents as the family members of the deceased belonged to a less sophisticated section of the society. The High Court believed the prosecution evidence regarding demands made by the respondents and his father, payment of Rs. 10,000/- by Vibha's father and withdrawal of Rs. 15,000/- from Vibha's account. It confirmed the finding of the trial court that the respondent was in need of money as he had to pay loan instalments. It also believed the incident of 26.11.83. it, however, held that (i) as the respondent had, on the next day, apologised to Vibha's parents and had given an assurance that he would treat her well and not harass her though he had money problems (ii) no incident of any significance had taken place thereafter, and (iii) even after the incident of 26.11.1983 the respondent and Vibha used to go to Dadar Frequently and were staying there and there was no evidence worth considering with regard to any physical ill treatment to Vibha, the first circumstance could not have provided any motive for the respondent to kill her. The other two circumstances were regarded as too weak. More over, in view of the evidence that Vibha did not like any criticism of the respondent, that she had declined to take a divorce even though her parents desired it and that she always hoped that her situation would improve in future, the High Court held that they on the contrary indicated that the respondent had no reason to cause her death. The High Court, after re-appreciating the evidence regarding the incident of burning on 23.6.84, recorded a contrary finding that it was a case of suicide and not homicide. Re appreciating the evidence of Tambe (PW-9) and Tiwari (PW-10) , the two hostile witnesses, the High Court held that they were not telling the truth but on the basis of their evidence and the other evidence what can be believed is: " that both of them had gone to the accused's flat at about 2.15 P.M. on that day. The door of the flat was opened by

Vibha. They had entered the flat, had talk with the accused and were sitting in the drawing room when Vibha came to the drawing room in flames." The High Court also found the evidence of Yadav (PW-11) unreliable except to the following extent: " The witness had driven Mrs. Shukla, Usha and the baby Rachna in a jeep from Jogeshwari i.e. from Chandrakant's place to Mulund i.e. the accused's house. Secondly, he had gone to the flat along with the baby, and at that time had seen both Tambe and Tiwari coming out of the flat. Thirdly, he had gone downstairs with the baby and when the accused came down, he had carried him upto the dispensary of Dr. Mukhi. He was asked by the accused to go away as soon as the accused got down from the jeep and he had returned with the jeep to Harsha Apartment. He had carried Dr. Shah, Mrs. Pushpa, and Vibha in the jeep from Harsha apartment to Sion Hospital and on the away had halted the jeep at Dr. Chandan's Hospital". The High Court further held that the circumstance, namely, that the act of burning had taken place while Tambe (PW-9) and Tiwari (PW-10) were in the flat, alone was sufficient to negative any hypothesis of homicide. The second reason given by the High Court for not accepting the prosecution version of homicide is that the respondent had gone inside the bed room for about 2 to 3 minutes only and , therefore, it was not probable that he could have burnt the deceased within that short time. the third reason given by the High Court for holding that the evidence was more consistent with the hypothesis of suicide is that if respondent had tried to burn Vibha she would have resisted and in that case there would have been some struggle and scuffle, shouts and screaming or at least audible exchange of words but nothing of that sort was heard by the visitors. The fourth reason indicating suicide was that the visitors had left the flat hurriedly after Vibha had appeared before them in flames. If Vibha was burnt by the respondent she would have asked for herself from the two visitors and they would have certainly rendered it. Moreover, Vibha was more agile than the respondent and , therefore, she could have run out of the flat. Partly relying upon the evidence of Tambe and Tiwari and what was indicated by the scene of offence panchnama the High Court held that in all probability a quarrel leading to a scuffle had taken place between Vibha and respondent before the visitors came to their flat and that while the respondent and the visitors were talking outside she poured kerosene over her body, lit herself and then rushed into the drawing room. It did not attach any importance to the find of kerosene can in the drawing room as the scene of offence panchnama was made at about 11.50 P.M., i.e., after about nine hours and anything could have transpired in the meanwhile. The High Court found the evidence of Usha (PW-2) and Pushpa (PW-8) inconsistent on two material points viz., who pulled the curtain and tried to extinguish the fire and the conduct of respondent. Usha's evidence was disbelieved as no burn injuries were received by her or pushpa. Moreover, the small burnt portion of the curtain indicated that very little fire was required to be extinguished after they had entered the flat. On the basis of the burn injuries by the respondent the High court inferred that the respondent must have tried to extinguish the fire and that was probably the reason why there was some lapse of time in answering the door bell. It also held that as Usha and Pushpa were called with Rachana and the respondent knew about that it was unreasonable to believe that he would have thought of killing her at that time . The High Court disbelieved both the dying declarations. One made to Pushpa was disbelieved mainly on the ground that after it was stated to have been made no further enquiries were made by Pushpa from her regarding the reason and the manner in which she was burnt and also because that was not stated to Dr. Shah by Vibha or Pushpa. The dying declaration was disbelieved on the ground that Dr. shah did not refer to the presence of Vibha's father Chandrakant near the jeep and that when Dr.Rajan Gupta (PW-16) had asked Vibha about the history of burns she had stated that she had received burns by kerosene and no further details were given by her. It further held that they were concocted with a view to boost up the charge against the respondent. The high Court believed that the conduct of the respondent was rather unnatural and unusual but it could not be regarded as an incriminating circumstance as the respondent must have been in confused state of mind in view of the circumstances in which he was placed and possibly because he must have thought that he would become the target of attack of his in laws and held responsible for Vibha's death. The High Court also held that the silence of the accused while answering certain questions put to him while he was examined under Section 313 of the Criminal procedure code was not indicating of his guilt as " it cannot be forgotten that prisoners in the dock mostly act on the advice they get from their lawyers" and again "our criminal jurisprudence does not require the accused to open his mouth even when he is completely innocent and no adverse inference can be drawn against him if he chooses not to speak." With respect to the charge under Section 498-A IPC the High Court held that no proper charge indicating the manner in which Vibha was cruelly treated was framed, as it was extremely Vague and "it had thus undoubtedly prejudiced the accused in the trial in no small measure". On merits it held that the circumstances which were relied upon for proving that charge were not sufficient to lead to that conclusion because: 1) The

circumstances that rachana was not allowed to stay with Vibha at her in-laws' house at Dadar was not even alleged to be a cause of suicide or any other physical or mental injury and no evidence was led to show that this incident had weighed on her mind and had led her to commit suicide. (2) The circumstance that neither the parents nor the respondent liked the female child, in absence of any evidence regarding its effect on the mind of Vibha, could not be regarded as an act of cruelty. (3) The incident of 26.11.83 became irrelevant as on the very next day the respondent had tendered an apology and Vibha had gone with the respondent again to her in laws place and no incident of harassment had taken place till 236.84 and particularly when Vibha had also gone to Dadar and stayed with parents in law on some occasions during that period. The High Court found that the inferences drawn and the findings recorded by the trial court were not justified. The High Court, therefore, allowed the appeal and set aside the conviction of the respondent for both the offences which were held proved by the trial court. Challenging the finding recorded by the High Court that this is a case of suicide and not of homicide the learned counsel of the State forcibly contended that the inferences drawn by the High Court from the proved facts and circumstances, are not at all justified. He submitted that if Vibha wanted to commit suicide she would not have run from the bed room to the drawing room. He also submitted that signs of scuffle preceding burning of Vibha not opening the door of his flat for about ten minutes, find of empty plastic can of kerosene in the drawing room, immediate subsequent conduct of the respondent and a false statement made by him to the doctor, prove beyond any doubt that the respondent had set her ablaze. In the alternative, it was contended by him that even on the basis that Vibha committed suicide, the High Court ought to have held that it was because of the cruel treatment given by the respondent and, therefore, he was held guilty under Section 498A IPC. He submitted that the High Court having believed that there were demands for money from Vibha and her father, that her father was unwilling to give more money to the respondent, that the respondent was not showing any affection for Rachna, that Rachna was not allowed to stay with Vibha at his place and that on 26.11.1983 in the respondent had driven out Vibha from his house as his father was not willing to pay Rs. 30,000/-, ought to have further held that Vibha committed suicide because she was subjected to harassment and cruelty by the respondent. On the other hand, it was contended by the learned counsel for the respondent that this being an acquittal appeal what this court has to consider is whether the view taken by the High Court, after considering the entire evidence and the circumstances found proved, has recorded the finding that they do not lead to the only conclusion that the respondent had caused the death of Vibha and that this was not a case of Suicide. Moreover, the High Court has given good reasons in support of its findings. The High Court has recorded the finding that harassment or cruelty was not really the cause for committing suicide. He further submitted that as there was no incident of physical ill treatment or any type of harassment between November, 1983 and June, 1984 and as the evidence disclosed that Vibha and the respondent were to go to her in laws' flat at Dadar because she was not keeping good health, harassment or cruelty being the because of suicide becomes very doubtful. Therefore, it cannot be said that the view taken by the High Court is unreasonable. In view of the rival submissions and seriousness of the offence we have scrutinised the evidence and examined the judgments of both the courts below with due care and caution. it is very unfortunate that a young girl without any fault of her lost her life. It is also a matter of shame that the respondent did not treat his wife properly because her father was not willing to give more money had for that reason on one occasion he had driven her out of his house and also because she had given birth to a female child. The facts and circumstances which can be accepted as proved no doubt create a strong suspicion that on the fateful day the respondent had, after some quarrel, poured kerosene over her and put her to flames. But this is a case of circumstantial evidence and on re appreciation of the evidence the High Court has found it fit to acquit the respondent. Therefore, unless, we come to the conclusion that the view taken by the High Court is so unreasonable as to warrant interference by this court it will not be proper to interfere with the order of acquittal, only because on re-appreciation of evidence it is possible to take a different view. On the question of homicide what we find is that the high Court heavily relied upon the fact that prosecution witnesses Tambe and Tiwari were in the flat when the incident of burning of Vibha took place. The prosecution evidence shows that they hurriedly left the flat and did not wait for putting on their shoes before leaving the flat . This conduct of Tambe and Tiwari indicates that something very unusual had taken place in their presence and that had obliged them to leave the flat in such a hurry. If they were told to leave the flat either because the respondent told to leave the flat either because the respondent told them that he had to go out or because there was some exchange of words between Vibha and the respondent, they would not have left in such a manner. If it is believed that the respondent had left them in the drawing room and gone inside for about two or three minutes had

then Vibha was seen rushing into the drawing room in burning condition, as deposed by these two witnesses, then also it becomes very doubtful if the respondent would have tried to burn his wife while outsiders were present in his house. Moreover, the respondent was aware that her mother in law was to come with Rachna at about that time and, therefore, it was unlikely that the respondent would have thought of murdering Vibha at that point of time. All these factors were taken into consideration by the High Court and, therefore, the finding recorded by it cannot be regarded as unreasonable. There is no evidence on record to show when the scuffle, as indicated by what has been recorded in the scene of offence panchnama, had taken place. There is some substance in the contentions raised by the learned counsel for the State that Vibha, if she really wanted to commit suicide, would not have run out of the bed room and that she must not have carried the plastic can of kerosene, as it would have immediately caught fire and would not have been found in the drawing room in the condition in which it was found. These are indeed incriminating circumstances suggesting that the respondent followed with the said tin and poured kerosene over her in the drawing room and placed it there. But eh possibility of the said plastic can having been placed there by some one else cannot be ruled out. It is true, as submitted by the learned counsel for the State, that the reason given by the High Court that planting of the plastic can cannot be ruled out because of the time lag between the time when the incident took place and the scene of offence panchnama was made, is not quite correct. The mother of Vibha along with Vibha and other persons had left the flat within a short time for taking her to a hospital and at that time they had closed the door and the flat could be and was in fact opened only after the police obtained the key of the flat from the respondent. Therefore, it was not correct to say that during these six to eight hours anybody could have planted the said plastic can in the drawing room. But even during that short period besides Vibha's mother Pushpa, her sister Usha, other persons had gathered in the flat an d anyone of them could have placed the said plastic can at the place where it was found. If respondent had carried the said can to the drawing room and poured more kerosene over Vibha more damage would have been caused to the articles lying in the drawing room. The evidence discloses, and that is what the High Court has found, that the damage caused to the articles lying in the drawing room was very less. We also find considerable force in the submission made by the learned counsel for the state that the conduct of the respondent soon after the incident was highly unusual, that he made a false statement to the doctor to whose hospital he had gone for treatment and that he has not given any explanation in his 313 statement as regards some of the highly incriminating circumstances and they are all indicative of the fact that he had caused the death of Vibha. It was submitted by the learned counsel that if this was a case of suicide by Vibha then the respondent would have tried to put out the fire and in that case he would have received more burn injuries than what were found on his person. The curtain with which he had tried to put out the fire had only a small burnt portion and that indicates that he had tried to extinguish the fire only at the last moment. and that too to make a show that he was not guilty, particularly when he found that mother of Vibha had already arrived. It was also submitted that if it was really a case of suicide he would have at once tried to secure medical help for Vibha. Instead of doing that he got himself admitted in a hospital. This unusual conduct of the respondent and his failure to explain some of the incrimination circumstances create a strong suspicion about his involvement but it does not lead to the only conclusion that Vibha had not committed suicide but he had caused her death. He was the only person staying in the flat with Vibha and , therefore, he might have felt that he would be falsely involved by his in laws. If in this state of mind he did not do what he was expected to do that cannot lead to the conclusion that he behaved in that manner because he had committed the murder of Vibha. The High Court has considered all these factors and given good reasons for holding that this was not a case of homicide., We also find that the reasons given by the High Court for not relying upon the two dying declarations are not improper. Therefore, the finding recorded by the High Court, that the prosecution has failed to establish beyond reasonable doubt that the respondent caused her death, does not call for any interference. Even with respect to the evidence of harassment and cruelty, the High Court has held that it is insufficient for holding that Vibha was driven to commit suicide because of harassment and cruel treatment by the respondent. The fact that after the incident of 26.11.1983 the respondent had approached Vibha and her parents on the very next day and apologised and no other incident either of demand of money or ill treatment had taken place after that date makes it doubtful if harassment and cruel treatment given by the respondent was the immediate cause of committing suicide. Before a person can be convicted under Section 498A IPC the prosecution has to prove that he committed acts of harassment of cruelty as contemplated by that Section and that harassment or cruelty was the reason for the suicide. What we find in this case is that no specific charge was framed against the respondent. As rightly pointed out by the High Court no evidence was led to show that

either her separation from Rachna or the incident of 26.11.1983 had weighed heavily on her mind and that had driven her to commit suicide. Neither the parents nor the sister of Vibha have deposed about any complaint made by her regarding any ill treatment by the respondent after the incident of 26.11.1983. Moreover, the evidence of these witnesses show that Vibha was to go to her in laws place at Dadar and stay with them as she was not keeping good health. If she was under mental strain because of any ill treatment or harassment by the respondent or her in laws she would have preferred to go and stay with her parents. These are the factors which were taken into consideration by the High Court for arriving at the conclusion that the prosecution has failed to establish beyond reasonable doubt that Vibha committed suicide because of ill treatment or cruelty by the respondent. The view taken cannot be regarded as unreasonable. In the result the appeal is dismissed and the bail bonds of the respondent are ordered to be cancelled.

PETITIONER: MADHU BALA

Vs.

RESPONDENT: SURESH KUMAR

DATE OF JUDGMENT: 23/07/1997

BENCH: M.K. MUKHERJEE, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T M.K. MUKHERJEE, J. Special leave granted. Heard the learned counsel for the parties. On February 18, 1988 the appellant filed a complaint against the three respondents, who are her husband, father- in-law and mother-in-law respectively, before the Chief Magistrate, Kurukshetra alleging commission of offences under Sections 498A and 406 of the Indian Penal Code [I P C for short] by them. On that complaint, the learned Magistrate passed an order under Section 156(3) of the Code of Criminal Procedure (code for short) directing the police to register a case and investigate into the same. Pursuant to the said direction Thaneswar Police Station registered a case being FIR No. 61 of 1988 and on completion f investigation submitted charge sheet (police report) against the three respondents under Section 198A and 406 I P C. The learned Magistrate took cognizance upon the said charge- sheet and thereafter framed charge against the three respondents under Section 406 I P C only as, according to the learned Magistrate, the offence under Section 198A I P C was allegedly committed in the district of Karnal. Against the framing of the charge the respondents moved the Sessions Judge in revision, but without success. Thereafter on January 29, 1994 the appellant filed another complaint against the respondents under Section 498A IPC before the Chief Judicial Magistrate, Karnal and on this complaint the learned magistrate passed a similar order under Section 156(3) of the Code for registration of a case and investigation. In compliance with the orders FIR No. 111 of 1994 was registered by the Karnal Police Station and on completion of investigation charge-sheet was submitted against the three respondents under Section 498A I.P.C.; On that charge sheet the learned Magistrate took cognizance of the above offence and later on framed charge against them in accordance with Section 240 of the Code. While the above two cases were being tried the respondents filed petitions under Section 482 of the Code before the Punjab & Haryana High Court for quashing of their proceedings on the ground that the orders passed by the Chief Judicial Magistrates of Kurukshetra and Karnal directing registration of cases in purported exercise of their power under Section 156 (3) of the Code were patently wrong and consequently all actions taken pursuant thereto were illegal. The contention so raised found favour with the High Court; and by the impugned judgment it quashed the orders of the Chief Judicial Magistrates of Kurukshetra and karnal dated February 18, 1988 and January 29, 1994 respectively, pursuant to which cases were registered by the police on the complaints of the appellant, and the entire proceedings of the two cases arising therefrom. According to the High Court, under Section 156(3) of the Code a Magistrate can only direct investigation by the police but he has no power to direct registration of a case'. in drawing the above conclusion, it relied upon the judgments of this Court In Gopal Das Sindhi & Ors. vs. State of Assam (AIR 1961 SC 986) and Tula Ram & Ors. vs. Koshore Singh (AIR 1977 SC 2401) and some judgments of the Punjab and Haryana High Court which according to it, followed the above tow decisions of this court. In our considered view, the impugned judgment is wholly unsustainable as it has not only failed to consider the basic provisions of the Code but also failed to notice that the judgments in Gopal Das (supra) and Tula Ram (supra) have no relevance whatsoever to the interpretation or purport of Section 156(3) of the Code. The earlier judgments of the Punjab & Haryana High Court, which have been followed in the instant case also suffer from the above two infirmities. Coming first to

the relevant provisions of the Code, Section 2 (d) defines 'complaint' to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code that some person, whether known or unknown has committed an offence, but does not include a police report. Under Section 2 (c) cognizable offence means an offence for which, and cognizable case means a case in which a police officer may in accordance with the First Schedule (of the Code) or under any other law for the time being in force, arrest without warrant. Under Section 2(r) police report means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. Chapter XII of the Code comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, inter alia that the officer uncharge of police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing shall be signed by the person giving it and the substance thereof shall be entered in book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 156 of the Code with which we are primarily concerned in these appeals reads as under: "(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned." On completion of investigation undertaken under section 156(1) the officer in charge of the Police Station is required under Section 173(2) to forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the State Government containing all the particulars mentioned therein. Chapter XIV of the Code lays down the conditions requisite for initiation of proceedings by the Magistrate. Under sub- section (1) of Section 190 appearing that Chapter any Magistrate of the first class and any Magistrate of the second class specially empowered may take cognizance of any Magistrate of the first class and any Magistrate of the second class specially empowered may take cognizance of any offence (a) upon receiving a complaint of facts which constitutes such offence; (b) upon a police report of such facts; or (c) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. Chapter XV prescribes the procedure the Magistrate has to initially follow if it takes cognizance of an offence on a complaint under section 190(1)(a). From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under Section 156(3) for investigation. Once such a direction is given under sub section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a police report in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(b) but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be police report in view of the definition of complaint referred to earlier and since Section 156(1) has to culminate in a police report the complaint - as soon as an order under Section 156 (3) is passed thereon - transforms itself to a report given in writing within the meaning of Section 154 of the Code, which id known as the First information Report (F I R). As under Section 156 (1) the police can only investigate a cognizable case it has to formally register a case on that report. The mode and manner of registration of such cases are laid down in the Rules framed by the different State Governments under the Indian Police Act, 1861. As in the instant case we are concerned with Punjab Police Rules, 1934 (Which are applicable to Punjab, Haryana, Himachal Pradesh and Delhi) framed under the said Act we may now refer to the relevant provisions of those Rules. Chapter XXIV of the said Rules lays down the procedure an officer-in-charge of a Police Station has to follow on receipt of information of commission of crime. Under Rules 24.1 appearing in the Chapter every information covered by Section 154 of the Code must be entered in the First information Report Register and substance thereof in the daily diary. Rule 24.5 says that the First information Report Register shall be a printer book in Form 24.5(1) consisting of 200 pages and shall be completely filled before a new one is commenced. It further requires that the cases shall bear an annual serial number in each police station for each calender year. The other requirements of the said Rules need not be detailed as they have no relevance to the point at issue. From the foregoing discussion it is evident that whenever a magistrates directs an investigation on a 'complaint' the police has to register a cognizable case on that complaint treating the same as the FIR and comply with

the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156(3) legally unsusteinable. Indeed, eve if Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to Investigate into a cognizable 'case' and the Rules framed under the Indian Police Act, 1861 it (the Police) is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the Police would be to register a case at the police station treating the complaint as the First Information Report and investigate into the same. Adverting now to the two cases of this Court on which reliance has been placed by the High Court we find that in the case of Gopal Das (supra) the facts were that on receipt of a complaint of commission of offences under Section 147,323,342 and 448 of the Indian Penal Code, the Additional District Magistrate made the following endorsement: " To Shri C. Thomas, Magistrate 1st class, for disposal." On receiving the complaint Mr. Thomas directed the officer In- charge of the Gauhati Police Station to register a case, investigate and if warranted submit a charge sheet. After investigation police submitted a charge sheet under Section 448 of the Indian Penal Code and on receipt thereof the Additional District Magistrate forwarded to Shri R. Goswami, Magistrate for disposal. Shri Goswami framed a charge under Section 448 of the Indian Penal Code against the accused therein and aggrieved thereby the accused first approached the revisional Court and, having failed there, the High Court under Article 227 of the Constitution of India. Since the petition before the High Court was also displeased they moved this Court. The contention that was raised before this Court was that Mr. Thomas acted without Jurisdiction in directing the police to register a case to investigate it and thereafter to submit a charge sheet, if warranted. The steps of reasoning for the above contention was that since the Additional District Magistrate had transferred the case to Mr. Thomas for disposal under Section 192 of the Code it must be said that the former had already taken cognizance thereupon under Section 190(1)(a) of the Code. Therefore, he (Mr. Thomas) could not pass any order under Section 156(3) of the Code as it related to a pre-cognizance stage; and he could deal with the same only in accordance with Chapter XVI. In negativing this contention this Court held that the order of the Additional District Magistrate transferring the a case to Mr. Thomas on the face of it did not show that the former had taken cognizance of any offence in the complaint. According to this Court the order was by way of an administrative action, presumably because Mr. Thomas was the Magistrate before whom ordinarlly complaints were to be filed. The case of Gopal Dass (supra) has, therefore, no manner of application in the facts of the instant case. It is interesting to note that the order that was passed under Section 156(3) therein also contained a direction to the Police to register a case. In Tula Ram's (supra) the only question that was raised before this Court was whether or not a Magistrate after receiving a complaint and after directing investigation under Section 156(3) of the Code and on receipt of the 'Police report' from the police can issue notice to the complainant, records his statement the statements of other witnesses and then issue process under Section 204 of the Code. From the question it self it is apparent that the said case related to a stage after police report under Section 173(2) of the Code was submitted pursuant to an order under Section 156(3) of the Code and not to the nature of the order that can be passed thereunder [Section 156(3)]. The cases of the Punjab & Haryana High Court referred to by the learned Judge in the impugned judgement need not be discussed in details for they only lay down the preposition that under Section 156(3) a Magistrate can only direct investigation but cannot direct registration of a case for no such power is given to him under that section. We repeat and reiterate that such a power inheres in Section 156(3), for investigation directed thereunder can only be in the complaint filed before the Magistrate on which a case has to be formally registered in the Police Station treating the same as the F.I.R If the reasoning of the Punjab and Haryana High Court is taken to its logical conclusion it would mean that if a Magistrate issues a direction to submit a report under Section 173(2) of the Code after completion of investigation while passing an order under Section 156(3) it would be equally bad for the said Section only 'directs investigation' and nothing more. Needless to say, such a conclusion would be fallacious, for while with the registration of a case by the police on the complaint, the investigation directed under Section 156(3) commences, with the submission of the 'Police report' under Section 173(2) it culminates. On the conclusions as above we set aside the impugned judgment and orders of the High Court and direct the concerned Magistrates to proceed with the cases in accordance of law. The appeals are accordingly allowed.

PETITIONER: KRISHNAN & ANR.

Vs.

RESPONDENT: KRISHNAVENI & ANR.

DATE OF JUDGMENT: 24/01/1997

BENCH: K. RAMASWAMY, S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T K. Ramaswamy, J. Leave granted. This appeal by special leave arises form the judgment dated 26th March, 1992, passed by the Madras High Court in Crl. O.P. No. 10678 of 1991 The Facts relevant for out purpose are that in a litigation between Krishnaveni, the first respondent and Tulasiammal , The Second wife of her husband, Chinnikrishnan, the first appellant, Krishnan had offered his services and promised to help the first respondent in conducting the said litigation and asked her to execute a power of attorney for that purpose in his favour, It is the case of the first respondent that on faith of the promise of the first appellant, she went to sub-Registrar's office at Madurai where the first appellant made her sign on some stamp papers in the presence of the sub Registrar. Later it transpired the first appellant had got her signature on an agreement to sell her land (which indicated that she had received Rs. 20,000/- and not the power of attorney as she was given to under stand. According to the first respondent, when the appellants came to her house on April 15 1989 and demanded money purported to have been spent by the first appellant in the litigation and wanted her to execute the sale deed in her favour, she made enquiries and came to know that the first appellant had played fraud upon her with dishonest intention to cheat her and obtained her signatures on the purported agreement to sell dated September 13, 1986, consequently, She lodged a complaint with the police on April 24, 1989 and the crime came to registered as Crime No. 31 of 1989 under Section 420 and 406 IPC, The Sub-Inspector after investigation submitted a report stating that the case was essentially of civil nature and no criminal case was made out. There upon the first respondent feeling aggrieved, brought the matter to the notice of superintendent of Police, Madurai and requested him to assign the same to another officer to make an honest investigation. Accordingly, the Inspector of Police, Crime Branch was entrusted with the investigation after through investigation, the inspector filed the charge- sheet under Section 173 Crl P.C. on December 4, 1989 which disclosed commission of the offences under sections 420 and 406 IPC. On receipt thereof, the Judicial magistrate No.1, Madurai had taken cognizance of the offences and issued summons on February 22, 1990. Thereupon the appellants filed an application to discharge them. The Magistrate on the said application discharge them/. The magistrate on the said application discharged the accused in Criminal M.P. NO. 262 OF 1990 by order dated 22nd February, 1990 The respondents feeling aggrieved thereby, Filed Revision Applications before the Sessions Judge and the matter was transferred to the First Additional Sessions Judge who by order dated March 26, 1991 dismissed the revision petition . On a further Revision Filed by the first respondent in the High Court, by Order dated March 26,1992 it allowed the Revision by the impugned order and set aside the order of the Magistrate and directed him to consider the facts on merits at the trail, Thus this appeal buy special leave. When the matter had come up for hearing upon consideration of the decision cited by the learned counsel for the appellants, in particular Dharampal & ORS. V/S Ramshri (Smt.) & Ors. [(1993)] 1 SCC 435 and Rajan Kumar Manchanda V/s State of Kerala {(1990 supp. SCC 132) the matter was referred to a three-Judge Bench. Thus the appeal has come up before us. Shri Krishnamurthy, learned counsel for the appellants, contended that the State as well as the respondents having availed of the remedy of revision under Section 397 of the code of Criminal Procedure, 1973 {for short, the "code"} the high court

was devoid of power sand jurisdiction to entertain the second revision due to prohibition buy section (3) of Section 397 of the Code, therefore the impugned order is one without jurisdiction and vitiated by manifest error of law warranting interference, In support of his contention, the learned counsel placed strong reliance on the abovesaid two decisions of this court. The further contended that when there is prohibition under section 3297 (3) of the code, the exercise of the power being in violating thereof, is non est. he further placed reliance on the decision of his court in Simrikhia V/S. Dolley Mukherjee & Chhabi Mukherjee & Anr, [(1990) 2 SCC 437] and Deepti @ Aarati Rai V/s Akhil Rai & Ors [JT 1995 (7) SC 175]. The question therefore, is; whether the high court has power to entertain a Revision under section 397 (10 in respect of which the sessions judge has already exercised revisional power and whether under the circumstances of the present case, it could be considered to be one under section 482 of the Code? Chapter XXX of the code relating to reference and revisional powers of the High courts, consists of the Section 395 to 405 Under the codes, the revisional power of the High Court has concurrently been given by operation of sub-section (1) of section 397 to Sessions judge, to call for the records of any proceeding and to exercise powers of revision . The power is given to examine the record of any proceedings before nay inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence , or order, recorded or passed, and as to the regularity of any proceeding of such inferior Court. Sub-Section (3) thereof provided that if an application under the said section has been made by any person either to the high court or to the Sessions judge no further application by the same Person shall be entertained by the other of them.. This was brought by way of amendment to section 435 of the predecessor Code i.e., Act V of 1898 . Section 401 of the code gives to every High Court power of revision Sub-Section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledges the High Court may in its discretion, exercise any of the power conferred on a court of Appeal by Sections 386 389 and 391 and on a court of Sessions by section 307 Apart form the express power sunder section 397 (1) the High Court has been invested with Suo motu power under Section 401 to exercise revisional power. In addition, section 482 saves inherent powers of the High Court Postulating that "nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this code, or to prevent abuse of the precess of any court or otherwise to secure the ends of justice" Section 483 enjoins upon every high Court to so exercise its continuous superintendence over the courts of judicial magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cased by such magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount impotance to examine correctness, legality or propriety of any finding, sentence or order recorded or passed as also regularity of the proceedings of all inferior criminal courts. It is seen that exercises of the revisional power by the high court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of judicial Magistrate are inferior criminal courts to the sessions judge. ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 And section 401 are required to be read together. section 397 gives powers to the High Court to call for the records as also suo motu power under section 401 to exercise the revisional power on the grounds mentioned therein, i.e. to examine the Correctness, legality or propriety of any finding sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under section 401 of the Code. The revisional. power of the high Court merely conserves the power of the high Court to see that justice is done is accordance with the recognised rules of criminal jurisprudence and that its subordinates courts do not exceed the jurisdiction or abuse the power vested in them under the code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice. The object of Section 483 and the purpose behind conferring the revisional power under section 397 read with section 401 upon the High court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to met out justice or to correct irregularity of the procedure or to met out justice. In addition, the inherent power of the High Court is preserved by Section 462 . The Power of the High court therefore is very wide, However , High Court must exercise such power sparingly and cautiously when the sessions judges has simultaneously exercised revisional power under Section 397 (1) however, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or

order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or tow correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order. The inherent power of the High Court si not one conferred by the code but one which the high Court already has in it and which is preserved by the Code, the object of Section 397 (3) is to put a bar on simultaneous revisional applications to the High Court and the court of Sessions so as to prevent unnecessary delay and multiplicity of proceeding as seen , under sub-section (3) of section 397 revisional jurisdiction can be invoked by" any person" but the code has not defined the word 'person', However, under section 11 of the IPC, 'PERSON' INCLUDES ANY COMPANY OR ASSOCIATION or body of person whether incorporated or not. The word 'person' would, therefore include not only the natural person but also juridical person in whatever form designated and whether incorporated or not By implication the State stands excluded form the purview of the word 'person' for the purposes of the limiting its right to avail the revisional power of the High Court under Section 397 (!) of the code for the reason that the Sate, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. The Object behind criminal law is to maintain law, public order, stability as also peace and progress in the society, Generally, Private complaint under section 202 of the code are laid in respect of non-cognizance offences or when it is found that police has failed to perform its duty under Chapter XII of Code or to report as mistake of fact. In view of the principle laid down in the maxim Ex debito justitiae i.e. in accordance with the requirements of justice, the prohibition under section 397 (3) on revisional power given to the High Court would not apply when the state seek s revision under section 401 . So the state is not prohibited to avail the revisional power of the high Court under section 397 (1) read with section 401 of the code. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted. In Madhu Limaye V/s. The State of Maharashtra [(1977) 4 SCC 551], a three-Judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397 (2) of the Code. This Court held that the bar on the power of revision was put in order to facilitate expedient disposal of the case but in Section 482 it is provided that nothing in the Code which would include Section 397 (2) also, shall be deemed to limit or affect the inherent powers of the High Court. On an harmonious construction of said two provisions in this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party. In that case, when allegation of defamatory statements were published in the newspapers against the Law Minister, the State Government had decided to prosecute the appellant for offence under Section 500, IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to take trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that Court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on the maintainability, this Court held that power of the High Court to entertain the revision was not taken away under Section 397 or inherent power under Section 482 of the Code. In V.C. Shukla V/s. State through C.B.I. (1980) 2 SCR 380 at 393], a four-Judge Bench

per majority had held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Session Court under Section 397 (1) of the Code. In Rajan Kumar Manchanda case (supra), the case relating to release of a truck from attachment, obviously on filing of an interlocutory application. It was contended that there was prohibition on the revision by operation of Section 397 (2) of the Code. In that context it was held that it was not revisable under section 482 in exercise of inherent powers by operation of sub-section (3) of Section 397. On the facts in that case, it was held that by virtue of provisions contained in section 397 (3), the revision is not maintainable. In Dharam Pal case (supra) which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts in that case it could be said that the learned Judges would be justified in holding that it was not revisable since it was prohibitory interim order of attachment covered under Section 397 (2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in Madhu Limaye's case (supra) as upheld in V.C. Shukla's case (supra) and also in view of our observations stated earlier. The ration in Deepti's case (supra) is also not apposite to the facts in the present case. To the contrary, in that case an application for discharge of the accused was filed in the Court of Magistrate for an offence under Section 498A, IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegation constituting the offence under Section 498-A, the High Court without applying its mind had discharged the accused. On appeal, this Court after going through the record noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498A, IPC. The High Court, since it failed to apply its mind, has committed an error or law in discharging the accused leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court has set aside the order of the High Court and confirmed that of the Magistrate. The ratio of Simrikhia's case (supra) has no application to the facts in this case. Therein, on a private complaint filed under Section 452 and 323, IPC the Judicial Magistrate, First Class had taken cognisance of the offence. He transferred the case for inquiry under Section 202 of the Code to the Second Class Magistrate who after examining the witnesses issued process to the accused. The High Court exercising the power under Section 482 dismissed the revision. But subsequently on an application filed under Section 482 of the Code, the High Court corrected it. The question whether the High Court could was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ration therein as stated above, has no application to the facts in this case. In view of the above discussion, we hold that through the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be in appropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the in the context of the revisional power under Section 397 (1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal. The appeal is accordingly dismissed.

PETITIONER: STATE OF ORISSA

Vs.

RESPONDENT: SHARAT CHANDRA SAHU & ANR.

DATE OF JUDGMENT: 08/10/1996

BENCH: KULDIP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT: O R D E R S.Saghir Ahmad, J. Respondent No.1 is the husband of respondent No.2 who made a complaint in writing to the Women's Commission setting out therein that respondent No.1 had contracted a second marriage and had thus committed an offence punishable under Section 494 I.P.C.. It was also alleged that eversince the marriage with her, he had been making demands for money being paid to him which amounted to her harassment and constituted the offence punishable under Section 498A I.P.C. for which respondent No.1 was liable to be punished. 2. The Women's Commission sent the complaint to police station where G.R.Case No.418 of 1993 was registered against respondent No.1. The police investigated the case and filed a charge-sheet in the court of Sub-Divisional Judicial Magistrate, Anandpur, who, after perusal of the charge- sheet, framed charges against respondent No.1 under Section 498A as also under Section 494 IPC. 3. Aggrieved by The framing of the charge by the Sub- Divisional Judicial Magistrate, Anandpur, respondent No.1 filed a petition (Criminal Misc. Case No.1169/94) under Section 482 of the Code of Criminal Procedure (for short, Code, in the Orissa High Court for quashing the proceedings and the charges framed against him. The High Court by its impugned Judgment dated 3.5.95 partly allowed the petition with the findings that since respondent No.2 had not herself personally filed the complaint under Section 494 I.P.C., its cognizance could not have been taken by the Magistrate in view of the provisions contained in Section 198(1) of the Code. Consequently, the charge framed by the Magistrate under Section 494 I.P.C. was quashed but the charge under Section 498A I.P.C. was maintained and the petition under Section 482, Criminal Procedure Code to that extent was dismissed. 4. It is this Judgment which has been challenged before us by the State of Orissa. We have heard the learned counsel for the parties. 5. The Judgment of the High Court so far as it relates to the quashing of the charge under Section 494 I.P.C., is wholly erroneous and is based on complete ignorance of the relevant statutory provisions. 6. The first Schedule appended to the Code indicates that the offence under Section 494 I.P.C. is non-cognizable and bailable. It is thus obvious that the police could not take cognizance of this offence and that a complaint had to be filed before a Magistrate. 7. Relevant portion of Section 198 which deals with the prosecution for Offences against Marriage provides as under: "198. Prosecution for offences against marriage.- (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence: Provided that- (a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf; (b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf; (c) there the person aggrieved by an offence punishable under [Section 494 or section 495) of the Indian Penal Code (45 of 1860) is the wife, complain may be made on her behalf by her father, mother, sister, son or daughter or by her father's

or mother's brother or sister [,or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.] (2)..... (3)..... (4)..... (5)..... (6)..... (7)..... . 8. These provisions set out the prohibition for the Court from taking cognizance of an offence punishable under Chapter XX of the Indian Penal Code. The cognizance, however, can be taken only if the complaint is made by the person aggrieved by the offence. Clause(c) appended to the Proviso to Sub-section (1) provides that where a person aggrieved is the wife, a complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or other relations mentioned therein who are related to her by blood, marriage or adoption. 9. The High Court relied upon the provisions contained in Clause (c) and held that since the wife herself had not filed the complaint and Women's Commission had complained to the police, the Sub-Divisional Judicial Magistrate, Anandpur could not legally take cognizance of the offence. In laying down this proposition, the High Court forgot that the other offence namely, the offence under Section 498A I.P.C. was a cognizable offence and the police was entitled to take cognizance of the offence irrespective of the person who gave the first information to it. It is provided in Section 155 as under:- "155. Information as to non- cognizable cases and investigation of such cases.(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book tobe kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the information to the Magistrate. (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. (3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case. (4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non cognizable." 10. Sub-section (4) of this Section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable. 11. Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated a cognizable, the police had no option but to investigate the whole of the case and to submit a charge- sheet in respect of all the offences, cognizable or non- cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed. 12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in Sub-section (4) provides that even non- cognizable. 13. This Court in Preveen Chandra Mody vs. State of M.P. AIR 1965 SC 1185 has held that while investigating a cognizable offences and presenting a charge-sheet for it, the police are not debarred from investigation any non- cognizable offence arising out of the same facts and including them in the charge-sheet. 14. The High Court was thus clearly in error in quashing the charge under Section 494 I.P.C. on the ground that the Trial Court could not take cognizance of that offence unless a complaint was filed personally by the wife or any other near relation contemplated by Clause (c) of the Proviso to Section 198(1). 15. The Judgment of the High Court being erroneous has to be set aside . The appeal is consequently allowed. The Judgment and order dated 3rd May, 1995 passed by the Orissa High Court in so far as it purports to quash the charge under Section 494 I.P.C. and the proceedings relating thereto is set aside with the direction to the Magistrate to proceed with the case and dispose it of expeditiously .

PETITIONER: SMT. RAJESHWARI DEVI

Vs.

RESPONDENT: THE STATE OF U.P.

DATE OF JUDGMENT: 19/04/1996

BENCH: MANOHAR SUJATA V. (J) BENCH: MANOHAR SUJATA V. (J) PUNCHHI, M.M.

CITATION: 1996 SCC (5) 121 JT 1996 (6) 58 1996 SCALE (3)613

ACT:

HEADNOTE:

JUDGMENT: (With Criminal Appeal No. 534 of 1987) Onkar Singh & Ors. V. The State of U.P. J U D G M E N T Mrs. Sujata V.Manohar, J. The appellant Rajeshwari, in Criminal Appeal No.38 of 1987 is the mother-in-law of the deceased. The first appellant Onkar Singh, in Criminal Appeal No.534 of 1987 is the father-in-law of the deceased. The second appellant in that appeal, Santosh Singh is the husband of the deceased while appellants 3 and 4 in that appeal Lallu Ram and Bandha are the servants of Onkar Singh. The deceased Sudha was married to Santosh Singh on or about 3.2.1982. She died of a gun shot injury in the house of her husband on 22.11.1982 at around 12.30 noon. The village Chowkidar Rameshwar was sent by the accused to the parents of Sudha who reside in a different village. He reached the house of Sudha's parents around 4.30 p.m. and informed them that Sudha had committed suicide. He said that she was still alive and she was being taken to Hardoi Hospital. Accordingly, the entire family of Sudha went to Hardoi instead of to the village of the accused. They reached there at about 8.00 p.m. They did not find Sudha there. Hence the brother of the deceased went to village Samtharia where the accused reside on the following morning. On reaching their house he was told that his sister had died instantaneously the previous day and her body had been cremated the previous evening at 4.00 p.m. The accused could not give any proper explanation why the cremation could not wait till the arrival of the family of Sudha. Seven persons were tried before the Sessions court; Santosh Singh Onkar Singh, Rajeshwari and Suman alias Guddi, the sister-in-law of the deceased were charged under Section 302 read with Section 149, Section 147 and Section 201 of the Penal Code. The two domestic servants Lallu Ram and Bandha were tried under Section 201. One Manipal Singh was also tried under Section 201. Rameshwar, the village Chowkidar was tried under Section 202. The Sessions court acquitted Suman, alias, Guddi, the sister-in-law of the deceased. It convicted the husband Santosh Singh and his parents Onkar Singh and Rajeshwari and sentenced them to life imprisonment under Section 302 read with Section 149 of the Indian Penal Code. They were also sentenced to 2 years and 4 years rigorous imprisonment under Sections 147 and 201 respectively. The two domestic servants Lallu Ram and Bandha were convicted and sentenced to four years' rigorous imprisonment. Mahipal Singh was similarly sentenced under Section 201. Rameshwar, the village Chowkidar was convicted and sentenced to 6 months rigorous imprisonment. In appeal before the High Court the High Court has convicted Santosh Singh under Section 302 and maintained his sentence of life imprisonment. Onkar Singh and Rajeshwari have been convicted under Section 302 read with Section 34, and the sentence of life imprisonment is maintained. The sentence under Section 147 is set aside. The conviction of Lallu Ram and Bandha has been maintained while Mahipal Singh has been acquitted. Rameshwar did not prefer any appeal and has served his sentence. The High Court has upheld the findings given by the Sessions court regarding motive for the murder of Sudha. It has been found the Sudha was being harassed by her husband and in-laws for not bringing sufficient dowry. As the marriage of Suman, the sister-in-law of the deceased had been fixed, there was a renewed demand for ornaments from the family of Sudha. She was harassed on account of her failure to get the ornaments. About a month prior to Sudha's death, when she was at her parent's house, her husband had come to fetch her. Sudha was refusing to go back. Sudha had told her parents that she may not be

sent there because on account of her failure to bring ornaments as demanded by her in-laws, they would kill her. However, she was persuaded to go. Thereafter, on or about 18.11.1982 the brother of the deceased, Yaduvir Singh who is P.W.2 had gone to Sudha's place in connection with the preparations for the marriage of Sudha's sister-in-law. He was at the house of the deceased upto 22.11.1982, the day of the occurrence. On 22.11.1982 he had been told by Sudha that she was treated very badly as she had not brought sufficient dowry and she was given state food to eat. p.w.2 thereupon, thought it proper to talk to Sudha's husband Santosh Singh. But he did not give a satisfactory reply and said that bad days had come and the day of extermination of his line had approached. So saying he picked up the gun and went out towards his field. Thereafter, p.w.2 started back for his own house around 10.00 a.m. and he reached his house around noon. P.W.5 Rukmangal Singh has stated in his evidence that while he was in his field, at about 12.30 noon, the heard a gun shot. He rushed to the house of Onkar Singh where he saw Sudha lying injured, and Santosh Singh, Onkar Singh, Rajeshwari, Suman and the servants standing there. Sudha died shortly thereafter of gun shot injury. He was informed by Lallu and Bandhsa that on the instigation of Onkar Singh, Santosh had fired on his wife and injured her. P.W.5 told the Chowkidar to report the matter to the Police Station. The matter, however, was not reported to the Police Station. He has further stated that after sometime, he found smoke coming from the northern side of the ground near Onkar Singh's house. He went there and saw the two servants, throwing sticks on the fire and burring the dead body of Sudha Onkar Singh and Santosh were also present. No pyre was made and the dead body was burnt by sticks. The High Court, on the basis of circumstantial evidence and, in particular, the fact that Santosh Singh had been seen by Yaduvir Singh with a gun in his hand going to the field and making a statement that his line was about to be extinguished, coupled with the evidence of P.W.5 has convicted Santosh Singh under Section 302 of the Indian Penal Code. The High Court has rightly negatived the theory of suicide for the reasons which it has set out in its judgment. We do not see any reason to set aside this findings of the High Court. The cases of Onkar Singh and Rajeshwari, however, stand on a somewhat different footing. The death of Sudha occurred prior to the two amendments of the Indian Penal Code introducing Sections 498A and 304B in the Indian Penal Code and amending the Evidence Act by introducing Section 116B. Therefore, the presumptions under these Sections are not available to the prosecution although there is clear evidence relating to the demand for dowry by Onkar Singh and Rajeshwari and harassment of Sudha on that count. In the absence of these presumptions we find that there is no material to convict them under Section 302 with the help of Section 34. The evidence of P.W.2 Yaduvir Singh is to the effect that Santosh Singh had taken the gun in his hand and gone to the field after P.W.2 Yaduvir Singh had talked to him about the treatment being given to his sister Sudha. There is no evidence to indicate any instigation by either Onkar Singh or Rajeshwari of Santosh Singh to kill Sudha. The evidence of P.W.5. Rukmangal Singh, undoubtedly shows the presence of Rajeshwari and Onkar Singh at the site of the occurrence. He has deposed that the two servants told him that Onkar Singh had instigated Santosh Singh to kill Sudha. This, however, is hearsay evidence. There is no satisfactory evidence to establish that Onkar Singh was in any manner responsible for instigating Santosh Singh to shoot his wife Sudha. Undoubtedly, both Onkar Singh and Rajeshwari had demanded dowry from Sudha's family and were parties to harassing her. But in the absence of presumptions which are available after the amendments of the Penal Code and the Evidence Act, there is no other direct or circumstantial evidence which would justify the conviction of Onkar Singh and Rajeshwari under Section 302 read with 34. Their conviction on this count is, therefore, set aside. Onkar Singh, however, was present at the time of the cremation of the dead body of Sudha alongwith Santosh Singh and the two servants. The High Court has rightly come to the conclusion that Section 201 is attracted. Sudha was cremated on the land adjoining the house of her in-laws without waiting for anyone from her parents, side to come and attend the funeral. In fact (1) It was ensured that none from her parents' family would reach Onkar Singh's house until after the dead body was cremated; (2) The cremation did not take place at the usual cremation ground but in the field close to Santosh's house; (3) Deliberate attempt was made to prevent anyone from Sudha's parents side to reach Santosh's house for cremation and (4) No report of her unnatural death was made at the police Station. As Onkar Singh was present at the time of cremation and the servants who burnt the body were under his control and can be said to have acted on his instructions, his conviction under Section 201 of the Penal Code must be upheld. The two servants Lallu Ram and Bandha have also been convicted under Section 201. The two servants being the employees of Onkar Singh, Onkar Singh was in a position of exercise authority overthem. Being financially dependant on Onkar Singh and Santosh Singh, it is likely that the servants may have acted at the bidding of both of them. This is, therefore, a fit case for reducing the sentence of Lallu Ram and Bandha to the sentence already undergone. The

appeals are accordingly partly allowed. The conviction and sentence of Santosh Singh is upheld. The conviction of Rajeshwari is set aside and she is acquitted of all charges. The conviction of Onkar Singh under Section 302 read with Section 34 is set aside. However, his conviction under Section 201 and the sentence imposed, of four years' rigorous imprisonment is upheld. The sentence of Lallu Ram and Bandha is reduced to the sentence already undergone.

PETITIONER: G. RAJ MALLAIAH AND ANOTHER

Vs.

RESPONDENT: STATE OF ANDHRA PRADESH

DATE OF JUDGMENT27/04/1995

BENCH: A.S. ANAND, S. RAJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT: J U D G M E N T S. Rajendra Babu, J. Leave granted. The appellants were chargesheeted for offences arising under Section 304 I.P.C. and Section 3 and 4 of the Dowry Prohibition Act read with section 498A, I.P.C. The allegation made in the chargesheet is that one G. Madhavi Latha was married to Manik Prabhu the son the appellants herein on 8.6.1983; that the decreased Madhavi Latha, the appellants and her husband were living in Hyderabad, that on 27.6.1989 Madhavi Latha is said to have committed suicide by setting fire to herself in the presence of her children and she succumbed to the same on 29.6.1989; that the appellants were ill-treating the deceased by burling abuses at her and did not provide proper or timely food as she did not bring enough money towards dowry. In the trial 20 witnesses were examined on behalf of the prosecution and several documents were market while the defence examined two witnesses and also got several documents marked. The trial court held that the offences arising under Section 304B I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act were not established and acquitted them of the said charges. However, the trial court convicted the appellants for offices arising under Section 498A and sentenced them to sufer rigorous imprisonment for a period of two years and to pay a fine of Rs. 200/- each in default to suffer simple imprisonment for one month. Aggrieved by the said conviction, the appellants preferred an appeal being Criminal Appeal No. 577 of 1993 on the file of the High Court. The appellants engaged the services of Shri Shankar Rao Biloliker and Shri Milind Gokhale and subsequently they were replaced by Shri Anil Kumar and Shri C. Praveen Kumar, Advocates who filed memo of appearance with consent of the learned counsel appearing earlier in the case. The appeal was listed for hearing on 12.8.1997 when Mr. Milind Gokhale filed a memo stating that the appellant had taken away the file and wanted to engaged some other counsel and he had already endorsed his no objection on the Vakalstnama. The matter was listed for hearing on 14.8.1997, 26.8.97, 27.8.97 and finally on 28.8.1997 on which date the matter was diseissed. On all these dates the name of Mr. Milind Gokhale was shown as the learned counsel for the appellants whereas in fact Mr. Anil Kumar and Shri Praveen Kumar had filed memo of appearance on 25.1.1993. However, that information was not put up with the file, fed into the computer either, nor printed in the cause list. In those circumstances the appeal came to be dismissed in the absence of the learned counsel for appellants. An application was filed by the parties under section 482 of the Criminal Procedure Code in Miscellaneous Petition No. 4201 of 1997 seeking for setting aside the judgment passed on 28.8.1997 dismissing their appeal. The said application set out the facts to which were have adverted to new about the change of the advocates and the names of the new advocates appearing in the case not having been shown in the cause list. In fact, the High Court held an enquiry into the matter and called upon the office to make a report and the said report a copy of which is made available to us, reflects what we have stated about the mistake of the office in not indicating the names of the advocates and about the change of the advocates. It is clearly admitted in the Report that by mistake the names of Mr. Anil Kumar and Mr. Praveen Kumar were not shown in the cause list. The High Court however, dismissed the petition observing that Mr. Milind Gokhale whose name was shown in the cause list should have informed the appellants and the criminal appeal having been disposed on merits, the same could not be restored. The respondent remained unrepresented. It is no doubt true

that it is open to the Court to dispose of an appeal on merits even in the absence of the learned counsel appearing for the parties when the case is set down for hearing and the advocate or the party concerned does not appear. However, when the learned counsel could not appear before the Court not on account of the fault either of the appellant or the advocates themselves, but on account of mistake committed by the Registry of the High Court in not showing the names of the counsel in the cause list properly and the counsel not being aware of the listing of the case before the Court in such a master we do not think that principle should be extended. We may notice a decision of this Court in Bani Singh vs. State of Uttar Pradesh (AIR 1996 SC 2439) in which a bench of three Judge considering the scope of Section 385 and 386, Cr. P.C. took the view that while dealing with an appeal under the Code, both the appellant and his lawyer if absent on the dates set down for hearing the Court is not bound to adjourn the case and may dispose of the appeal on merits and dismissal of the appeal simplicitor for non- prosecution is not contemplated. In the aforesaid decision, it is also noticed that by adopting this procedure if a case is decided on merits in the absence of the appellant or his advocate, the higher court can remedy the situation if there has been a failure of justice. In the present case the case was set down for hearing on different dates without notifying the names of the advocates appearing for the appellant, but showing the name of the advocate who had retired from the case. Therefore, it could not stated that the appellant or his advocate had notice of hearing of the case on the dates set down for hearing. Hence, we must hold that the decision in the case without hearing the appellants or their advocate has resulted in miscarriage of justice and the principle stated in the decision in Bani Singh vs. State of U.P. does not come in the way of the view we have expressed in this case. Therefore the order made by the High Court dismissing the appeal is set aside and the matter shall stand remitted to the High Court which shall be disposed of in accordance with law by restoring the appeal to its original number. The appeals are allowed accordingly.

PETITIONER: PRABHUDAYAL AND OTHERS

Vs.

RESPONDENT: STATE OF MAHARASHTRA

DATE OF JUDGMENT14/05/1993

BENCH: YOGESHWAR DAYAL (J) BENCH: YOGESHWAR DAYAL (J) KULDIP SINGH (J)

CITATION: 1993 AIR 2164 1993 SCR (3) 878 1993 SCC (3) 573 JT 1993 (4) 475 1993 SCALE (2)941

ACT: % Indian Penal Code 1860-Ss. 302, 498A, 201 read with 34 and S. 306 read with 34-Burning of young married woman-Whether death by burning or strangulation-Whether suicide or homicide-Held, facts indicate homicide, and death by strangulation preceding burning. Circumstantial Evidence-Held, cumulative effect or circumstances negatives innocence of father-in-Law and husband--Mother-in-law and Sister-in-law may not have participated, hence, acquitted.

HEADNOTE: Sangita was married to accused 2 on 28th April, 1984. In the intervening night of 14115 September 1984, the accused found Sangita burning. Sangita's body suffered 100% burns and the smell of kerosene was noticed even in the spot panchnama. There had been problems relating to dowry, and she had complained of ill-treatment and of being beaten because of failure to pay the dowry amount. The trial judge acquitted accused 1-4 - her father-in-law, husband, mother-in-law and sister-in-law respectively. The High Court examined the evidence a fresh, while castigating the trial judge for having gone merely on the statement of the Public Prosecutor that only a case under Ss. 306, 498-A and 34 was made out. The High Court Convicted the accused under S.302 r/w 34, S.201 r/w 34 and 498-A r/w 34. Partly dismissing the appeal, this Court.. HELD: 1. It was a case of murder and not suicidal death. It is not possible that there were no 'cries' from the deceased while she was burning. This is not possible even in a case of suicide. Some of the symptoms of internal and external injuries are common in 879 case (if strangulation and burns. But some symptoms that occur in the case of strangulation, and not in case of burns, are present in this case. Dr. K.S. Narayan Reddy, The Essentials of Forensic Medicine and Toxicology 6th edn. p. 55, relied on. 2. The prosecution rests its case only on circumstantial evidence. Therefore, it is necessary to examine the impelling circumstances attending the case and examine whether the cumulative effect of those circumstances negatives the innocence of the appellant-,; and serves a definite pointer towards their guilt and unerringly leads to the conclusion that with all human probability the offence was committed by the appellants and none else. State of U.P. v. Dr. Ravindra prakash Mittal, JT(1992) 2 SC 114 at 121. applied. Taylor, Medical jurisprudence, relied on. On an appreciation of the circumstances which arc established as being closely linked to one another, the complicity of appellants 1 and 2 is not in doubt. But it is not necessary that appellants 3 and 4 also participated in the murder of the deceased. They are given the benefit of doubt and accordingly acquitted.

JUDGMENT: CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 738 of 1992. From the Judgment and Order dated 16.11.1992 of the Bombay High Court in Crl. A. No. 148 of 1989. A.N. Mulla, Ms. Shefali Khanna and J.M. Khanna for the Appellant. S.B. Bhasme, S.M. Jadhav and A.S. Bhasme for the Respondents. The Judgment of the Court was delivered by YOGESHWAR DAYAL, J.This is an appeal by the four accused persons against the judgment of the Bombay High Court dated 16th November. 1992. Appellant No. 1 who was accused No. 1 was tried for the offence of having 880 committed the murder of his daughter-in-law Sangita, wife of appellant No. 2 who was accused No.2, during the night between 14th September, 1984 and 15th September, 1984 at the residential house of the appellants at Murtizapur with common intention and also for having treated her with cruelty on account of dowry amount. In the alternative the appellants were also charged for the offence of having abetted the deceased Sangita in commission of suicide by subjecting her to cruelty. Appellant no.3, who was accused No.3, is the wife of accused No.1 and appellant No.4, who was accused No. 4. is

their daughter. Appellants 1 to 4 are hereinafter called accused Nos. 1 to 4. The story of the prosecution was as follows:- The accused run a printing press at their residence. Marriage of accused No. 2 was settled with the 5th daughter of Madan lal (PW. 8). Few days prior to the settlement of the marriage. marriage of her elder sister was also settled. As such marriages of both the daughters i.e. Sangita and Hemlata were celebrated at Paratwada on 28th April, 1994. Talk over the marriage had taken place about a month prior to the marriage and the same was finalised after about 2 or 3 days of such talks. At the time of finalisation, accused No. 1 demanded Rs. 20,000 by way of hard cash as dowry, besides other articles, add he himself had given such demands in writing vide Ext. 73. Though agreed, Madan Lal, father of the deceased could not give Rs. 20,000 at the time of marriage. He also could not give the gold agreed, though he assured to comply with the demands later on getting the crops. After the marriage, on account of the month of Shrawan, and as per custom, Sangita resided with her parents. It was during her stay after the marriage that she was found disturbed and sullen. Though she herself did not give out the reason therefore, but on insistence by the father to know the reason she told him that accused No. 1 had an evil eve on her and that other members of the family used to beat and ill treat her because of the failure on the part of Madan Lai to pay the dowry amount. Though Madan lal assured that he would come down to Murtizapur and pursued the accused, but he could not visit Murtizapur. After the month of Shrawan, Sangita returned to Murtizapur but not communication was made about her safe return by the accused persons to her father. The accused persons had a telephone connection and Madan Lal (PW.8), two three days prior to the date of the incident contacted accused No. 1 on telephone. Accused No. 1 talked angrily with Madan Lal. Madan Lal then requested accused No. 1 to call Sangita on telephone. Sangita came on phone and in answer to his query she broke down and Stated weeping and told Madan lal as to why he did not send Ganesh Chaturthi Neg','Neg' means a customary offer that the father of the bride has to pay on an auspicious day. It varies according to financial capacity of the father. He told 881 Sangita that he had committed it mistake and assured that he would be sending it immediately. On the next day lie had got drawn a draft of Rs. 101/- on State Bank of India. Ext. 74-A is the said draft. It was thereafter when Madan Lai was on a visit to Amravati that Madan Lal received a message about Sangita having got burnt on 15th September, 1984. During the night between 14th and 15th September. 1984 at about midnight the accused found Sangita not in her bed and smell of burning. They found that in the rear side open space Sangita was burning and lying down. According to the defence the doors were closed from inside and there was no access to the said open space. Accused No. 1 informed the police about the occurrence that he had seen through the window opening on the)pen space. Accused No. 1 at about 3.45 a.m. on 15th September, 1994 submitted it report (Ext.82) to the police wherein he had stated that about 2. 10 a.m. in the night Sangita was found to be burnt and died in the bath-room. PW.9. Mundheh. the investigating Officer gave instructions to the accused persons not to disturb the situation. Initially on the report of the accused, accidental death was registered. PW9 when reached the spot on 15th September. 1984 at about 10.00 a.m. he made spot Panchnama vide ext.63. He also found a postcard. half burnt, (Ext. 62) by the side of the dead body. He thereafter drew inquest panchnama (Ext.64). PW. 1 Bhanudas acted as a panch. PW.9 having convinced that it was a case of murder, lodged it report on behalf of the State registering the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Dr. Lande, PW.3, on 15th September, 1994 at about 5.00 p.m. conducted the post-mortem. The Additional Sessions Judge on the basis of the material filed with the challan. on 30th September, 1994 trained a charge under Sections 302.499-A and 201 read with Section 34 of the Indian Penal code and thereafter recorded the evidence of PWs. 1 to 9. Thereafter by an order dated 22nd August, 1988 the trial court framed an additional charge for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. The accused persons challenged the framing of the additional charge before the High Court but the challenge was defeated. The accused persons were accordantly tried. Their defence through out was a total denial. It appears that during arguments the Prosecutor did not think it proper to press for the diffence punishable under Section 302 read with Section 34 of the Indian penal Code. According to the Prosecutor the only case made out was for the offences punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code. The trial court endorsed the view of the Public Prosecutor and did not 882 discuss the relevant evidence it all on the charge of Section 302 and recorded a finding of acquittal in that behalf. He also held that the charge of Section 201 also did not survive. The learned trial Judge also held that the prosecution hits not been able it) prove that the accused persons with their common intention treated Sangita with cruelty or thereby abetted her to commit suicide. He accordingly acquired all the accused persons for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. The State filed all appeal against their order of acquittal and the High Court on

appeal castigated the trial judge for having gone merely oil the statement of the public Prosecutor without applying his own mind on the evidence. The High Court examined the evidence afresh. The High Court posed a question is to whether the nature of death of Sangita was suicidal or homicidal and ultimately gave a finding that it was a case of homicidal death and found all the accused guilty under Section 302 read With Section 34 and Section 201 read with Section 34. The accused were also find guilty under Sections 498-A read with Section 34. For the offence under Section 302 read with Section 34 all of them were sentenced to rigorous imprisonment `for life and different fines. For the offence under Section 201 read with Section 34 all the accused persons were sentenced to rigorous imprisonment for three years and each of them was fined Rs.1,000/-. For the offence under Section 498-A read with Section 34 all of them were sentenced to one year rigorous imprisonment and a fine of Rs.2,000. Learned counsel for the defence, however, submitted before the High Court that the charge under Section 302 read with Section 34 did not survive tit view of the concession made by the Prosecutor and also in view of the framing of the additional charge under Section 306 read with Section 34. It was also submitted that the framing of the additional charge negated the theory of murder in pith and substance. The High Court, however negatived this submission and on consideration of the evidence convicted all the accused persons as stated above. Body of Sangita suffered 100% burn injuries and smell of kerosene was even noticed in the spot panchanama. The description 1005 burn does not really fully 883 convey the condition of the body. Asper the inquest report the dead body was lying on its back in the open court-yard at the back side of the house of the accused. Both the legs were partly stiffen. Both the hands were partly bent and lying at side. Hairs on the head burnt and-even fleshy portion is also burnt at some places. There was slight hair at some portion of head. Complete body was burnt and skin on it also peeled up. Face had became red and black. Eyes were closed and burnt. Nose was burnt and blood was cozing from the nose and mouth. Tongue was slightly protruding out. Brassier of the left side was totally burnt and right side was partly burnt. Ash of burnt cloth was visible on stomach. A partly burnt small piece of the border of saree was lying there. Some pieces of saree, burnt and sticking each other, were lying on the stomach. Skin on palm of both hands was peeled up and was appearing reddish. Skin on the complete body was burnt and peeled up. On observing the body by turning its upside down, the complete body was burnt from back side. On observing the private parts of the deceased through Pancha No.3 it was stated that private parts were burnt and there was no injury and to ascertain the actual cause of death, the dead body was sent to the Civil Surgeon, Murtizapur for post-mortem. According to Dr. Lande, who conducted the postmortem, on opening of trachea black particles were found. He recorded that probable cause of death was 100% burn with bum shock with asphysix. On the basis of medical evidence the High Court again felt the necessity to ascertain whether the act of pouring kerosene oil was voluntarily by the victim or the act of a third person. The High Court felt that the trial court has not even discussed the medical evidence or the inquest report and hastily reached the conclusion that it was a case of suicidal death. According to the High Court the entire approach of the trial court was thoroughly unsatisfactory and grossly erroneous. After going through the evidence the High Court gave the following findings:-- That the deceased could not control her emotional out-burst even during the presence of her father -in-law while talking on telephone. The deceased was a young girl of 20 years. A determination to suffer extreme pain in silence could not be a matter of speculation. "In third degree injuries, as per Dr. Lande, the victim suffers extreme pain. Such injuries will make the person to give out cries and shouts for help." The shouting and crying of the deceased was not only obvious but inevitable. Undisputedly, none had heard the cries or shouts of the deceased while she was in flames. This circumstance alone does not support the probability of suicidal death. 884 The trial court has wrongly read the contents of letter Ext. 62 and its interpretation is highly illegal. Undisputedly Sangita returned from Paratwada after "Shrawani Mass" just a week before the incident, probably by 7th September, 1984. She was subjected' to insinuation and accused used to refer her as "awara", "loafer". "badmash", She wanted to convey this to her father through post card (Ext.62) which seemingly not delivered. By this letter she requested her father not to visit Murtizapur. This letter never reached post off-ice and the message could not be passed to Madan Lai, PW. 8. Before accomplishing her design to convey this message, she could not bring an end to her life. Sangita could not simply think of committing suicide while in possession of Ext.62. Sangita at the time of incident, as per the post mortem report. was having, a pregnancy of 3-4 months and this is also not in tune with the act of commission of suicide. The Sessions Judge omitted to discuss the complete evidence of Dr. Lande and the post mortem report Ext.50. As per post mortem report the eye-ball and tongue of the deceased were protruding. Dozing of the blood was found from the nose and mouth. In case of death due to burning such injuries cannot be sustained. Sangita was assaulted before she was set on fire. There might be a

definite attempt to cause death by strangulation before pouring kerosene oil on her person. Relying of the evidence of PW.1, Shivraj, a neighbour who heard a shriek of' woman as a result of strangulation coming from the house of the accused. Taking into account tile medical evidence read with the testimony of PW.1, Shivraj, Sangita met with tile homicidal death. A ball of cloth half burnt was also found by the side of the body. The ball was used for gagging her mouth as a precautionary measure to handicap her from raising cries or shouts. PW.5, Bhanudas, had also noticed dragging marks in the court-yard and the deceased after assault was dragged and kept at the spot. While in flames Sangita did not make any movement. She was completely motionless. The latching of doors of the compound was not accepted as an act of the deceased. Latching of doors and pouring of kerosene after assault was a farcical venture skilfully and conveniently made to bring colour of suicide to the incident. 885 The High Court then posed the question as to who is responsible for homicidal death of Sangita. It was held that it could not be an act of an individual It was joint venture. There is no direct evidence. Undisputedly the payment of Rs.20,000/- was not made nor the tither items mentioned in Ext. 73 were given till the date of incident. On her second visit, the deceased had disclosed to her father, Madan Lal. that the members of in-laws' family had beaten and ill-treated her for the reason of non-fulfillment of dowry and other articles. A reading of the letter indicates that the accused persons had very serious grievance against Sangita and her parents for non fulfillment of dowry demands. Recovery of handkerchief at the instance of accused No. 1 in pursuance of a disclosure statement and the seizure thereof vide Ext.69 from a drawer of the table of the office. The handkerchief was smelling, kerosene oil. It was concealed at a place which was not normally or ordinarily used for keeping the handkerchief. This handkerchief was used at the time of the incident. None of the accused persons made any attempt to reach the spot even though they noticed the death of Sangita. They merely allowed the body to be burnt. Accused persons had quoted exact time of death in Ext.82 which means that they were mentally alert and conscious of the happening in the house. The refusal to disclose the death of Sangita to the chowkidar of the locality, PW.2, Rahadursingh. The meeting with chowkidar Bahadursingh was falsely denied in the statement under Section 313 of the Code of Criminal Procedure. Homicidal death occurred by Sangita while she was in their custody. The incident with its gravity and extent cannot in any manner go unnoticed. As such the accused persons were duty bound to offer plausible explanation. Their action was concerted. well thought out. well planned. With the aforesaid findings all the accused persons were found guilty by the High Court and the appellants have come up in appeal before this Court. This court on application of appellant Nos. 3 and 4 i.e. another-in-law and sister-in-law of the deceased, admitted them to be on hail. Apart from the inferences noticed by the High Court there are certain other features in the post mortem report Ext. 15 which may also be noticed at this state. It is stated in paragraph 13 of the post mortem report that the whole (if skin of face 886 was burnt and Covered at places with black soot. Eye ball slightly protruding Tongue was protruding from mouth. Blood stained discharge from nose and mouth. In paragraph 17 it is noticed heirs of the scalp, eye lashes, both ears, eyes, whole neck. whole chest. whole abdomen suffer from burns. Buttock and pubic hairs also burnt. Black soot was present over burnt area of face, chest, abdomen. In paragraph 19 it is stated Brain & Meninges congested. In paragraph 20 it is stated Larynx.Trachea and Bronchi-congested, on opening, troches. black particles seen inside human. Right lung left lung-congested. Right ventricle of the heart was full whereas left was empty. In paragraph 21 it is stated liver and gall bladder-congested. pancreas and suprarenals - congested. spleen - congested, kidneys - congested and bladder - empty, i.e. parenchymatous organs show intense venous congestion. Dr. K.S. Narayan Reddy, M.D. D.C.P., M.I.A.F.M., F.I.M.S.A.,F.A.F.Sc., Professor of Forensic Medicine, Osmania Medical College Hyderabad in his well known treatise THE ESSENTIALS OL FFORENSIC MEDICINE AND TOXICOLOGY. Sixth Education at page 255 gives descriptions of internal as well as external symptoms of manual strangulation. At page 255 while dealing with signs of asphyxia. the learned author observes : "The face may be livid, blotchy and swollen, the eyes wide open, bulging and suffused, the pupils dialated, the tongue swollen, dark-cloured and protruded. Petechial hemorrhages are common into the skin of the eyelids, face, forehead, behind the cars and scalp. Bloody froth may escape front the mouth and nostrils and there may he bleeding from the nose and cars. The hands are usually clenched. The genital organs may be congested and there may be discharge of urine, faeces and seminal fluid." While internal injuries described little later included as under "The larynx. trachea and bronchi are congested and contain frothy. often blood stained mucus. The lungs are markedly congested and show ecchymoses and larger subaerial hemorrhages. Dark fluid blood exudes on section. Silvery- looking spots under the pleural surface due to rupture of the air cells which disappear on pricking. are seen in more than 505 cases. The parenchymatous organs show intense venous congestion and in young persons ecchymoses are usually seen on the heart and

kidneys. The brain is contested and shows petechial hemorrhages. The right side of the heart is full of dark fluid blood and the left empty. Both the cavities are full if the heart stopped during diastole." Whereas in burn injuries the learned author at pages 237-238 observes."the 887 brain is usually shrunken, firm and yellow to light brown due to cooking. The dura matter is leathery." (dura matter is meninges of the brain). If the death has occoured from suffocation. aspirated blackish coal particles are seen in the nose, mouth and whole of the respiratory track. Their presence is proof that the victim was alive %,.hen tile fire occurred. The pleurae are contested or inflamed. The lungs are usually congested. may be strunken and rarely anemic..... Visceral congestion is marked in many cases..... The heart is usually filled with clotted blood. 'The adarme;s (glands above kidneys) may he enlarged and congested. Some of these symptoms or internal and external injuries are common in case of strangulation and burn like face is swollen and distorted, the tongue protruded. the lungs are usually congested visceral congestions is marked in many cases. What is to he noticed in the present case is that there are hardly "any cries" as per the defence also by the deceased. This is not possible even in case of suicide. Even if the burns ,ire inflicted with suicidal intent tile victim is bound to cry out of pain. Admittedly there was no cries and, therefore, it was not a Case of suicidal burn but the deceased was put in a condition where she could not cry and yet get burnt by third party. As is clear from the aforesaid commentary of Dr. K.S. Narayan Reddy that if it was a case of merely burns the blood of the heart would have got clotted. Even the postmortem report does not say that asphvsix was due to burn. Coupled with all the internal injuries which occur in the case of strangulation. are present in this case. As pointed out by the High Court there is no direct evidence to connect the appellants with the offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court propounding the cardinal principles to be followed in cases in which the evidence is of circumstantial nature. It is not necessary to repapitulate all those decisions except stating the essential ingredients as noticed by Pandian, J. in the case reported as The State of Uttar Pradesh v. Dr. Ravindra Prakesh J. in the case 2 SC 114 at 121, to prove quilt of an accused person by circumstantial evidence. They are:- (1) The circumstance from which tile conclusion is drawn should be fully proved; (2) the circumstances should he conclusive in nature; 888 (3)all the facts so established should he consistent only with the hypothesis of guilt and inconsistent with innocence: (4)the circumstances should. to a moral certainty, exclude the possibility of guilt of any person other than the accused." Now let us examine the impelling circunistances attending the case and examine whether tile cumulative effect of those circumstances negatives tile innocence of tile appellants and serves a definite pointer towards their guilt and unerringly leads to the conclusion that with all human probability the offence was committed by the appellants and none else. There is no doubt that when the incident occurred there was no outsider its the house. The circumstances which ire establislied its having closely linked up with one another may be noticed 1) The motive for the occurrence. 2) The place where the tragic incident occurred was in possession and occupation of the appellants. 3) The occurrence had happened in the wee hours when body else would have had ingress at the place where the incident allegedly occurred. 4) The appellants admit their presence. The positive features, which occurred, had it been it pure case of burning, there would he evidence of vomiting. 6) The positive opinion of the doctor that the death was due to asphysix as well apart from 100% burns. 7) The deceased was carrying fetus of 3-4 months 8) The extensive use of kerosene as seen from the burn shows that the deceased was practically 889 drenched as sort of a bath with kerosene. 9) Total absence of any shout or cries except one which was heard by way o f strangulation by PW. 1. 10) Blood in heart was not found clotted. Right ventricle heart was full of blood but left ventricle wits empty. 11) Besides total burning of neck was to destroy evidence of attempted strangulation. 12) In burn brain is usually shrunken and firm whereas in strangulation it is congested. As noticed by Pandian, J. in the aforesaid decision, opinion of Taylor in Medical Jurisprudence is quoted below. It reads thus: "Not uncommonly the victim who inhales smoke also vomits and inhales some vomit, presumably due to bouts of coughing, and plugs of regur- gitated stomach contents mixed with soot may be found in the smaller bronchi, in the depths of the lungs." By the time a person could take a bath of kerosene she is likely to get fainted and would not be in a position thereafter to burn herself. A total burning, of the face and the neck shows that even at portions where she was not wearing any clothes were not burnt. It could only be possible if she had poured kerosene on her head and face also. It is not understood as to how the unposted post card found near the dead body was not burnt when the whole body had got burnt. It in fact indicates that the planting of the post card was to show that it was a case of suicidal death. In passes all human probabilities that the appellants have satisfied themselves by watching through the window the burning of daughter-in-law without any due and cry or without and serious attempt to save her. We

are thus satisfied that it was a case of murder and not suicidal death. So far as the accomplicity of appellants 1 and 2 are concerned, there is no doubt. But 890 it is not necessary if appellant Nos. 3-4 i.e. mother-in-law and sister-in-law of the deceased have also participated in the murder of the deceased. For the aforesaid reasons we dismiss the appeal on behalf of appellant. Nos. 1 and 2 but give benefit of doubt to appellant Nos. 3 and 4 and accept the appeal on their behalf. They are accordingly acquitted. The convictions and sentences of appellant Nos. 1 and 2 are upheld. U. R.

Appeal dismissed. 891

PETITIONER: ANITA LAXMI NARAYAN SINGH

Vs.

RESPONDENT: LAXMI NARAIN SINGH

DATE OF JUDGMENT24/03/1992

BENCH: AHMADI, A.M. (J) BENCH: AHMADI, A.M. (J) VENKATACHALLIAH, M.N. (J) JEEVAN REDDY, B.P. (J)

CITATION: 1992 AIR 1148 1992 SCR (2) 316 1992 SCC (2) 562 JT 1992 (2) 349 1992 SCALE (1)722

ACT: Hindu Marriage Act, 1955 : Section 13-Divorce-Petition by husband at Bombay-Wife required to travel a long distance to defend proceedings- Transfer petition by wife-Supreme Court directing sufficient expenses for wife's stay and travel expenses-Grant of meagre amount of wife by Family Court-Consequent inability of wife to attend proceedings-Ex-parte divorce decree in favour of husband-Held grant of meagre amount of wife resulted in denial of justice-Ex-parte decree of divorce set aside.

HEADNOTE: The respondent was married to appellant at Ghaziabad. He filed a Divorce Petition at Bombay and the appellant-wife filed applications for maintenance and expenses of the divorce proceedings. Subsequently she filed a Transfer petition in this Court for transferring the case from Bombay to Ghaziabad which was disposed by this Court directing that (i) the respondent-husband would pay Rs.2500 for wife's next visit to Bombay; and (ii) the Family Court would insist on the husband depositing the to and fro fare for the wife and her companion and also an amount sufficient for their stay in Bombay on each visit. The Family Court dismissed the wife's application for interim maintenance and expenses of proceedings on the ground that she was gainfully employed but awarded Rs. 700 as expenses and further directed that she will be paid an additional amount of Rs. 150 per day in case of her stay for more than one day at Bombay. Against this order the appellant filed a Special Leave petition in this Court. Since she was held up for attending to her petition in this Court the Family Court granted an ex-parte decree of divorce to the husband. She filed a petition in this Court as she could not attend the Court on account of her inability to meet the expenses for travel and residence in Bombay. Allowing the appeal, this Court, 317 HELD : 1. While disposing the appellant's Transfer Petition this Court had clearly directed that the Family Court will insist on the husband not only depositing the to and fro travel expenses for the wife and her companion but also an amount sufficient for their stay in Bombay on each visit. But the Family Court has been far from just to the wife who was required to travel a long distance to defend herself. Nothing has been allowed by way of transport charges and lodging and boarding charges even if she has not to stay for an additional day in Bombay. [320 D-F] 2. The interim order passed by the Family Court is for reasons best known to it, highly biased. This is more so because this Court's order granting expenses to visit Bombay provided sufficient guideline for determining the quantum of expenses to be awarded. Besides the Family Court has not awarded any amount to meet the cost of the proceedings on the specious plea that the appellant is gainfully employed. To say the least the order is far from satisfactory and has resulted in gross denial of justice. The impugned order is accordingly set aside. [321 A-C] 3. As the interim order made it impossible for the wife to contest the divorce petition in the Family Court and facilitated an ex-parte divorce decree in favour of the husband, in the extraordinary and peculiar circumstances of this case, the ex-parte divorce decree is set aside. [321 C- D] 4. Interest of justice requires transfer of the proceedings from the Family Court, Bombay to the District Court, Ghaziabad. The restored divorce proceedings will stand transferred from Family Court Bombay to the District Court, Ghaziabad. [321 E-F]

JUDGMENT: ORIGINAL JURISDICTION : Interlocutory Application No. 4 of 1991 in Transfer Petition (Civil) No. 521 of 1990. (Petition under Section 25 C.P.C.) WITH C.A. No. 1119 of 1992 WITH C.A. No. 1118 of 1992 318 Mrs. Sureshtha Bagga for the Appellant. Vimal Dave for the Respondent. The Judgment of the Court was delivered by AHMADI, J. Delay condoned. Special leave granted in both matters. The facts leading to these cases, briefly stated, are that the appellant Anita married respondent Laxmi Narain

on November 1, 1987 at Ghaziabad according to Hindu rites. It is the appellant's case that on the very next day at the Bidai ceremony the relatives of her husband raised a dispute regarding inadequacy of dowry amount. However, that dispute was settled for the time being by respected persons but Anita was not happy at her husband's home on account of ill-treatment meted out to her by the respondent. Ultimately on March 11, 1988 she left for her father's house in Ghaziabad and since then she has been living there. The respondent sent a notice through his Advocate dated November 16, 1988 and followed it up by filing a Divorce Petition under Section 13 of the Hindu Marriage Act in the City Civil Court at Bombay. On the appellant being served with the notice of the divorce petition she went to Bombay and entered an appearance and also filed an application for maintenance pendente lite. Even thereafter she attended court on several adjournments but there was no progress in the matter. On October 3, 1989 the proceedings were transferred to the Family Court at Bandra, Bombay, and the appellant was informed about the same. The appellant filed a complaint under Section 498A, IPC against the respondent at Ghaziabad on December 13, 1989. The appellant paid several visits to Bombay to attend the divorce proceedings in the Family Court but the matter was only adjourned from time to time. An effort was made by the Marriage Counsellor of the Family Court to bring about a settlement on May 22, 1990 but in vain. Tired of making long trips from Ghaziabad to Bombay the appellant preferred a Transfer Petition in this Court for transferring the case from Bombay to Ghaziabad wherein notice was issued and the respondent filed his counter. The Transfer Petition was ultimately disposed of by this Court's order dates January 14, 1991 to the following effect : "Since the matter is pending in the Family Court in which the petitioner herself has also filed an application bearing No. 4091/89, We think it would be advisable to allow the Family 319 Court to dispose of the matter expeditiously. The ends of justice would suffice if we direct that on each occasion the petitionerwife is required to attend the Family Court, the Family Court will first insist on the husband depositing the to and fro fare for the petitioner and a companion and also an amount sufficient for their stay in Bombay on each visit. For the next visit to Bombay we direct the husband to deposit a sum of Rs. 2500 in the Family Court under notice to the petitioner. We also hope that the Family Court will appreciate the difficulty of the petitioner-wife and try to dispose of the matter and vacate the stay but with liberty to the petitioner-wife to move this Court in case of difficulty." It was only after this order was passed that the respondent filed his reply to the appellant's application for grant of interim maintenance and cost of proceedings. As her first application was not taken up for hearing she filed another application for payment of expenses, etc. The Family Court dismissed her application for interim maintenance and expenses of proceedings on the ground that she was gainfully employed. The only amount allowed by the Family Court was Rs. 700 towards second class sleeper Railway fare for herself and her companion. The Family Court also observed that if she and her companion are required to stay in Bombay the respondent will pay Rs. 150 for additional days. After this order dated April 20, 1991 the appellant was directed to file her statement by May 20, 1991. Feeling aggrieved by this order the appellant approached this Court seeking special leave to appeal against the said order. She also filed I.A. No. 4 of 1991 in Transfer Petition No. 521/90 in view of the liberty reserved unto her by this Court's order dated January 14, 1991. In the meantime the divorce proceedings were listed before the Family Court on September 23, 1991 and as the appellant was held up for attending to her special leave petition against the interim order she sought an adjournment by a letter sent through courier service on September 21, 1991. However that being a holiday the Family Court did not hold its sitting but took up the matter on the next day. Since the letter written by the appellant had reached the Family Court, the Family Court adjourned the matter to October 7, 1991 with a direction to obtain a stay from the Supreme Court or else the matter 320 would proceed. Intimation about the said order was sent to the appellant at her old address even though her new address was communicated to the Family Court earlier. The proceedings were adjourned from October 7, 1991 to October 11, 1991 and thereafter to October 19, 1991 without intimation to the appellant. The evidence was recorded on October 19, 1991 and the judgment was pronounced on October 21, 1991 allowing the divorce petition and granting a decree for divorce expert. The appellant has preferred a special leave petition against the said order granting divorce on the plea that she had been condemned unheard by the Family Court as she could not attend the court on account of her inability to meet the expenses for travel and residence in Bombay. These are the circumstances in which the aforesaid proceedings have arisen before this Court. From the facts set out above it is evident that this court did not order transfer of the case because it felt that the Family Court, Bombay, which was seized of the matter would be able to resolve the controversy at an early date. This Court had clearly directed that the Family Court will insist on the husband not only depositing the to and from travel expenses for the wife and her companion but also an amount sufficient for their stay in Bombay on each

visit. Even according to the Family Court the second class fare from Bombay Central to Delhi by mail train and from Delhi to Ghaziabad comes to Rs. 326 + Rs. 12 i.e. Rs. 338 for two persons. The Family Court, therefore, awarded Rs. 700 by way of expenses and added that she will be paid an additional amount of Rs. 150 per day if she has to stay for more than one day. To say the least, the Family Court has been far from just to the wife who was required to travel a long distance from Ghaziabad to Bombay Central to defend herself. Nothing has been allowed by way of transport charges and lodging and boarding charges even if she has not to stay for an additional day in Bombay. Where does the Family Court expect her to put up in Bombay after a 24 hour journey ? If the case is adjourned it seems the Family Court expects her to leave on the same day post-haste for Delhi. Even on reaching Bombay after a tiring journey of 24 hours she is not provided any expense by way of hotel charges, lodge and board, for the day. Does the Family Court expect her to rush to Court from the station and rush back to station from the Court on the proceedings being adjourned for the day? Even the meagre payment of Rs. 150 is made available to her if she has to stay in Bombay for an additional day. The Family Court, with respect, also did not realise that it would be impossible to find a modest living place for two for Rs. 150 per day in a 321 costly city like Bombay, leave aside the expense for meals, etc. It seems to us that the interim order passed by the Family Court is, for reasons best known to it, highly biased. This is more so because it had before it this Court's order granting Rs. 2500 by way of expenses to visit Bombay which provided sufficient guideline for determining the quantum of expenses to be awarded. Besides, the Family Court has not awarded any amount to meet the cost of the proceedings on the specious plea that she is gainfully employed. To say the least the order is far from satisfactory and has resulted in gross denial of justice. The order made it impossible for the wife to meet the expenses of frequent visits to Bombay and facilitated an ex- parte divorce decree in favour of the husband. In the result we allow the appeal and set aside the impugned order dated 20th April, 1991 passed in M.J. Petition No. 146 of 1989. As the said order of 20th April, 1991 made it impossible for the wife to contest the divorce petition in the Family Court and facilitated an ex-parte divorce decree in favour of the husband, in the extraordinary and peculiar circumstances of this case, we allow the appeal and set aside the ex-parte divorce decree. Having regard to the fact that the husband is a high ranking railway officer who would be entitled to travel facilities, we think in the backdrop of events that have taken place, it would be expedient in the interest of justice of transfer the proceedings from the Family Court, Bombay, to the District Court, Ghaziabad, for disposal in accordance with law, The restored divorce proceedings will stand transferred to the District Court, Ghaziabad. The Family Court, Bombay will forthwith transmit the record and proceedings, inclusive of pending interim applications including the one in which the impugned order of 20th April, 1991 came to be passed, to the District Court, Ghaziabad, for disposal in accordance with law. The respondent-husband will pay the cost of the present three proceedings which we quantify at Rs. 5,000 (Rupees five thousand only). T.N.A. Appeal allowed. 322

PETITIONER: STATE OF PUNJAB

Vs.

RESPONDENT: IQBAL SINGH AND ORS.

DATE OF JUDGMENT10/05/1991

BENCH: AHMADI, A.M. (J) BENCH: AHMADI, A.M. (J) RAMASWAMI, V. (J) II RAMASWAMY, K.

CITATION: 1991 AIR 1532 1991 SCR (2) 790 1991 SCC (3) 1 1991 SCALE (1)923

ACT: Indian Penal Code, 1860-Sections 107, 108-`Abetment' Abettor'-Definition of. Words and Phrases-"Instigate","aid"-Meaning of. Indian Evidence Act, 1872-Sections 113-A and 113-B- Dowry death-Presumption-Legislative intention of-Duty of Court indicated. Indian Penal Code, 1860-Sections 107-10, 30, 304-B, 306 and 498-A-Married woman, subjected to cruelty or harassment- Death-Presumption of-Punishment of persons responsible.

HEADNOTE: Respondent No. 1's wife setting herself and her three children ablaze, died at her husband's house on 7.6.1983. The marriage had taken place seven or eight years before the incident. The deceased wife was working as a teacher while her husband was a clerk. Soon after the marriage there were disputes between them on the question of dowry. The demand for extra dowry strained the relations between them them and the husband began to ill-treat the deceased wife. The deceased had written a letter to the Deputy Superintendent of Police on 12.10.1977 complaining about the ill-treatment meted out to her and apprehending danger to her life and the lives of her children. When the police came to inquire into the matter there was some understanding, as a result of which she had informed the police that no further action be taken for the present but her application may be kept pending. Later, a divorce deed was executed but not acted upon. The situation did not improved. On 7.6.1983, the very morning of incident, the deceased wife wrote a letter addressed to Deputy Commissioner of Police, wherein she narrated how she and her children were ill-treated by her husband, narrated how she and and her children were ill-treated by her husband, mother-in-law and sister-in-law for dowry and why she took the decision to put an end to her life and the lives of her children. Another letter 791 of even date was addressed to her mother stating the reasons for her such act. A First Information Report was lodged against the Respondent No. 1 by the mother of the deceased. After investigation the Respondent No. 1, his mother and sister were put up for trial. The Trial Court on an examination of the prosecution evidence convicted all the three accused persons under Section 306, IPC and sentenced the husband to rigorous imprisonment for seven years and a fine of Rs.5,000, in default, rigorous imprisonment for one year and sentenced the two others to rigorous imprisonment for three years and a fine of Rs.1,000 each, in default, rigorous imprisonment for three months, against which order, accused persons preferred an appeal before the High Court. The High Court on a reappreciation of the evidence and having regard to the language of Section 306, IPC came to the conclusion that there was no evidence to show that any of the accused was guilty of abetment and allowed the appeal. The State has, therefore, approached this Court by way of special leave. In the meantime the Respondent No. 1's mother had passed away. The appeal was, therefore, limited to the Respondent No. 1 and his sister. Allowing the appeal, this Court, HELD: 1. `Abetment' as defined by Section 107 comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for the doing of that thing and (iii) intentionally aiding by any act or illegal omission the doing of that thing. An abettor is a person who abets an offence or who abets either the commission of an offence of the commission of an act which would be an offence. [798C-D] 2. The word `instigate' in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word, "aid" is to give assistance, help, tec. [798D-E] 3. Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relative for or in connection with any demand for dowry, such death is described as dowry under Section 304 B for which the 792 punishment extends to imprisonment for life, but not less than imprisonment for seven

years. By Section 113B, Evidence Act, the court has to raise a presumption of dowry death, if the same has taken place within seven years of marriage and there is evidence of the women having been subjected to cruelty and/or harassment. [800A-C] 4. The legislative intent is clearly to curb the menance of dowry deaths, etc., with a firm hand. Court must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing sections 113A and 113B in the Evidence Act tried to strengthen the prosecution's hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. [800D-E] 5. If a married woman is subjected to cruelty of harassment by her husband or his family members section 498- A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304B IPC. [800E-F] 6. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, section 113B Evidence Act provides that the Court shall presume that such person had caused the dowry death. [800F-G] 7. In the present case section 113A or 113B, Evidence Act cannot be invoked as the prosecution has not brought the exact date of marriage on record. Yet where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of section 306, IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate act. In this case it would seem from past events that it was a carefully chalked out strategy to provoke the woman into killing herself. [800H-801A, 801E] 793 8. In the peculiar facts and circumstances of the case, the trial court had rightly convicted the husband under section 306 IPC. The High Court committed an error in reversing the conviction. The plea for reduction of his sentence cannot be countenanced. [801F-G]

JUDGMENT: CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 325 of 1987. From the Judgment and Order dated 9.11.1984 of the Punjab and Haryana High Court in Crl. Appeal No. 132-SB of 1984. Amita Gupta and R.S. Suri for the Appellant. R.L. Kohli, R.C. Kohli, G.S. Rao and Ms. C. Markandeya for the Respondents. The Judgment of the Court was delivered by AHMADI, J. Mohinder Kaur set herself and her three children ablaze on the afternoon of 7th June, 1983, at the residence of her husband Iqbal Singh. The marriage had taken place seven or eight years before the incident. She had given birth to two daughters and a son. The deceased was working as a teacher while her husband was a clerk in the Punjab State Electricity Board office at Amritsar. Soon after the marriage there were disputes between them on the question of dowry. The demand for extra dowry strained the relations between them and the husband began to ill-treat the deceased wife. It appears that in course of time there was further deterioration in their relationship as a result whereof the deceased had written a letter to the Deputy Superintendent of Police on 12th October, 1977 complaining about the ill-treatment meted out to her and apprehending danger to her life and the life of her children. She therefore, sought police protection. However, by the time the police came to inquire into the matter there was some understanding as a result of which has had informed the police that no further action be taken for the present but her application may be kept pending. Then on 31st December, 1977 a divorce deed Exh. D-2 was executed but was not acted upon. It seems that the situation did not improve and as a result she took the extreme step of putting an end to her life as well as the lives of her three children since she apprehended that their fate would be worse after her death. However, before putting an end to her life she wrote a letter that very morning which has been reproduced in extenso in paragraph 13 of the judgment of the trial court. The text of that letter dated 7th June, 1983 794 addressed to the Deputy Commissioner of Police, Public Dealing Branch, Amritsar, shows that her husband was demanding Rs.35,000 to Rs.40,000 by way of additional dowry and was ill-treating her under the influence of alcohol on that account. She also alleged that her mother-in-law and sister- in-law also conspired and made false accusations against her and instigated her husband to beat her if she refused to bring the additional dowry. She alleges that they had conspired to kill her on the night of

6th June, 1983 by sprinkling kerosene/petrol on her but their plan misfired. She was fed up on account of the beating given to her that night. She further alleged that her children were also ill-treated by her husband and his family members. On account of these developments she had taken the decision to put an end her life and the lives of her children to spare them of the present and future agony. At the foot of the letter she appended a note to the effect that even after their death she apprehended that her husband and his family members may try to cause physical harm to her mother and younger brother and requested the police to extend to them the necessary protection. She implores that her salary, G.P. Fund and other monetary benefits to which she may be entitled from the school authorities should not fall in the hands of her husband and his relatives and may be given to some school or orphanage and her ornaments, etc. may be recovered from her in-laws and be returned to her parents. Another letter of even date was addressed to her mother (her father having since died) stating that she was fed up of the continuous tension, suffering and agony that her mother had to go through on her account as she could not meet the demand for extra dowry. She also states that apart from her husband demanding extra dowry he has started making false accusations against her and beating her time and again on that account. She further alleges that her husband's mother and sister were privy to this beating by her husband but she had somehow survived. Then she adds `today I alongwith three children am sacrificing by fire'. She ends the letter by stating that her mother need not think that her daughter was dead, in fact she will gain freedom from seven years of hell. In the letter addressed to the Deputy Commissioner of Police there is reference to the earlier application/letter dated 12th October, 1977 by which she had complained about possible risk to life. It appears from the said letter that the police had gone to inquire into the matter two months later on 11th December, 1977 but during that intervening period the relatives of her husband had intervened and had temporarily patched up the matter. It was for that reason that she informed the police that no action was immediately necessary but still she insisted that her application may be kept pending, Thus this subsequent letter contains intrinsic evidence about her 795 previous application dated 12th October, 1977. After the unfortunate incident which took place on the afternoon of 7th June, 1983 a First Information Report was lodged against the husband Iqbal Singh, by the mother of the deceased. After investigation the husband, his mother and sister were put up for trial. The Trial Court on an examination of the prosecution evidence convicted all the three accused persons under Section 306, IPC and sentenced the husband Iqbal Singh to rigorous imprisonment for seven years and a fine of Rs.5,000, in default, rigorous imprisonment for one year. So far as the other two accused were concerned, having regard to their role and the fact that the mother was an aged and frail woman, he sentenced them to rigorous imprisonment for three years and a fine of Rs.1,000 each, in default, rigorous imprisonment for three months. Against this order of conviction and sentence all the three accused persons preferred an appeal before the High Court. The High Court on a reappreciation of the evidence and having regard to the language of Section 306, IPC came to the conclusion that the prosecution evidence did not establish the ingredients of the section, in that, there was no evidence to show that any of the accused was guilty of abetment. In this view that the High Court took, it allowed the appeal and set aside the order of conviction and sentence passed against the appellants. The State has, therefore, approached this Court by way of special leave. In the meantime the accused Manjit Kaur has passed away. The appeal is, therefore, limited to Iqbal Singh and his sister Kulwant Kaur. Counsel for the State of Punjab took us through the evidence on record, particularly the letters dated 7th June, 1983 and submitted that this was a clear case of the husband and his sister creating conditions which compelled the deceased to take the extreme step of burning herself and her children. The evidence of Dr. Harjinder Singh who performed autopsy has not been disputed before us. His evidence shows that the deaths of all had resulted on account of shock sustained due to excessive burns. PW 2 Jasbir Kaur, the mother of the deceased, says that her daughter complained to her from time to time about the ill-treatment meted out to her by her husband on his own and at the instigation of his mother and sister. She has also stated that this ill- treatment was due to failure of the deceased to meet his demand for extra dowry. She received a message about the incident while she was at her brother's residence in amritsar. She and her son went to the hospital and learnt that her daughter and grand children had passed 795 previous application dated 12th October, 1977. After the unfortunate incident which took place on the afternoon of 7th June, 1983 a First Information Report was lodged against the husband Iqbal Singh, by the mother of the deceased. 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mother was an aged and frail woman, he sentenced them to rigorous imprisonment for three years and a fine of Rs.1,000 each, in default, rigorous imprisonment for three months. Again this order of conviction and sentence all the three accused persons preferred an appeal before the High Court. The High Court on a reappreciation of the evidence and having regard to the language of Section 306, IPC came to the conclusion that the prosecution evidence did not establish the ingredients of the section, in that, there was no evidence to show that any of the accused was guilty of abetment. In this view that the High Court took, it allowed the appeal and set aside the order of conviction and sentence passed against the appellants. The State has, therefore, approached this Court by way of special leave. In the meantime the accused manjit Kaur has passed away. The appeal is, therefore, limited to Iqbal singh and his sister Kulwant Kaur. 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She and her son went to the hospital and learnt that her daughter and grand children had passed 796 away. She then deposed to have received a letter of 7th June, 1983 on 9th June, 1983. In her cross-examination it was brought out that she had not pointed an accusing finger at the mother and sister of accused Iqbal Singh. She tried to explain the absence of allegation against the said two persons on the ground that she was confused on account of the tragedy. She further deposed that she had omitted the names of two ladies because of pressure exerted on her by Iqbal singh. Obviously her explanation cannot carry conviction because it is difficult to believe that she would submit to the pressure of Iqbal Singh whom she considered primarily responsible for the death of her daughter and grand children. It may also be mentioned at this stage accused Kulwant Kaur is a married women who lives with her husband in another village. There is no evidence on record to show that she was at the residence of her brother on the date of the incident or immediately prior thereto to instigate her brother. PW Santosh Singh, brother of the deceased, has maintained that accused Iqbal Singh was ill-treating his sister soon after marriage as the latter was not able to meet his demand for extra dowry. He further deposed that after the death of his father his mother had received a sum of Rs.60,000 or thereabouts by way of provident fund and gratuity and when the accuse Iqbal Singh learnt about the same he pressurised the deceased to secure a sum of Rs.40,000 or thereabouts from that amount to meet his demand for extra dowry. He had gone with his mother PW 2 Jasbir Kaur to the hospital after learning about the incident. In cross-examination he was questioned about the purchase of a plot in the name of the deceased by Iqbal Singh. He, however, stated that his father had given a sum Rs.20,000 or 21,000 for purchase of this plot although he could not state the exact price at which it was purchased. The two letters, one addressed to the Deputy Commissioner of Police and the other to the mother dated 7th June 1983, have been duly proved by the prosecution. These letters were written immediately before she put an end to her life and the lives of her three children. These letters reveal her plight immediately before the incident. There is a mention about an attempt on the part of her husband to kill her on the preceding day. She apprehended that her children would suffer intolerable miseries if they survived her and, therefore, she took the extreme decision to put an end to their lives also along with her. This letter clearly brings out her turmoil whereunder she took the extreme step of putting an end to her life. The earlier letter of 12th October, 1977 also shows that she was being ill-treated soon after her marriage. The divorce deed produced at Exh. D-2 is dated 30th November, 1977. This would show that by that time the relatives had intervened and, therefore, when the police came to inquire on 11th December, 1977 she told them that 797 there was no immediate danger but her application should be kept pending. Considerable emphasis was laid by the learned counsel for the respondents on the statement in Exh. D-2 attributed to the deceased that she had been forced to marry Iqbal Singh. Emphasis was also laid on the post-script at the foot of the said document made by Iqbal Singh to the effect that he has agreed to a divorce since his wife desires it. From these two statements counsel for the respondents argued that the accused Iqbal Singh had no grudge against his wife and had expressed his willingness to put an end to the marital relationship as his wife so desired. He also submitted that the statement of the deceased that she was forced to marry Iqbal Singh went to show that it was she who was keen to put an end to the relationship as she did not desire to live with Iqbal Singh. But

counsel overlooks the fact that there is intrinsic evidence inthe divorce deed that their marital life was unhappy and she apprehended blood shed as well as harm to the children even after they parted company. Counsel then referred to letter Exh. D-1 April, 1983 written by the deceased to one Gopal Singh complaining about the behaviour of the Headmaster towards her. By that letter she expressed her desire to secure a transfer from the school to get rid of the harassment meted out to her by the Headmaster. In this letter there is a mention that her husband Iqbal Singh was spending considerable time in correspondable time in correspondence with the Headmaster. From this letter counsel for the respondents submitted that the deceased could have committed suicide on account of the harassment caused to her by the Headmaster of the school. But that does not explain the killing of the children. This letter was written on 17th April, 1983 whereas the incident in question occurred on 7th June, 1983 i.e. more than 1-1/2 months thereafter. The immediate cause for the extreme step taken by the deceased is clearly reflected in the two letters of 7th June, 1983. Therefore, the inference drawn by the learned counsel for the respondents from the letter of 17th Aril, 1983 cannot advance the defence set up by the accused persons. Iqbal Singh filed a written statement jointly with Kulwant Kaur wherein he stated that he had not helped his wife to secure a transfer as the family was having a good residence in the village and this was the real cause of quarrel between the two. The statement shows that the factum of quarrel between the husband and wife is not seriously disputed. The nature of correspondence he was carrying on with the Headmaster is not difficult to judge. He then states that he had purchased the plot in the name of his wife for Rs. 12,500 but he does not disclose the source from which the consideration for the plot came. He further states that his wife was earning Rs.900 per month and, therefore, he could never have entertained an intention to push her to committing suicide. It 798 would, therefore, appear from the evidence placed on record that the relations between the deceased and Iqbal Singh were strained because of the latter's demand for extra dowry and they worsened to such an extent that the deceased decided to put an end to her life. The charge against the accused was under section 306, I.P.C. That section must be read in the backdrop of the above facts. Underthat section if any person commits suicide the person who abets the commission of suicide shall be liable to be punished with imprisonment of either description for a term which may extend to ten years and fine. The question is whether on the facts proved it can be said that either Iqbal Singh or his sister were guilty of abetment. Chapter V of the Penal Code is entitled `Of Abetment' and comprises sections 107 to 120 of which we may notice sections 107 and 108 only. `Abetment' as defined by section 107 comprises (i) instigation to do that thing which is an offense (ii) engaging in any conspiracy for the doing of that thing and (iii) intentionally aiding by any act or illegal omission the doing of that thing. Section 108 defines an abettor as a person who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word `instigate' in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. Since there is no question of parties being engaged in any sort of conspiracy we have to consider whether there was any intentional aiding for committing suicide. The dictionary meaning of the word aid is to give assistance, help, etc. Before we come to grips with the question at issue it is necessary to notice a few legislative changes introduced in the Penal Code to combat the menance of dowry deaths. The increasing number of such deaths was a matter of serious concern to our law-makers. Cases of cruelty by the husband and his relatives culminated in the wife being driven to commit suicide or being done to death by burning or in any other manner. In order to combat this menance the legislature decided to amend the Penal Code, Criminal Procedure Code and the Evidence Act by the Criminal Law (Section Amendment) Act, 1983 (No, 46 of 1983). So far as the Penal Code is concerned, Section 498A came to be introduced whereunder `cruelty' by th husband or his relative to the former's wife is made a penal offence punishable with imprisonment for a term which may extend to three years and fine. The explanation to the section defines `cruelty' to mean (i) 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 her life, limb or health or (ii) causing harassment of the woman with a view to coercing her or any person 799 related to her to meet any unlawful demand for any property or valuable security. Thus, under this newly added provision if a woman is subjected to cruelty by her husband or his relative it is a penal offence and by the insertion of section 198A in the Code of Criminal Procedure a Court can take cognizance of the offence upon a police report or upon a complaint by the aggrieved party or by the woman's parents, brother, sister, etc. The offence is made non- bailable. In so far as the Evidence Act is concerned, a new section 113A came to be introduced which reads as under: "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)." On a plain reading of this provision it is obvious that if a wife is shown to have committed suicide within a period of seven years from the date of marriage and there is evidence that she was subjected to cruelty by her husband or his relative, it would be permissible for the court to presume that such suicide was abetted by her husband or by such relative of her husband. The Amendment Act 46 of 1983 received the assent of the President on 25th December, 1983 and was published in the Gazette of India, dated 26th December, 1983. The trial court rendered its Judgment on 23rd February, 1984 and it does not appear if the prosecution concentrated on section 113A, Evidence Act, for otherwise it would have tried to place on record the exact date of marriage to take advantage of the presumption arising thereunder. The High Court referred to this provision but did not say anything in regard to its application. Being a rule of evidence it could perhaps have been invoked if proof regarding the exact date of marriage was laid. Since there is no cogent evidence that the marriage was solemnised within seven years from the date of incident we need not dilate on that point. 800 The law underwent a further change with the introduction of section 304B in the Penal Code and section 113B in the Evidence Act by the Dowry Prohibition (Amendment) Act, 1986. Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relative for or in connection with any demand for dowry, such death is described as dowry death under section 304B for which the punishment extends to imprisonment for life but not less than imprisonment for seven years. By section 113B, Evidence Act, the court has to raise a presumption of dowry death if the same has taken place within seven ears of marriage and there is evidence of the woman having been subjected to cruelty and/or harassment. The legislative intent is clear: to curb the menance of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. It a married woman is subjected to cruelty or harassment by her husband or his family members section 498A, I.P.C. would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304B, I.P.C. When the question at issue is whether a person is guilty of dowry death of a woman and and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract section 302, I.P.C. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would 801 squarely fall within the ambit of section 306, I.P.C. In such a case the conduct of the person would tantamount to inciting provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide. In the present case the facts clearly reveal from the divorce deed Exh. D-2 that the relations between the husband and the wife were strained even in 1977. There is intrinsic evidence in that document that the wife apprehended blood shed and harm to her children. Before the execution of this document she had sought police protection by her application/letter dated 12th October, 1977. Then in April, 1983 her efforts to secure a transfer from the school where she was harassed by the Head Master were frustrated by her husband. Her husband had kept up the pressure for extra- dowry since her marriage and had stepped it up after the demise of her father on learning that her mother had received the G.P. Fund, Gratuity, etc., due to her father. Since she and her mother and brother were not able to meet this demand she was subjected to considerable torture. Added to that was the anxiety caused by her husband's conduct at trying to frustrate her efforts to seek a transfer from the school where she was serving. The last straw on the

camel's back fell when she was severely beaten on the previous day, i.e. 6th June, 1983 as is evident from her letter of 7th June, 1983. An atmosphere of terror was created to push her into taking the extreme step. It would seem it was a carefully chalked out strategy to provoke her into taking the extreme step to kill herself and her children as she apprehended that they will be much more miserable after she is dead and gone. In this fact/situation can it be said that the husband had not been responsible in creating circumstances which would provoke or force her into taking the only alternative left open to her, namely suicide? Can it be said that the husband did not realise where he was leading her by his wilful conduct? We think in the peculiar facts and circumstances of the case, the trial court had rightly convicted the husband under section 306 I.P.C. We think that the High Court committed an error in reversing the conviction. We, therefore, allow this appeal, set aside the High Court's order and restore the order of conviction and sentence passed by the trial court. We cannot countenance the plea for reduction of his sentence. No order on his C.M.P. So far as his sister's involvement is concerned, we think the evidence falls short of proof beyond reasonable doubt and, therefore, we see no reason to interfere with the High Court's order. We, therefore, dismiss the State's appeal directed against her. Her bail bonds will stand cancelled. V.P.R. Appeal allowed. 801

PETITIONER: S.D. SONI

Vs.

RESPONDENT: STATE OF GUJARAT

DATE OF JUDGMENT21/12/1990

BENCH: PANDIAN, S.R. (J) BENCH: PANDIAN, S.R. (J) REDDY, K. JAYACHANDRA (J)

CITATION: 1991 AIR 917 1990 SCR Supl. (3) 668 1992 SCC Supl. (1) 567 JT 1991 (1) 1 1990 SCALE (2)1342

ACT: Indian Penal Code 1860: Sections 300, 302 and 304 Part II-Deceased--Whether committed suicide by taking poison or was murdered by her husband--No direct evidence to prove either of the versions--Guilt of appellant/husband to be drawn from circumstantial evidence--Held on facts--Defence theory of suicide----Complete hoax-Falsely invented to escape guilt, legal punishment and drift course of investi- gations-blow given to deceased on vital part of body con- taining vital organ--Held act done only with knowledge that it is likely to cause death. Indian Evidence Act, 1872: Sections 3, 11 and 45 Alibi--Plea of--Appreciation of evidence--Opinion of medical witness--Doctor's evidence--Consideration of case based on circumstantial evidence-Nature of proof of commission of offence--Necessary requirements-What are.

HEADNOTE: The appellant in Criminal Appeal No. 459 of 1987 was married to one Varsha on 4th December 1982. After the mar- riage, she came to Ahmedabad and stayed with her husband who was in joint family. After having stayed for about a month with her husband, she returned to her parents' place at Bombay. The husband took her back to the matrimonial home after about a month. The prosecution alleged that even during her stay with her husband for about a month, the matrimonial life was not happy as the lady members of the house used to taunt her. She was not even allowed to see and freely talk to her father and brother in private when they used to visit her. On 7.7.1983 she wrote a letter Exh. 18 to her parents in- forming them that she was being ill-treated by her husband and in laws and other relatives complaining that her father did not give her anything at the time of marriage, and that only Almighty could save her from threatened danger. After the receipt of this letter, the father contacted the appellant's 669 father-PW15, to come to meet him personally. Thereafter, there was a chain of correspondence between the parents of both the wife and the husband. While this was going on, the wife was found lying dead in her bed in her matrimonial home on the morning of August 1, 1983. It was the case of the appellant-husband that a chit Exh. 80 was seen underneath a pillow, said to have been written by the deceased herself that she was committing suicide on her own volition by consuming sleeping pills as she was in love with a boy at Bombay and her demand for divorce was not acceded to by her husband. The medical officer PW3 examined her and declared her to be dead. There- after, the police was informed that she had committed sui- cide. The Sub-Inspector of Police (PW 17) held the inquest over the dead body and sent a report Exh. 10 stating that it was a suicidal death. After the inquest, the dead body was sent to the Civil Hospital for post-mortem, The parents of the deceased on being informed that their daughter was in a serious condition rushed to Ahmedabad from Bombay. The dead body was brought to the appellant's house in the morning of August 2, 1983 and thereafter the cremation took place. The father of the deceased (PW 5) having suspected some foul play and that the death was not of a natural one, sent letters to the Commissioner of Police the Home Minister, IGP and Chief Justice of Gujarat and wanted the matter to be investigated. The matter was examined and further investiga- tion was taken up on January 7, 1984 by the Investigating Officer (PW 21) who after recording the statement of wit- nesses and receiving the opinion of the Handwriting Expert laid the charge sheet and arrested the appellant in August 16, 1984. The defence of the appellant was one of denial. The Trial Court found the appellant guilty of having committed the murder of his wife and convicted him under Section 302 IPC and sentenced him to imprisonment for life. He was also charged for two other offences viz. under Sec- tion 196 IPC that he attempted to use the chit Exh. 80 as a true or genuine evidence knowing that it was false and fabricated one, and another under Section 498A that he subjected his wife, the deceased to cruelty thereby driving her to commit

suicide. On appeal, the High Court held the appellant guilty of the offence punishable under Section 304 Part II IPC, and not under Section 302 IPC and sentenced him to rigorous imprisonment for five years. 670 The appellant filed an appeal to this Court challenging his conviction and sentence, and the State of Gujarat also preferred an appeal on the ground that the evidence makes out a case for an offence punishable under section 302 IPC. In the appeal to this Court it was contended on behalf of the appellant-accused relying on the evidence of the doctor PW11 and the Sub-Inspector PW17 that the deceased should have been suffering from malaria resulting in splenic fever and that she would have collapsed while violently vomiting and sneezing by taking excessive doses of sleeping pills or barbiturates and that a fail from the cot might have caused all the internal injuries, showing no visible marks of external injuries, Strong reliance was also placed on the chit Exh. 80 in support of the defence theory that it is a case of suicide and that the deceased has unfolded her mind therein that she had already fallen in love with her lover at Bombay and that her marriage with the appellant had been solemnised against her will, and as the appellant had refused to accede to her request for divorce she was commit- ting suicide. On behalf of the State it was contended that the offence was one of murder within the ambit of Section 300 IPC, and that the punishment provided thereunder should be imposed. Dismissing the Appeal, this Court, HELD: 1. There is no direct evidence to prove whether the deceased committed suicide by taking poison on account of the alleged failure in love or whether she was murdered by her husband. Therefore, the guilt or otherwise of the appellant has to be drawn only from the circumstantial evidence. [676F] 2. In a case in which the evidence is of a circumstan- tial nature the facts and circumstances from which the conclusion of guilt is said to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and the circumstances so established should not only be consistent with the guilt of the appellant but also they must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis con- sistent with his innocence. [676G] Gambir v. State of Maharashtra, [1982] 2 SCC 351; Rama Nand and Ors. v. State of Himachal Pradesh, [1981] 1 SCC 511; Prem Thakur v. State of Punjab, [1982] 3 SCC 462; Earabhadrapa alias Krishnappa v. State of Karnataka, [1983] 2 SCC 330; Gian Singh v. 671 State of Punjab, [1986] (Suppl.) SCC 676 and Balvinder singh v. State of Punjab, [1987] 1 SCC 1, referred to. 3. Exh. 80 is not proved to be under the handwriting of the deceased and, therefore, no reliance can be placed on this document. [684A] 4. The appellant has failed in his attempt to prove the defence theory of suicide which is fanciful and incredible. [686D] Sharad Birdhichand Sarda v. State of Maharashtra, [1984] 4 SCC 116 at 184 and Lakshmi Singh and Ors. v. State of Bihar, [1976] 4 SCC 394, referred to. 5. Admittedly, Varsha was found dead in her bed-room PW13 is the witness who speaks of having seen Varsha lying on her cot. This witness is none other than the wife of the younger brother of PW15 the father of the appellant. It is found from her evidence that when all the family members pushed Varsha's room a little the door had opened. This indicates that the door was not locked from inside. There- fore from these circumstances, one could safely infer that Varsha had slept in her room with her husband on the inter- vening night of 31.7.1983 and 1.8.1983 and that the appel- lant had came out of the room and that Varsha was found dead in her bed. [687G-688F] 6. The witnesses PW13, 14, 15 and 16 have attempted to create the defence of alibi saying that the appellant was not present in the house on the night of 31.7.1983. These four witnesses are none other than the aunt, parents and brother of the appellant and their evidence is highly taint- ed with interestedness. Even in their attempt at creating alibi, there is no consistent version in that while PW13 would state that the appellant left the house on the evening of 31.7.1983, PWs 14 and 15 would go to the extent of saying that the appellant was not in the house even from 30.7.1983 till the morning of 1.8.1983. According to PW.23 it was the appellant who came to his house at about 8.00 a.m. on the morning of 1.8.83 on a scooter and took him to the scene house to examine Varsha. The inconsistent evidence of PWs 13, 14 and 15, whose testimony is highly interested, has to be thrown overboard in view of the abundant circumstances appearing in the case demonstrably showing that the appel- lant was in his bed room on the night of 31.7.1983. It further transpires from the evidence of PWs 14 and 15 that the appellant used to come to the house late in the night and sleep in his bed room. [688G-689B] 672 7. It boggles one's mind that as to how the appellant suddenly appeared in the scene house in the early morning of 1.8.1983 when he had been away from the house for two days as per the evidence of PWs 14 and 15. The various compulsive circumstances appearing against the appellant, when examined in proper perspective, lead to only one conclusion that the appellant was in the scene house on the fateful night and that he knew the cause of death of his wife and that he has now come forward with a completes false defence that he was away from the house. [689D-E] 8. The defence theory of suicide is a complete hoax and an incredulous one falsely invented by the appellant in order to escape from his guilt and the legal punishment, and also to drift the course of the investigation. [690B] 9. The deceased Varsha did

not die by taking any sleep- ing pills or consuming poisonous substance but only on account of external severe pressure on region of pancreas and spleen. [686B] Taylor's Principles and Practice of Medical Jurispru- dence, Vol. I (1965 Edn.) p. 253; Parikh's Textbook of Medical Jurisprudence, p. 353; Modi's Medical Jurisprudence and Toxicology ed. by CA Franklin: Harrison's Principles of Internal Medicine, (11th Edn.) Butterworth's Medical Dic- tionary, referred to. 10. The appellant in his statement under Section 313 Cr. P.C. has stated that he did not go to the cremation grounds as the elders had asked him not to go and that he did not enquire as to why he was not to attend the cremation of his life. This is one more clinging circumstance raising same suspicion about the conduct of the appellant. [689C] 11. The High Court has also examined the nature of the offence proved to have been committed by the appellant, and has rightly held that even though he may not have had the intention to cause death, his act is done with the knowledge that it was likely to cause death and therefore he had committed the offence punishable under Section 304 Part II I PC and was required to be convicted and punished for the same. [690D-F]

JUDGMENT:

PETITIONER: SMT. VANKA RADHAMANOHARI

Vs.

RESPONDENT: VANKE VENKATA REDDY AND ORS.

DATE OF JUDGMENT20/04/1990

BENCH:

ACT: Criminal Procedure Code 1973 : Sections 468. 473-- Limitation-Applicability of-Matrimonial Offences like cruelty, by husband and members of the family-Under Section 498A of I.P.C. Application of Section 468 Criminal Procedure Code for an offence of Second marriage under Section 494 I.P.C. Section 482 Criminal Procedure Code Application-Can the pro- ceedings before Magistrate be quashed for delay by High Court-Under Section 468 or whether Section 473 to be applied in the interest of justice-The non obstante clause of Section 473 and its over-riding effect-Explained. Criminal Procedure Code 1973: Section 482-Quashing of pro- ceedings before Magistrate by the High Court-No cognizance of offence Section 498A I.P.C after expiry of three years- Validity of. Maxim-Vigilantibus. it non-dormientibus, jura subveniunt- Applicability of-In cases of matrimonial Offences like cruelty. Basic difference between the limitation under Section 473 and Section 5 of the Limitation Act-Explained.

HEADNOTE: A complaint petition was filed before the Magistrate by the Appellant that she was ill-treated and subjected to cruelty by husband the accused respondent. and her in-laws, and that during the subsistence of their marriage he married again and got a second, wife. The High Court on an application filed by the accused respondent under Section 482 of Cr.P.C.quashed the Criminal Proceedings, holding that it was time barred since after three years cognizance cannot be taken of an offence under Section 498 A of the Penal Code, 2188 in view of the Section 468 of the Criminal procedure Code. Allowing the Appeal, the Court, HELD 1.In view of the allegation that complainant was as being subjected to cruelty by the respondent the High Court should have held that it was in the Interest of justice to take cognizance even of he offence under Section 498A of the penal Code ignoring the bar of section 468 of the Cr.P.C. (295-C) 2.In view of the allegation of Second marriage during the continuance of the first marriage, prime-facie an offence under section 494 of the penal Code which is punishable by imprisonment for a term which may extend to seven years and then the some was disclosed in the complaint before the Magistrate, there was no question of Section 468 of the Penal Code being applicable since the imprisonment prescribed there is only upto three years. (291-F) 3.In view of Section473 of the Cr.P.C.a court can take cognizance of an offence even after the period prescribed under Section 468. if the court is satisfied on the facts and circumstances of the case. that it is necessary so to do in the interest of justice. Section 473 has a non-obstante clause which means that said section has an over riding effect on Section 468. if the court is satisfied on facts and in the circumstances of a particular case. that either the delay has been properly explained or that It is necessary to do so in the interest of justice (292-E-F) 4.It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her inside the house, which many, of such victims do not like to he made public. As such courts while considering the question of limitation for an offence under Section 498 A i.e. subjecting a women to cruelty by her husband or the relative of her husband, should judge that question in the light of Section 473 (if the Cr.1l.C.which requires the Court, not only to examine as to whether the delay has been property explained, but as to whether "it is necessary to do so in the interest of Justice" (293-H, 294-A) 289 5.Many courts are treating provisions of Sections 468 and 473 of the code as provisions parallel to the period of limitation provided under the limitation Act and power of condonation of delay under Section 5 of the Limitation Act. But there is a basic difference between Section 5 of Limitation Act and Section 473 of the Code. For exercise of powers under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 en joins a duty on the court to examine not only. whether such delay has, been explained but as to whether it is the requirement of justice to condone or Ignore such delay. As such, wherever

the bar of section 468 is applicable,the court has to apply its mind on the question, whether it is necessary to condone such delay in the interest of.justice. (292-G-H) Bliagirathi Kanoria v. State of M.P. AIR 1984 SC 1688=[1985] 1 SCR 626 referred to. 6.The general rule of Limitation is based on the maxim vigilantibus, et non dormientibus, jura subveniunt (the vigilant and not the sleepy, are assisted by the laws). But this maxim cannot be applied In connection with offence relating to cruelty against women. (293-1)) 7.The object of the bar of limitation under Section 468 has been explained in the statement and object for introducing a period of limitation and also by this court but the same consideration cannot he extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. (293-F) State of Punjab v. Sarwan Singh, AIR 1981 SC 1054= [1981] 3 SCR 349- referred to, (309-B)

JUDGMENT: CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 339 of 1993. From the Judgment and order dated 27.4.1992 of the Andhra Pradesh High Court in Crl. Petition No. 6 of 1992. 290 Badri Nath Bahu for Anip Sachthey for the Appellant. T.V.S.R. Krishna Sastry, Vishnu Mathur(NP) and G. Prahhakar, for the Respondents, The Judgment of the court was delivered by N.P. SINGH. J. leave granted. 2.The validity of an order passed by the High Court, in exercise of the power under Section 492 of the Code of criminal procedure hereinafter referred to as "the Code"). quashing the criminal proceeding which had been initiated against the accused-respondents has been questioned in this appeal. 3. The appellant filed a petition of complaint against her husband, accused respondent No. 1 (hereinafter referred to as "the respondent") alleging that she was married to the said respondent and an amount of Rs. 5,000/- along with gold ring and wrist watch, was given to him on the eve of the marriage. Later at the instance of her mother-in-law, who was also in made an accused. she was being maltreated and even abused by the accused persons including her husband. She further alleged that her husband often used to beat her and had been insisting that she should get another sum of Rs. 10,000/- from her parents for his business. Ultimately the respondent married again and got a second wife. The other accused persons have actively associated themselves with the second marriage. It was stated that earlier she had lodged a First Information Report. but when no action was taken by the police, the complaint aforesaid was being filed in the year 19(X). 7Me learned Magistrate took cognizance of 'the offences under Sections 498A and 404 of the Penal Code against the accused persons. 4. The High Court on an application filed on behalf of the accused respondents under Section 482 of the code, quashed the said criminal proceeding saying that after expiry of the period of three years, no Cognizance for an offence under Section 498 A of the Penal code could have been taken. The high Court has pointed out that according to the statement made by the complainant, she had left the matrimonial house in the year 1985 and, as such, she must have been subjected to cruelty 291 during the period prior to 1985. As such, in view of Section 468 of the Code, no cognizance for an offence under Section 498 A could have been taken in the year 1990. The high court has also pointed out that there was discrepancy in respect of the date of Second marriage of respondent, inasmuch as in the petition of complaint 4.5.1900 has been mentioned as the date of the second marriage whereas in the statement recorded on solemn affirmation the appellant has stated that he had married in the year 1986. According to the learned Judge, as section 498A prescribes the punishment up to three years imprisonment only, the petition of complaint should have been filed within three years from the year 1985 in view of section 468 of the code. Nothing- has been said in the order of the High Court, so far the offence under section 494 is concerned, for which the period of imprisonment prescribed is up to seven years. There cannot he any dispute that in view of the allegation regarding the second marriage by the respondent during the contiance of the first marriage, prima facia an offence under Section 494 of the Penal Code was disclosed in the complaint and there was question of Section 468 of the Code being applicable to an offence under Section 494 of the Penal Code. 5.Earlier there was no period of limitation for launching a prosecution against the accused. But delay in initiating the action for prosecution was always considered to be a relevant factor while judging the truth of the prosecution story. But. then a court could not throw out a complaint or a police report soley on the ground of delay. The Code introduced a separate chapter prescribing limitations for taking cognizance of certain offences. It was felt that as time passes the testimony witnesses becomes weaker and weaker because of lapse of memory and the deterrent effect of punishment is impaired. if prosecution was not launched and punishment was not inflicted before the offence had been wiped off from the memory of persons concerned. With the aforesaid object in view Section 468 of the code prescribed six months, one year and three years limitation respectively for offences punishable with fine, punishable with

imprisonment for a term not exceeding one year and punishable with imprisonment for a term exceeding one year but not exceeding three years. The framers of the Code were quite conscious of the fact that in respect of criminal offences, provisions regarding limitation cannot be prescribed at par with the provisions in respect of civil disputes. So far cause of action 292 accruing in connection with civil dispute is concerned, under Section 3 of the limitation Act, it has been specifically said that Subject to the provisions contained in Sections 4 to 24 every suit instituted. appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been Set Lip as a defence. Section 5 of that Act enables any Court to entertain any appeal or application after the prescribed period. if the appellant or the applicant satisfies the court that he had "sufficient cause for not preferring the appeal or making the application within such period". So far Section 473 of the code is concerned. the scope of that Section is different. Section 473 of the ('ode provides:- "Extension of period of limitation in certain Cases. Notwithstanding anything_contained in the foregoing provision of this Chapter, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that tile delay has been properly explained or that it is necessary so to do in the interests of justice." In view of Section 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, hut even in absence of proper explanation it the Court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non obstante clause which means that said Section has an overriding effect on Section 468. if the court is satisfied on the facts and in the circumstances of a particular case. that either the delay has been properly explained or that it is necessary to do so in the interests of justice. 6.At times it has come to our notice that many Courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the limitation Act and the requirement of satisfying the court that there was sufficient cause for condonation of delay under Section 5 of that Act. There is a basic difference between Section 5 of the limitation Act and Section 473 of the Code. For exercise of power under 293 Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the court has to apply its mind on the question, whether it is necessary to condone such delay in the interest of justice. while examining the question as to whether it is necessary to condone the delay in the interest of justice, the court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the code is to be exercised in the interests of justice, then while considering the grievance by a .lady, of torture, cruelty and in human treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim: vigilantibus, et non dormientibus, jura subveniunt (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women. 7.It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this court in the case of State of punjab v. Sarwan Singh, AIR 1981 SC 1054. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a Court to unfold and relate the day to day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such Courts while considering the question of limitation for an offence 294 under Section 498 A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interest of Justice". 8.In the case of Bhagirath Kanoria v. State of M. P. AIR 1984 SC 1688, this court even after having held that non- payment of the employer's contribution to the Provident Fund before the due date, was a continuing offence, and as such the period of limitation prescribed by Section 468 was not applicable, still referred to Section 473

of the Code. In respect of Section 473 it was said: "That section is in the nature of an overriding provision according to which notwithstanding anything contained in the provisions of chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in S.473 of the Code." 9.Coming to the facts of the present case, the- appellant is admittedly the wife of the respondent. She filed the petition of complaint in the year 1990, alleging that she was married to the respondent, who subjected her to cruelty, details whereof were mentioned in the complaint aforesaid. She further stated that on 4.5.1990 he has married again, deserting the appellant. In view of the allegation 295 regarding second marriage, an offence under Section 494 of the Penal Code was also disclosed which is punishable by imprisonment for a tern which may extend to seven years. The High Court taking into consideration Section 468, has come to the conclusion that the complaint in respect of the offence under Section 498 A which prescribes imprisonment for a term up to three years, was barred by time. Nothing has been said by the High Court in respect of the offence under Section 494 of the Penal Code, to which Section 468 of the Code is not applicable, the punishment being for a term extending up to seven years. Even in respect of allegation regarding an offence under Section 498A of the Penal Code, it appears that the attention of the High Court was not drawn to Section 473 of the Code. In view of the allegation that the complainant was being subjected to cruelty by the respondent, the High Court should have held that it was in the interest of justice to take cognizance even of the offence under Section 498 A ignoring the bar of Section 468. 543

PETITIONER: GURBACHAN SINGH

Vs.

RESPONDENT: SATPAL SINGH & ORS.

DATE OF JUDGMENT26/09/1989

BENCH: MUKHARJI, SABYASACHI (J) BENCH: MUKHARJI, SABYASACHI (J) RAY, B.C. (J)

CITATION: 1990 AIR 209 1989 SCR Supl. (1) 292 1990 SCC (1) 445 JT 1989 (4) 38 1989 SCALE (2)677

ACT: Criminal Trial--Criminal charge must be brought home- Proved beyond all reasonable doubt- abetment separate and distinct offence--Letting guilty escape is not doing justice according to law.

HEADNOTE: Ravinder Kaur, daughter of Gurbachan Singh was married to Satpal Singh in November, 1962. She died on 25th June, 1983 at about 2.30 P.M. It was alleged, she committed sui- cide because of the harassment, constant taunts and cruel behaviour of her in-laws towards her and persistent demand for dowry and insinnuations that she was carrying an ille- gitimate child. It is alleged, provoked by the aforesaid conduct and behaviour she committed suicide. The father-in- law, mother-in-law and the husband of the deceased have been the abetters of the crime and the deceased died of second to third degree burns. The learned Additional Sessions Judge on the totality of evidence on record held that the accused were guilty of abetment to suicide and as such punishable under Section 306 of the I.P.C. On appeal by the accused the High Court was of the view that the guilt of the accused had not been proved and as such acquitted them. The complainant and father of the deceased aggrieved by the order of the High Court preferred these appeals by way of special leave to appeal. This Court holding that the order of acquittal made by the High Court is not sustainable and affirming the conviction of the accused under section 306 of I.P.C. and the sentence imposed by the Additional Sessions Judge, Amritsar, HELD: (Per Sabyasachi Mukharji J.) Abetment is a sepa- rate and distinct offence provided the thing abetted is an offence. Abetment does not involve the actual commission of the crime abetted; it is a crime apart. [295G] Criminal charges must be brought home and proved beyond all reasonable doubts. While civil case may be proved by mere preponderance of evidence, in criminal cases the prose- cution must prove the 293 charge beyond reasonable doubt. There must not be any 're- asonable doubt' of the guilt of the accused in respect of the particular offence charged. The courts must strictly be satisfied that no innocent person-innocent in the sense of not being guilty of the offence of which he is charged--is convicted. even at the risk of letting of some guilty per- sons. Even after the introduction of S. 493A of the I.P.C. and S. 113A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt. There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases. [296C-F] The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts of lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Let- ting guilty escape is not doing justice, according to law. [296F] (Per B.C. Ray, J): Circumstantial evidence as well as the prosecution witnesses in the instant case clearly prove beyond doubt that the accused instigated and abetted Ravind- er Kaur, deceased in the commission of the offence by com- mitting suicide by burning herself. [306G] The findings arrived at by the Trial Court after consid- ering and weighing the entire evidences are unexceptional. The findings arrived at by the High Court without consider- ing properly the circumstantial evidence as well as the evidences of the prosecution witnesses cannot be sustained. As such the findings of the High Court are liable to be reversed and set aside. [306H; 307A] The suicide having been committed within a period of seven years from the date of her marriage in accordance with the provisions of Section 113A the Court may presume having regard to all the other circumstances of the case that such suicide had been abetted by the husband and his relations. Therefore, the findings arrived at by the Additional Ses- sions Judge are quite in accordance with the provisions of this section and the findings of the High Court that the accused persons could not be held to have instigated or abetted the commission of offence, is not sustainable in law. [308C-

D] Section 113A of the Indian Evidence Act was inserted in the Statute Book by Act 46 of 1983 whereas the offence under Section 306, I.P.C. was committed on June, 23, 1983 i.e. prior to the insertion of the 294 said provisions in the Indian Evidence Act. [308E] Bardendra Kumar Ghosh, 52 ILR Cal. 197. Mancini v. Director of Public Prosecutions, [1942] AC 1. Woolmington v. The Director of Public Prosecutions, [1935] AC 462, Bater v. Bater, [1950] 2 AET 458 at 459. Wazir Chand and Anr. v. State of Haryana with State of Haryana v. Wazir Chand and Anr., [1989] I SCC 244, Sat Pal v. Delhi Administration, [1976] 2 SCR 11 at 30. Blyth v. Blyth, [1966] A.C. 643. Herridge' v. Herridge, [1966] I AER 93, Brij Lal v. Prem Chand & Anr. JT. 1989 3 SC 1, Halsbury's Laws of England, 4th Edn. Vol. 44 P. 510 & P. 574, refered to.

JUDGMENT: CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 600-601 of 1989. From the Judgment and Order dated 13.3.1986 of the Punjab and Haryana High Court in Crl. Revn. No. 434 and 1295 of 1984. Ms. Geeta Luthra, Ms. Pinky Anand and D.N. Goburdhah for the Appellant. R.L. Kohli and R.C. Kohli for the Respondents. The following Judgments of the Court were delivered SABYASACHI MUKHARJI, J. Ravinder Kaur, daughter of Gurbachan Singh, resident of Amritsar, was married to Satpal Singh in November, 1982. She died on 25th June, 1983 at about 2.30 p.m. She, it was alleged, committed suicide because of the cruel behaviour of her in-laws soon after her marriage. She used to visit her parents' at Amritsar occa- sionally and during those visits she used to tell them that there was demand for dowry and also taunting of her by the members of the family of her in-laws and also insinuation that she was carrying on illegitimate child. There are sufficient, relevant and acceptable evidence to that effect. It is alleged that provoked by the aforesaid conduct and behaviour-, she committed suicide. The father-in-law, moth- er-in-law and the husband of the accused have been the abettors to the crime. The evidence further established that she died of second to third degree burns on the body, and there was sprawling of kerosene oil on her body and the body was burnt by fire. Accused no. 3--Smt. Kamal Dip Kaur, the mother-in-law of the deceased and the mother of the accused Satpal Singh, stated in her statement under s. 3 13 Cr. P.C. that she was lying in her house at that time and the de- ceased was 295 cooking food on a kerosene stove, and as such the deceased caught fire accidentally. Learned Addl. Sessions Judge held that there was absence of burn injuries on the fingertips of the mother-in-law and other members of the family. As mentioned before, the de- ceased was married in November, 1982. After marriage, she used to stay in the house of her-in-laws at Raja Sansi. The deceased used to visit the house of her parents at Amritsar occasionally, as noted before. During these visits she used to tell them that her-in-laws were not happy with the dowry given to the latter. It is further on evidence..that she complained that her in-laws used to taunt her and insisted her tO bring more dowry. It is stated that she complained that the in-laws taunted her that at the time of the mar- riage, her parents did not serve proper meals to the in-laws and their guests. It is further stated that the accused used to tell her that they had been offered by fridge etc. by other parties for the marriage of the accused while she had not brought dowry expected from her parents. It is also on evidence that she was often openly threatened that she would be turned out of the house in case she did not bring more articles. These were all established by the evidence of Gurbachan Singh, father of the deceased and his two daugh- ters. It was insinuated of her by the accused that she was carrying an illegitimate child. On the totality of these evidence on record, it was held by the learned Sessions Judge that the accused were guilty of abetment to suicide and as such punishable under s. 306 of the I.P.C. The High Court on appeal was of the view that the guilt of the accused had not been proved, and as such acquitted them. The first thing that is necessary for proving the of- fence is the fact of suicide. Abetment is a separate and distinct offence provided the thing abetted is an offence. Abetment does not involve the actual commission of the crime abetted; it is a crime apart. See the observations of Baren- dra Kumar Ghosh, 52 ILR Cal. 197. It was contended on behalf of the accused that there was no direct evidence of the act of suicide by Ravinder Kaur. There, indeed, could not be in the circumstances in which she died. She was in the house of her in-laws. There is ample and sufficient evidence that she had complained that she was taunted for bringing meager dowry and that even insinuated that she was carrying 'an illegitimate child'. The aforesaid facts stand established by cogent and reliable evidence. These are grave and serious provocation enough for an ordinary woman in the Indian set up, to do 296 what the deceased is alleged.to have done. There is also evidence that the persons in the house of her in-laws in- cluding the mother-in-law-mother of the accused Satpal Singh, made no attempt to save her from the burn injuries. The absence of any burn injury in the hands of the people around, indicates and establishes that there was no attempt to save the deceased though she was seen

being burnt. The evidence of attitude and conduct of the in-laws--the father-in-law, mother-in-law and the husband after Ravinder Kaur, the deceased, got burns in not informing the parents and not taking prompt steps to take her to hospital for giving medical assistance corroborate the inference that these accused connived and abetted the crime. Criminal charges must be brought home and proved beyond all reasona- ble doubt. While civil case may be proved by mere preponder- ance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. See Mancini v. Director of Public Prosecutions, [1942] AC 1, Woolmington v. The Director of Public Prosecutions, [1935] AC 462. It is true even today, as much as it was before. There must not be any 'reasonable doubt' about the guilt of the accused in respect of the particular offence charged. The courts must strictly be satisfied that no innocent person, innocent in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting of some guilty persons. Even after the introduction of s. 498A of the I.P.C. and s. 113A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt. There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases. See the observations of Lord Denning in Bater v. Bater, [1950] 2 AER 458 at 459 but the doubt must be of a reasonable man. The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fancilful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law. The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. 297 Having regard to the circumstances of the case, there is no direct evidence indicating the circumstances in which the death took place, the conduct of the accused and the nature of the crime with which the accused was charged, there cannot be any scope of doubt that the learned Sessions Judge was right and the conviction was properly made. This is not a case where there could be two views possible on the facts found and on the facts which could not possibly be found because of i,the nature of the offence. The fact the two view are reasonably possible, is not established by the fact that two different conclusions are reached by two adjudica- tory authorities. The factum of that may be only a piece of evidence, but whether two views at all are possible or not, has to be judged in all circumstances by the Judge, by the logic of the facts found in the background of law. For the reasons aforesaid, I respectfully agree with the judgment and order proposed by my learned brother. RAY, J. Special leave granted. These appeals are at the instance of Gurbachan Singh, the complainant against the judgment and order passed in Criminal Appeal No. 434 SB of 1984 by the High Court of Punjab & Haryana at Chandigarh acquitting the accused-re- spondents of the charge under s. 306 of the Indian Penal Code on setting aside the conviction and sentence passed by the Additional Session Judge on August 9, 1984 convicting and sentencing all the accused. The appeal was allowed on holding that there was no evidence on record that the ac- cused at the time of commission of suicide by Ravinder Kant, in any way instigated or abetted her to commit suicide and as such the prosecution failed to establish the charge against the accused and their conviction consequently can not be sustained. The prosecution case is that the deceased, Ravinder Kaur, daughter of Gurbachan Singh, the complainant was married to Satpal Singh in November, 1982. After marriage, Ravinder Kaur started living in the house of her in-laws at Raja Sansi. She used to visit the house of her parents at Amritsar occasionally and during these visits, she used to tell them that her in-laws were not happy with the dowry given to her and they used to taunt her and insisted her to bring more dowry and that they even used to taunt her that her parents at the time of the marriage did not serve them with proper meals. The accused also used to tell her that they were being offered Fridge etc. by the other parties in the marriage of Accused Satpal Singh and that she has not brought the dowry expected from her parents. She was often told 298 by them that she would be turned out of the house, in case she did not bring more articles. In November, 1982, Gurbachan Singh visited the house of her in-laws at Raja Sansi where his daughter complained that the behaviour of her in-laws towards her was not cordial and that they were maltreating her for bringing insufficient dowry and they even taunted her that she was carrying an illegitimate child. Hearing these complaints from her daugh- ter, Gurbachan Singh brought her daughter to his house at Amritsar, one day prior to Baisakhi, 1983 and his daughter continued to remain at his house for about eight days. There-. after Satpal Singh, his father Harbhajan Singh, accused and his mother Smt. Kanwal Dip Kaur along with Harjit Singh, and Mohinder Singh, maternal uncles of Satpal Singh came to the house of Gurbachan Singh at Amritsar and pursuaded that he

should send Ravinder kaur with them where- upon Gurbachan Singh told them that his daughter complained against the ill-treatment and cruel behaviour towards her for bringing insufficient dowry and they also taunted her for this as well as for her illegitimate child and put pressure on her to bring more dowry. So he was reluctant to send her daughter back to her in-laws. Gurbachan Singh called Ved Prakash, President of the Mohalla Committee, Smt. Raj Kumari, a social worker living in the neighbourhood of Gurbachan Singh and one Ramesh Kumar to his house and all these complaints and grievances were repeated in presence of these persons. The accused assured him that in future they would not maltreat and taunt her and that he would not receive any complaint against them. They also assured him that in future they would not ask her to bring more dowry. On these assurances of the accused, Gurbachan Singh sent his daughter with the accused to Raja Sansi, the house of the accused. For about two months, Gurbachan Singh did not receive any information from his daughter and so he sent his two daughters Surjit Kaur and Sajinder Kaur to Raja Sansi to the house of the in:laws of Ravinder Kaur to enquire about her welfare. The said daughters of Gurbachan Singh went to the house of the in-laws of Ravinder Kaur on June 23, 1983 that is, two days prior to the death of Ravinder Kaur. The de- ceased complained to them about the torture as well as cruel behaviour of her in-laws, as before and they have not stopped maltreating her and torturing her and she was not happy there. On June 25, 1983 at about 6.30 p.m., Mohinder Singh, maternal uncle of Satpal Singh came to the shop of Gurbachan Singh at Amritsar and informed him that his daugh- ter committed suicide by sprinkling 299 kerosene oil on her body and then setting herself on fire and that she was lying at S.G.T.B. Hospital, Amritsar. Gurbachan Singh immediately went to the hospital and found the dead body of her daughter lying in the dead house. It has been alleged that Ravinder Kaur committed suicide on June 25, 1983 at 2.30 p.m. having fed up with the cruel behaviour of her in-laws. The appellant alongwith the mem- bers of his family stayed in the hospital. On June 26, 1983, Gurmeet Singh, A.S.I. Police Station, Ajnala came to the dead house at Amritsar at about 5 p.m. and examined the dead body of Ravinder Kaur. He recorded the statements of Gurba- chan Singh, Ved Prakash and Ramesh Kumar. The statement of Gurbachan Singh was reproduced in the Roznamcha, and the statements of Gurbachan Singh and Ved Prakash, President of the Mohalla Sudhar Committee and Ramesh Kumar though disclosed the commission of a cognizable offence by the accused yet Gurmit Singn, A.S.I. and even Shri Iqbal Singh Dhillon, D.S.P., Ajnala Police Station did not register the case for extraneous reasons. On June 27, 1983, Dr. Gurdip Kumar Uppal, Medical Offi- cer, Police Hospital, Amritsar conducted the post mortem examination on the dead body of Ravinder Kaur and found 2nd to third degree burns on the body of deceased. Gurbachan Singh alongwith his daughters and Raj Kumari, Ramesh Kumar, Ved Prakash and others met the S.S.P. Amritsar in this regard and the investigation of the case was then entrusted by S.S.P. to Shri Surjit Singh, S.P. (Head Quar- ters) Amritsar who summoned Gurbachan Singh and other per- sons and recorded their statements on July 23, 1983. All the three accused were charged for an offence under s. 306 of the Indian Penal Code and they pleaded not guilty to the charge framed against them. The accused no. 3 Smt. Kanwal Dip Kaur, the mother of the accused, Satpal Singh stated in her statement under s. 313 Cr. P.C. that she was lying in her house at the time and the deceased was cooking food in the kitchen on a kerosene stove and she caught fire accidentally. The learned Additional Sessions Judge held that the absence of burn injuries on the fingertips of the mother-in-law or other members of the family as evident from the statement of D.W. 1, Jaswant Singh, 300 ruled out the story of accidental fire as set up by the defence. He further held referring to the provisions of s. 113A of the Evidence Act that having regard to the facts and circumstances of the case it may be presumed that the ac- cused persons have abetted the suicide committed by the deceased and they fail to reverse this prosecution case by any evidence. Accordingly, the Additional Sessions Judge, Amritsar convicted the accused under s. 306 IPC and sen- tenced them to suffer rigorous imprisonment for five years each and to pay a fine of Rs.2,000 each, in default of payment of fine the accused shall be further liable to rigorous imprisonment for four months. The accused-respondents preferred an appeal being Crimi- nal Appeal No. 454 of 1984 in the High Court of Punjab and Haryana. The appeal was allowed and the conviction and sentence was set aside on the ground that the prosecution failed to establish the charge against the accused persons. Hence this appeal by special leave has been filed by the complainant. It has been contended by the learned counsel appearing on behalf of the appellant that the cruel behaviour, mal- treatment and taunts for not bringing sufficient dowry have been made to the deceased, Ravinder Kaur, soon after her coming to the house of her in-laws. It has also been urged that in November, 1982 she complained of her in-laws' ill- treatment and taunts to his father and her father took her to his house. It has also been urged that the accused Satpal Singh and his father accused Harbhajan Singh and other relatives of the accused met the deceased father at his house and requested him to send his daughter to the house of her in-laws and assured

them that they would not maltreat her or taunt her or torture her for not bringing sufficient dowry. These assurances were given in the presence of Ved Prakash, the President of the Mohalla Sudhar Committee, and Raj Kumari, a social worker and one Ramesh Kumar. Gurbachan Singh, father of the deceased on these assurances given by the accused and their relations sent his daughter, Ravinder Kuar to her in laws house. It has also been urged that on June 23, 1983 the two daughters Surjit Kaur and Sujinder Kaur were sent by Gurbachan Singh to the house of the in- laws of Ravinder Kaur to enquire about her welfare. Surjit Kaur, PW-7 stated in her statement under s. 161 Cr. P.C. that her sister Ravinder Kaur complained them about the same ill-treatment by her husband continuing in the same manner as before and as such she was not happy. This was reported by them to their father at Amritsar. It has also been urged that all the three accused taunted the deceased, Ravinder Kaur that she was carrying an illegitimate child. Being 301 depressed with these taunts and ill-treatment the deceased committed suicide by sprinkling kerosene on her person and setting her to fire. The evidences of PW-4 Gurbachan Singh, father of the deceased and the evidence of PW-7 Surjeet Kaur as well as evidence of PW-6 Raj Kumari were duly considered by the trial court and the trial court clearly found the accused persons guilty of the offence of abetting the sui- cide committed by the deceased. The court of appeal below had wrongly found that the prosecution could not prove charge against the accused and set aside the order of con- viction and sentence made by the trial court and acquitted the accused. It has been urged in this connection that the defence that it was a case of accidental fire and not of suicide was also not believed by the trial court and the trial court gave very cogent and plausible reasons for not believing this story and holding that it was a case of suicide committed by the deceased Ravinder Kaur by the taunts and ill-treatment made to her by her in laws and this forced her to take her own life by suicide. It has been submitted that the accused have abetted the commission of suicide by Ravinder Kaur, deceased and the accused are, therefore, guilty of the said charge. The order of acquittal made by the High Court is not sustainable in these circum- stances. The learned counsel, Mr. R.C. Kohli has made three fold submissions before this Court. The first submission is that the case of suicide committed by the deceased Ravinder Kaur was not proved and as such the conviction on the charge of s. 306 I.P.C. as made by the trial court was not sustain- able. He has further submitted that the prosecution has not proved beyond reasonable doubts that the deceased committed suicide. The next submission made is that the evidences produced on behalf of the prosecution are meagre and do not prove that the accused had abetted the commission of suicide by the deceased Ravinder Kaur. The prosecution did not prove that there was any instigation by the accused persons charged with the offence in this case. The High Court has rightly held that the prosecution failed to prove the ingre- dients of s. 306 of the IPC and acquitted the accused of the charge under s. 306. This order of acquittal should not be interfered with by this Court in this appeal. It has been lastly contended that if two reasonable views could be taken of evidences, one in favour of the accused and the other against them the appellate court should not interfere in such case and set aside the order of acquittal. As regards the first submission that the case of suicide has not been proved, it is relevant to mention that in the FIR (Ex. PF) lodged by the complainant it has been specifi- cally stated that due to constant 302 harassment of Ravinder Kaur by the accused persons for having brought less dowry in her marriage as well as due to constant taunts and also torture, the deceased committed suicide by pouring kerosene oil on her and burnt herself and afterwards she died. It has been further stated in the FIR that the complainant apprehended that some quarrel must have happened on the day of the incident between his daughter, Ravinder Kaur and her husband Satpal Singh, father-in-law Harbhajan Singh and mother-in-law Kanwaldip Kaur before she took the extreme step. P.W. 4, Gurbachan Singh has also stated in his deposition that his daughter used to tell them that her husband, father-in-law and mother-in-law always taunted her saying that her parents had not given sufficient dowry during the marriage and had not even served them with proper meals at the time of marriage. He further stated that on 25th June, 1983 at 6.30 p.m. Mohinder Singh, maternal uncle of Satpal Singh came to shop and told him that his daughter had committed suicide by sprinkling kerosene oil on her body and then setting her on fire. In his statement under Section 161, Cr. P.C. recorded on 23rd July, 1983 he also stated that her two daughters namely Sajinder Kaur and Surjeet Kaur (P.W. 7) who visited Raja Sansi to meet their sister, Ravinder Kaur two days before the incident were told by her deceased daughter that her in-laws often taunted her for not bringing sufficient dowry. It has also been stated by him that the accused taunted her daughter saying that she was carrying an illegal child which is a great defame for them. It has also been stated that "due to the bad treatment meted out towards his daughter Ravinder Kaur at the hands of her husband, Satpal Singh, her mother-inlaw, Kanwaldip Kaur and her father-in-law, Harbhajan Singh that she had not brought scooter and fridge and had brought less dowry in her marriage they had forced her to put kerosene oil on her body and commit suicide and as they often taunted her saying

that she had begotten immoral and illegal pregnancy and for this reason she had committed suicide and thus had lost her life." Furthermore, though the house of the accused persons is not far off yet the information was given not by his son-in-law or other members of the family promptly but it was given by the maternal uncle of the son-in-law, Satpal Singh at 6.30 p.m. to the appellant although the incident occurred at about 2.30 p.m. It is also evident that the deceased, Ravinder Kaur who had second to third degree burns on her person was brought to the hospital in the evening and the doctor, P.W. I immediately examined her and declared that she was already dead. Another most pertinent question which has been decided by the Trial Court is that the de- fence story as stated by her mother-in-law, 303 Kanwaldip Kaur in her examination under section 3 13 Cr. P.C. that it was a case of accidental fire and not a case of suicide, was falsified by the absence of burn injuries on the finger tips of the mother-in-law or other members of the family. The Trial Court rightly held "that the intending circumstances show that she was not allowed to move till the process of burning had become irrecoverable and till she succumbed to her injuries." We do not find any infirmity in this finding and we also hold on consideration and appraisement of the evidences as well as the circumstances set out hereinbefore that it was not a case of accidental fire but a case of suicide commit- ted by the deceased Ravinder Kaur being constantly abused, taunted for bringing less dowry and also being defamed for carrying an illegitimate child. It is pertinent to mention that in the appeal before the High Court it was not urged on behalf of the accused that the case of suicide was not proved and as such there was no finding by the High Court on this score. In such circumstances this argument is totally devoid of merit and as such it is not sustainable. It is convenient to refer in this connection the deci- sion cited at the bar in Wazir Chand and Another v. State of Haryana with State of Haryana v. Wazir Chand and Another, [1989] 1 SCC 244 to which one of us (B.C. Ray, J) was a party, wherein it has been held that "a plain reading of this provision (S. 306 I.P.C) shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed sui- cide." This decision is not at all applicable to the instant case in view of our specific finding that the evidence adduced on behalf of the prosecution clearly establish that the deceased Ravinder Kaur committed suicide at the instiga- tion and abetment of the accused persons in the commission of the said offence. The next argument advanced is that the evidences were too meagre and unreliable to sustain the conviction. It has also been urged that the High Court considered the evidences and came to a reasonable finding that the prosecution could not prove the ingredients of Section 306, IPC as there was no instigation by the accused nor there was any conspiracy for the commission of that offence. The High Court arrived at this finding on some contradictions in the statement of the evidences of P.W. 4, Gurbachan Singh, father of the deceased and of P.W. 7, Surjeet Kaur, sister of the deceased respectively with their statements made under Section 161 Cr. P.C. 304 It is convenient to refer in this connection the obser- vation made by this Court in the case of Sat Pal v. Delhi Administration, [1976] 2 SCR 11 at 30 to the following effect: "It emerges clear that on a criminal prosecu- tion when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record that part of his testimony which he finds to be creditworthy and act upon it." We have already referred to the material portions of the FIR as well as all the statements made by P.W. 4 in his evidence as well as his statement under Section 161 Cr. P.C. as well as the evidence of P.W. 7 and her statement under Section 161 Cr. P.C. On a plain reading of these statements it will be crystal clear that the accused persons since the date when the deceased, Ravinder Kaur went to her in-laws' house after the marriage, was mal-treated and was constantly taunted, harassed and tortured for not bringing sufficient dowry from her father and she was taunted for carrying an illegitimate child. The appellant sometime in November, 1982 went to her in-laws house. His daughter, Ravinder Kaur complained to him about this torture and constant taunts for not bringing sufficient dowry. On hearing this, her father brought her to his house and after eight days the accused persons, Satpal Singh, his father Harbhajhan Singh and two maternal uncles came to the house of the appellant and requested him to send his daughter with them assuring that there would be no further taunts or any ill-treatment by the respondents. The President of the Mohalla Sudhar Committee, Ved Prakash, P.W. 5 and a social worker, Smt. Raj Kumari, P.W. 6 and another person Ramesh Kumar of the same village were called in by Gurbachan Singh and in their presence all these talks were held. On the assurances given, Gurbachan Singh sent his daughter with them. It is also in evidence that as no

information of her was received, Gurbachan Singh sent his two other daughters namely Surjeet Kaur, P.W. 7 and Sajinder Kaur, to the 305 house of the in-laws of the deceased Ravinder Kaur to en- quire about her welfare. Ravinder Kaur told them that there was no improvement in the treatment meted out to her and she was being taunted and tortured by her in-laws in the same way and she was not happy. Two days thereafter i.e. on 25th June, 1983 at 2.30 P.M. this unfortunate incident occurred. P.W. 7, Gurjeet Kaur also stated in her deposition to the same effect. In her statement under Section 161 Cr. P.C. she also stated categorically that after about one month of the marriage whenever Ravinder Kaur met her she told that her in-laws i.e. the respondents were not treating her well for bringing less dowry. She was also told that the respondents were demanding refrigerator and a scooter. They had also taunted that she was having illegitimate child. She further stated that two days prior to the present occurrence she and her sister, Sajinder Kaur went to Raja Sansi to enquire about the welfare of our sister, Ravinder Kaur who told them weepingly that she was being beaten by the accused and again was mal-treated for bringing less dowry and scooter and fridge etc. She further stated that the respondents were leveling allegations that she had been carrying an illegiti- mate child and that she should die. It was also stated by her that her mother-in-law, Kanwaldip Kaur was present in the house and she was abusing Ravinder Kaur in their presence. The learned Sessions Judge after carefully considering and weighing the evidences held that the witnesses P.W. 4, Gurbachan Singh, P.W. 5, Ved Prakash, President of the Mohalla Sudhar Committee, P.W. 6, Smt. Raj Kumari, social worker and P.W. 7, Surjeet Kaur clearly proved that the respondents mal-treated Ravinder Kaur for bringing less dowry and they even tortured her for carrying an illegiti- mate child. The said witnesses testified to the greedy and lusty nature of the respondents that they were persistently demanding more money. It has also been held that the worst part of the cruelty was that she was even taunted for carry- ing an illegitimate child. The Trial Court also held that a respectable lady cannot bear this kind of false allegation levelled against her and this must have mentally tortured her. Thus the persistent demands of the accused for more money, their tortures and taunts amounted to instigation and abetment that compelled her to do away with her life. This finding was arrived at by the learned Sessions Judge on a proper appreciation of the evidences adduced by the prosecution. The High Court without properly considering and weighing the evidences of the prosecution witnesses and on a wrong appreciation of the evidences found that the prosecution failed to prove the ingredients of 306 Section 306 of I.P.C. It was also held that there was no evidence on record that the accused at the time of commis- sion of suicide by Ravinder Kaur, deceased in any way insti- gated or abetted her to commit suicide even though it has been brought but in evidences that the deceased was being maltreated by the accused continuously after her coming to the house of her in-laws. It was further held that the prosecution has singularly failed to establish the charge against the accused and their conviction and sentences were consequently unsustainable. We have already stated hereinfore that P.W. 4, Gurbachan Singh, P.W. 7, Surjeet Kaur have clearly stated in their depositions about the ill-treatment, torture and the cruel behaviour meted out to the deceased Ravinder Kaur which instigated her to take the extreme step of putting an end to her life by sprinkling kerosene oil on her body and setting fire. We have also stated hereinbefore that though the incident occurred at 2.30 P.M. the information of the death of Ravinder Kaur by burning was given to her father, Gurba- chan Singh at 6.30 P.M. in his shop at Amritsar. Gurbachan Singh with members of his family immediately rushed to the hospital and found the dead body of her daughter in the dead house of the hospital. It is also in evidence that Ravinder Kaur was brought to the hospital after much delay when she was already dead. The Trial Court rightly held that in such cases direct evidence is hardly available. It is the circumstantial evidence and the conduct of the accused persons which are to be taken into consideration for adjudicating upon the trust- fulness or otherwise of the prosecution case. We have already referred to hereinbefore the evidences of the prosecution witnesses who clearly testified to the greedy and lusty nature of the accused in that they persist- ently taunted the deceased and tortured her for not having brought sufficient dowry from her father. It is also in evidence that they also taunted her for carrying an illegit- imate child. All these tortures and taunts caused depression to her mind and drove her to take the extreme step of put- ting an end to her life by sprinkling kerosene oil on her person and setting fire. Circumstantial evidence as well as the evidences of the prosecution witnesses clearly prove beyond reasonable doubt that the accused persons instigated and abetted Ravinder Kaur, deceased in the commission of the offence by committing suicide by burning herself. The find- ings arrived at by the Trial Court after considering and weighing 307 the entire evidences are unexceptional. The findings arrived at by the High Court without considering properly the cir- cumstantial evidence as well as the evidences of the prose- cution witnesses cannot be sustained. As such the findings of the High Court are liable to be reversed and set aside. The High Court drew an inference from the conduct of Gurbachan Singh, P.W. 4 in making a delay of about 24 hours after

receipt of the information regarding her daughter's death to make a statement to the police about the incident with lodging the F.I.R. on the same date, i.e. June 25, 1983 or on the following morning. The High Court, therefore, held that all these circumstances would raise considerable doubt regarding the veracity of the evidence of these two witness- es (P.W. 4 and P.W. 7) and point an infirmity in their evidence as would render it unsafe to base the conviction of the accused. It is in evidence of P.W. 4 that he was intimate about the death of his daughter by committing suicide, by the maternal uncle of Satpal Singh, son-in-law on June 25, 1983 at about 5.30 p.m. He immediately rushed to the hospital with members of his family where his daughter was brought. It is also in his evidence that he stayed there the whole night with his wife and other members of his family near the dead body of his deceased daughter and also on the next day till the dead body was handed over to him after the comple- tion of post martem in the afternoon. The Assistant Sub- Inspector of Police of Ajnala Police Station reached SGTB Hospital on the next day i.e. on June 26, 1983 and got his statement recorded there. It has been rightly held by the Additional Sessions Judge that in the circumstances it cannot be said that there has been any delay in reporting the matter to the police. We fully accept this finding of the Additional Sessions Judge and we also held that the delay in lodging the FIR in the above circumstances does not raise any doubt regarding the veracity of the said two witnesses and there is no infirmity in the evidences of P.W. 4 and P.W. 7 which would render them unsafe to base the conviction of the accused as wrongly observed by the High Court. It is also convenient to refer to this connection to the provisions of Section 113A of Indian Evidence Act, 1872 which provide that: "113-A. Presumption as to abetment of suicide by a married women--When the question is whether the commission of suicide by a woman had been abetted by her husband or any rela- tive of her husband and it is shown that 308 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." In the instant case the deceased Ravinder Kaur was married to the accused, Satpal Singh in November, 1982 and she committed suicide on June 25, 1983. It has also been found on a consideration of the circumstantial evidence that she was compelled to take the extreme step of committing suicide as the accused persons had subjected her to cruelty by constant taunts, mal-treatment and also by alleging that she has been carrying an illegitimate child. The suicide having been committed within a period of seven years from the date of her marriage in accordance with the provisions of this Section, the Court may presume having regard to all the other circumstances of the case which we have set out earlier that such suicide has been abetted by the husband and his relations. Therefore, the findings arrived at by the Additional Sessions Judge are quite in accordance with the provisions of this Section and the finding of the High Court that the accused persons could not be held to have instigate or abetted the commission of offence, is not sustainable in law. It has been contended on behalf of the accused-respond- ents that Section 113-A of the Indian Evidence Act was inserted in the Statutes Book by Act 46 of 1983 whereas the offence under Section 306, I.P.C. was committed on June 23, 1983 i.e. prior to the insertion of the said provision in the Indian Evidence Act. It has, therefore, been submitted by the learned counsel for the respondents that the provi- sions of this Section cannot be taken recourse to while coming to a finding regarding the presumption as to abetment of suicide committed by a marriage woman, against the ac- cused persons. The provisions of the said Section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case. It is profitable to refer in this connection to Hals- bury's Laws of England, (Fourth Edition), Volume 44 Page 570 wherein it has been stated that: "The general rule as mat all statutes, other than those which are merely declaratory or which relate only to mat- 309 ters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature It has also been stated in the said volume of Halsbury's Law of England at page 574 that: "The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the inten- tion of Parliament." In Blyth v. Blyth, [1966] A.C. 643 the wife left the husband in 1954 and lived with the co-respondent until August, 1955, when she broke off the association. In 1958 the husband and wife met by chance and sexual intercourse took place. In December, 1962, the husband sought a divorce on the ground of his wife's adultery. During the pendency of the application section 1 of the Matrimonial Causes Act, 1963 came into force on July 31, 1963 which provided that any presumption of condonation which arises from the contin- uance or resumption of marital intercourse may be rebutted on the part

of a husband, as well as on the part a of wife, by evidence sufficient to negative the necessary intent. The question arose whether this provision which came into force on July 31, 1963 can be applied in the instant case. It was held that the husband's evidence was admissible in that Section 1 of the Act of 1963 only altered the law as to the admissibility of evidence and the effect which the courts are to give to evidence, so that the rule against giving retrospective effect to Acts of Parliament did not apply. In Herridge v. Herridge, [1966] 1 AER 93 similar ques- tion arose, it was held that section 2(1) of the Act of 1963 was a procedural provision, for it dealt with the adducing of evidence in relation to an allegation of condonation in any trial after July 31, 1963; accordingly the subsection was applicable, even though the evidence related to events before that date, and the resumption of cohabitation in the present case did not amount, by reason of Section 2(1), to condonation. On a conspectus of these decisions, this argument on behalf of 310 the appellant fails and as such the presumption arising under Section 113-A of The Evidence Act has been rightly taken into consideration by the Trial Court. It has been urged by referring to the decision in Brij Lal v. Prem Chand & Anr., JT 1989 3 SC 1 that where two views could reasonably be taken the appellate court should not interfere with the order of acquittal made by the Trial Court. In the instant case on a proper consideration and weigh- ing of the evidences the only reasonable view that can be taken is that the cruel behaviour and constant taunts and harassment caused by the accused persons while Ravinder Kaur, deceased was in her in-laws house instigated her to commit suicide and in our considered opinion no other rea- sonable view follows from a proper consideration and ap- praisement of the evidences on record. As such the decision cited above is not applicable to the facts and circumstances of the instant case. For the reasons aforesaid we set aside the judgment and order of acquittal passed by the High Court and affirm the conviction of the accused of the offence under Section 306 I.P.C. and sentence imposed upon them by the Additional Sessions Judge, Amritsar. The respondents will immediately surrender in the Court of Sessions Judge, Amritsar to serve out the remaining period of their sentence. R.N.J. Appeals allowed. 311

PETITIONER: BRIJ LAL Vs. RESPONDENT: PREM CHAND & ANR. DATE OF JUDGMENT 20/04/1989

BENCH: NATRAJAN, S. (J) BENCH: NATRAJAN, S. (J) AHMADI, A.M. (J)

CITATION: 1989 AIR 1661 1989 SCR (2) 612 1989 SCC Supl. (2) 680 JT 1989 (3) 1 1989 SCALE (1)1076
CITATOR INFO : D 1990 SC 209 (41)

ACT: Indian Penal Code--Sections 304B, 306 and 498A—Dowry Offences--Punishment for----What would constitute instiga- tion for commission of offence----Would depend on facts of case----Act of abetment-To be judged in the conspectus of evidence of the case.

HEADNOTE: Prem Chand, accused-respondent, had married Veena Rani, deceased, in the year 1973. Veena Rani was then employed in the State Bank of Patiala. Soon after their marriage the Accused resigned his job as Prosecuting Sub-inspector and started his ractice at Sangrut. Veena Rani got herself transferred to Sangrur and the couple set up house there. From the very beginning Veena Rani had an unhappy married life because the accused constantly tormented her to get more money from her parents. The accused was also given to heating her frequently. Veena Rani gave birth to a male child. Even after child-birth the accused did not stop ill-treating her. Unable to bear the ill-treatment, Veena Rani took leave on loss of pay and went away to her parents. She later filed an application under section 9 of the Hindu Marriage Act in the Court at Patiala for restitution of conjugal rights. At this stage, a compromise was brought about between the parties and Veena Rani came back to live with the accused at Sangrur. But nothing changed, and the accused continued to torment her for money.

The immediate provocation for the accused stepping up his illtreatment of Veena Rani was his demand of Rs. 1,000 to pay the balance amount of the scooter price which he had purchased. Veena Rani had no funds of her own. She, therefore, wrote to her brother and mother narrating her woes and requesting them to send Rs. 1,000. In spite of Veena Rani writing to her brother and mother, the accused did not relent in the immediate compliance of his demand. On 15.9.1975, the day of the tragedy, the accused and Veena Rani had a quarrel and thereupon both of them went to the house of Shri Hari Om, Advocate, who advised the accused not to torment Veena Rani. 613

There, in the presence of Hari Om, the accused went to the extent of saying that Veena Rani may go to hell but he should get the money forthwith. Veena Rani reacted by saying that she preferred death to such life. The accused, far from expressing regret for his conduct, drove her to despair by further saying that she can provide him relief quicker by dying on the very day. Thereafter, the accused left Veena Rani at their house and went to court at about 9.00 a.m. At 10.15 a.m. shrieks were heard from their house, and when people rushed in, they found Veena Rani lying on the ground with extensive burn injuries. Before her death in the hospital, Veena Rani told the doctor that she had been tortured at home and that she wanted to die as early as possible. The Additional Sessions Judge found the accused guilty under section 306, I.P.C., and sentenced him to undergo R.I. for four years. The Judge held that the accused had been tormenting and also physically assaulting Veena Rani, and that Veena Rani had committed suicide by reason of the accused's instigation. The High Court, on appeal, acquitted the accused holding that even though Veena Rani had committed suicide on account of her unhappy married life, there was nothing on the record to show that the appellant in any manner instigated the deceased to commit suicide. In this Court, two special leave petitions have been filed, one by the father of Veena Rani and the other by the State of Punjab. On behalf of the appellants it was contended that the High Court had completely erred in its appreciation of the evidence and in its application of the law. On behalf of the accused it was contended that even if the prosecution evidence was accepted in full, there was no material to show that the suicidal death of Veena Rani was abetted in any manner by the accused. Allowing the appeals and restoring the conviction of the accused under s. 306, this Court, HELD: (1) Veena Rani's death was undoubtedly due to suicide and not due to any accident or homicide. [621A] (2) There is overwhelming evidence in the case to establish that Veena Rani's life was made intolerable by the accused by constantly demanding her to get him money and also beating her frequently. [620G] 614

(3) Viewed in the background of Veena Rani's plight during the few days preceding her death and the events that took place on the morning of the tragedy, the utterances by the accused to the effect that she can provide him relief quicker by dying on the very same day would have certainly been seen by

Veena Rani as an instigation to her to commit suicide. [621D; 622B] (4) No mother, however distressed and frustrated, would easily make up her mind to leave her young child in the lurch and commit suicide unless she had been goaded to do so by someone close to her [622B-C] (5) When the evidence is of so compulsive and telling in nature against the accused, the High Court, it is regretted to say, has dealt with the matter in a somewhat superficial manner and acquitted the accused on the basis of imaginary premises. The High Court has failed to comprehend the evi- dence in its full conspectus and instead has whittled down the evidence by specious reasoning. [624E-F] (6) As to what constitutes instigation would depend upon the facts of each case. Therefore, in order to decide wheth- er a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation. [627A-B]

(7) Such being the case, the instigative effect of the words used by the accused must be judged on the basis of the distraught condition to which the accused had driven Veena Rani. [627B-C]

(8) In the instant case, the abetment of the commission of suicide by Veena Rani is clearly due to instigation and would therefore fail under the first clause of section 107, IPC. [626E-F]

(9) The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths of women has shocked the Legislative conscience to such an extent that the Legislature has deemed it neces- sary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113A and 113B in the Indian Evidence Act, and section 498A and 304B in the Indian Penal Code. [627E-G] 615

(10) It is not a case where Veena Rani had wanted to commit suicide for reasons of her own and the accused had facilitated her in the commission of suicide, as would attract Explanation II to Section 107 IPC. [626A] Sri Ram v. State of U.P., [1975] 2 SCR 622; distin- guished.

(11) Taking all factors into consideration including the fact that more than 11 years have elapsed since the High Court acquitted the accused and the accused is now leading a settled life, the Court considered the plea of leniency, and while restoring the conviction of the accused under section 306 modified the sentence to the period already undergone and enhanced the fine to Rs.20,000, out of which Rs. 18,000 were to be given to the father of the deceased for being utilised for the maintenance of Veena Rani's son. [628E]

JUDGMENT: CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 477 of 1978. From the Judgment and Order dated 23.11.1977 of the Punjab and Haryana High Court in Criminal Revision No. 880 of 1976. WITH Criminal Appeal No. 288 of 1989. From the Judgment and Order dated 23.11. 1977 of the Punjab and Haryana High Court in Crl. A. No. 670 of 1976. S.K. Bisaria and J.K. Nayyar for the Appellant in Crl. Appeal No. 477 of 1978. R.C. Kohli and R.S. Suri for the Appellant in Criminal Appeal No. 288 of 1989. S.K. Mehta, Dhuru Mehta and Atul Handa for the Respondent. The Judgment of the Court was delivered by: NATARAJAN, J. Appeal No. 477 of 1978 by Special Leave and Appeal No. 288 of 1989 by Special Leave arising out of Special Leave (Crl.) Petition No. 250 of 1980 are directed against a judgment of the High Court of Punjab and Haryana in Criminal Appeal No. 670 of 1976 616 whereunder a learned single Judge of the High Court had set aside the conviction of respondent Prem Chand and acquitted him of the charge under Section 306 I.P.C. The former appeal has been filed by the father of the deceased Veena Rani while the latter appeal has been filed by the State of Punjab. The facts of the case are in brief as under: Deceased Veena Rani who died of burn injuries on 15.9. 1975 was married to the respondent Prem Chand (hereinafter referred to as accused) in the year 1973. Veena Rani, who had passed the M.A. and B .Ed. degree examinations was employed in the State Bank of Patiala and was earning about Rs. 600 to 700 per month. The accused, who had obtained a degree in law was a prosecuting Sub-Inspector and soon after marriage he resigned his job and set up practice in his native place Sangrur. When the accused resigned his job and set up practice in Sangrut, Veena Rani obtained a transfer to Sangrur from Patiala and the couple set up house in a building owned by PW 5 Krishan Dutt. From the very beginning Veena Rani had an unhappy married life because of the ac- cused constantly demanding her to get more money from her parent's house. Even though the

accused had joined the office of a senior advocate by name Shri O.P. Singhal, his earnings were meager and consequently the house-hold ex- penses were borne by her from out of her salary. Besides tormenting Veena Rani to get more money from her parents, the accused was also given to beating her frequently. Veena Rani complained to her parents, brother and brother-in-law about the cruel treatment meted out to her by the accused. PW 4 Shanti Devi and PW 14 Khem Chand, the mother and broth- er respectively of Veena Rani and PW 17 Kuldip Rai, her brother-in-law have deposed about Veena Rani telling them about the accused ill-treating her and physically assaulting her. Apart from them, PW 5 Krishan Dutt, the landlord has also testified that the accused was in the habit of beating Veena Rani and that on hearing her cries he used to inter- vene and advise the accused to stop beating her. Since the accused did not mend his ways and continued his beatings of Veena Rani. PW 5 Krishan Dutt asked the accused to vacate his house. Veena Rani conceived and gave birth to a male child. But even after the child birth, the accused did not stop ill- treating her. Unable to bear the ill-treatment, Veena Rani took leave on loss of pay and went away to her parent's house at Patiala. The separation had no effect on the ac- cused and hence Veena Rani filed an application under Sec- tion 9 of the Hindu Marriage Act in the Court at Patiala for restitution of conjugal rights. As a counter move, the accused also filed a 617 similar petition in the Court at Sangrur. However, the enquiry of that petition was stayed by the Senior Sub Judge, Sangfur till the disposal of the earlier petition filed by Veena Rani at Patiala. At that stage of matters, Shri O.P. Singhal, who was acting as the counsel for the accused and PW 9 Shri Hari Om, another advocate at Sangrut who was appearing for Veena Rani brought about a compromise between the parties and in terms thereof Veena Rani came back to Sangrur to live with the accused. The re-union, however, took place only after the accused's counsel Shri O.P. Sing- hal had personally assured that their would be no danger to Veena Rani's life at the hands of the accused. This time, the parties set up residence in a house belonging to PW 12 Nathu Ram. Nothing changed, however because the accused started tormenting Veena Rani almost from the day of re-union for money and continued beating her. PW 12 Nathu Ram was a witness to the accused quarrel- ling with Veena Rani and beating her. The immediate provoca- tion for the accused stepping up his ill-treatment of Veena Rani was his purchase of a scooter for Rs.3,500 from one A.N. Jindal. The accused was able to obtain only Rs.2,500 from his father for buying the scooter and for the balance amount of Rs. 1,000 he asked Veena Rani to get tile same from her parents. Veena Rani had no funds of her own because she had been on leave on loss of pay for several months and had joined duty at the Bank only on 13.8.1975. She was in a fix and therefore she wrote a letter on 10.9.75 to her brother PW 14 Khem Chand as under:

"Dear brother, the day I came here he is asking for Rs. one thousand from the same day to repay the loan of the scooter. He does not pay any expenses which are required by me. Because I will receive my pay only on 26th September and all things are as they were before." Again just one day before her death i.e. 14.9.1975, she wrote to her mother PW-4 Shanti Devi a pathetic letter as follows:

"Yesterday I was to come to see Saroj in the evening but there is a quarrel in the house. I have no money, if I have any require- ment I must fulfil myself, otherwise no alter- native than to go on weeping and crying. Because he is saying that I am to repay the loan of Rs. 1,000 and I am to pay Rs. 100 for the house rent. Dear mother, you know it very well that I have not received my pay. It is therefore I am unable to pay anything for the household expenses. It is therefore, I am in a very bad condition at my house. I do not understand what to do. Whenever I talk to go to any 618 place, the same day there is an uproar in the house and he does not turn up till 12.00 in the night and unhealthy atmosphere develops in the house. Dear mother, please send me Rs. 1,000 immediately through Bhupinder. Dear mother, I am very sad on this account and unhappy. The whole day I remain weaping. Manish (the child) is alright. You do not worry but please send me Rs. 1,000 immediate- ly."

In spite of Veena Rani, writing to her brother and mother for a sum of Rs. 1,000 being sent immediately, the accused did not relent in his insistence for immediate compliance of his demand. This led to a quarrel between the husband and wife on the 15th morning and thereupon both of them went to the house of PW-9 Shri Hari Om at 6.30 a.m. itself. After-PW-9 Shri Hari Om woke up, he made enquiries and Veena Rani told him that the accused was "demanding money from her and annoying her on that account" in spite of her telling him that she had written letters to her brother and mother. He advised the accused not to torment Veena Rani for money but in spite of it the accused said he wanted immediate payment of the sum of Rs. 1,000. The accused went to the extent of saying that Veena Rani can go to hell but he should get his sum of Rs. 1,000 forthwith. Veena Rani reacted by

saying that because of the accused quarrelling with her every day over the payment of money, she preferred death to life in this world. The accused, far from express- ing regret for his conduct, drove her to despair by further saying that she can provide him relief quicker by dying on the very same day and that she need not postpone her death to the next day. PW-9 Shri Hari Om then sent the parties home saying that the matter can be talked over in the evening.

After things had gone to such a pitch the accused and Veena Rani left the house of PW-9 Hari Om at about 9.00 a.m. and went back to their house. After leaving Veena Rani in the house, the accused went to the Court. At about 10.15 a.m. PW-12 Nathu Ram was informed by one Keemat Rai, advo- cate that shrieks were heard coming from the house occupied by the accused and .Veena Rani. Both of them rushed to the house and saw Veena Rani lying on the ground with extensive burn injuries on her body. At once PW-12 Nathu Ram rushed on his bicycle to the Court and informed the accused an 11 D.K. Jindal, about Veena Rani having sustained burn injuries Thereupon all of them came to the house and the accused with the help of PW-11 D.K. Jindal removed Veena Rani to the Civil Hospital at Sangrut. FW-9 Hari Om on coming to know of Veena Rani having 619 sustained burn injuries, had information sent to PW- 17 Kuldip Rai and also made arrangements for a phone message being given to the parents of Veena Rani at Patiala. There-after he went to the hospital but by then Veena Rani had died. Veena Rani was seen by Dr. B.R. Dular at the hospital at 10.45 a.m. and the doctor found her to have sustained severe burns and to be in a state of shock. Veena Rani who was given treatment by PW- 19 Dr. J.K. Sharma told him that she had been tortured at home and that she wanted to die as early as possible. At 11.30 a.m. Veena Rani died. At the autopsy, it was noticed that she had sustained 19 burn injuries. Her death was certified to be due to shock result- ing from the burn injuries. On receipt of an intimation from the hospital entries were made in the general diary and subsequently a case was registered on the basis of representations made to PW-18, the Deputy Superintendent of Police by PW-16 Kuldip Rai and another relation. Investigation of the case resulted in a chargesheet being laid against the accused under Section 306 I.P.C. In his statement under Section 313 Cr. P.C. the accused denied having ill-treated Veena Rani but admitted that he had asked her to give him a sum of Rs. 1,000 for payment of the balance money for the scooter purchased by him. He however stated that he had offered to repay the amount as soon as he received his G.P.F., amount. He denied having told Veena Rani at the house of PW-9 Shri Hari Om that she may go to hell and that she can put at an end to her life the same day without waiting for the morrow. He has also stated that Veena Rani was of an irritable nature and would get agitated for no reason whatever. Lastly, he has stated that on coming to know of her having sustained burn in- juries, he had rushed home and taken her to the hospital to save her life but unfortunately she could not be saved. After a detailed consideration of the prosecution evi- dence and the statement of the accused, the Additional Sessions Judge, Sangrur, found the accused guilty under Section 306 I.P.C. and sentenced him undergo R.I. for four years. The learned Addl. Sessions Judge held that the ac- cused had been tormenting and also physically assaulting Veena Rani and that Veena Rani had committed suicide by reason of the accused's instigation. The accused preferred an appeal to the High Court and a learned 620 single judge of the High Court has acquitted the accused holding that even though Veena Rani had committed suicide on account of her unhappy married life "there is nothing on the record to show that the appellant in any manner instigated the deceased to commit suicide." Aggrieved by the judgment of the High Court the father of Veena' Rani and the State have preferred the two appeals under consideration. Shri R.S. Suri, learned counsel for the State and Mr. S.K. Bisaria, learned counsel for the father of Veena Rani took us through the evidence in the case and the judgments of the Addl. Sessions Judge and the High Court and argued that the High Court has completely erred in its appreciation of the evidence and in its application of the law and there- fore the appeals should be allowed and the conviction and sentence awarded to the accused should be restored. Shri S.K. Mehta, learned counsel for the accused contended that even if the prosecution evidence is accepted in full, there is no material to show that the suicidal death of Veena Rani was abetted in any manner by the accused and hence the judgment of the High Court does not call for any interfer- ence. We have considered the evidence and the arguments of the counsel in great detail. The evidence brings out with tell- ing effect the distressed life that Veena Rani was leading almost from the day of her marriage with the accused. Since the accused had resigned his job and set up practice as an advocate at Sangrur, she got herself transferred from Patia- la to a branch of the Bank at Sangrur. The parties lived as tenants in a portion of the house of PW-5 Krishan Dutt and Veena Rani was meeting the household expenses from out of her salary because the accused had no income as a lawyer. In spite of Veena Rani spending her entire salary on the house- hold, the accused was constantly demanding her for money and made her life miserable by frequently beating her. These matters have

been spoken to by PW-4 Shanti Devi, PW-14 Khem Chand and PW-17 Kuldip Rai. Besides them, independent wit-nesses viz. PW-5 Krishan Dutt, PW-9 Shri Hari Om and PW-12 Nathu Ram have also spoken about the ill-treatment of Veena Rani and their evidence has gone unchallenged. There is thus overwhelming evidence in the case to establish that Veena Rani's life was made intolerable by the accused by constantly demanding her to get him money and also beating her frequently. Before considering the question whether the accused had abetted Veena Rani in her committing suicide, we must point out that 621 Veena Rani's death was undoubtedly due to suicide and not due to any accident or homicide. When Veena Rani had set fire to herself no one else except her one and half year old son was in the house. Hearing her shouts PW-12 Nathu Ram and Keemet Rai rushed to the house and found her lying on the ground with burn injuries. The accused was at once informed in the court and he removed her to the hospital along with others. Despite treatment, she succumbed to her injuries by about 11.30 a.m. The autopsy revealed that her death was due to severe shock resulting from the burn injuries sustained by her. In such circumstance, the suicidal death of Veena Rani is an incontrovertible factor. The crucial question for consideration is whether Veena Rani put an end to her life of her own will and volition or whether her committing suicide had been abetted in any manner by the accused. To determine this question, we must see the plight of Veena Rani during the few days preceding her death and the events which had taken place on the morning of 15.9.75 itself. It is an admitted fact that the accused was wanting a sum of Rs. 1,000 for paying the balance of sale price for the scooter purchased by him and that he was demanding Veena Rani to get him the amount from her parents. The accused has himself admitted in his statement under Section 313 Cr. P.C. this fact but has stated that he wanted it only as a loan and not as a gift. Besides the letter, (annexure 3) written by Veena Rani to her brother and mother respectively throw considerable light on the matter. In the letter to the brother dated 10.9.75, Veena Rani has stated that even on the day she came to Sangrur the accused began demanding a sum of Rs. 1,000 for being paid for the scooter purchased by him. The accused would not wait and hence she had again to write a letter to her mother on 14.9.75. Therein she has stated that she was in a very bad condition and that her mother should send her Rs. 1,000 immediately. These two letters written in quick succession reveal fully the amount of pressure the accused must have been applying on Veena Rani to get him a sum of Rs. 1,000. So constant should have been his demand for money that on the morning of 15-9-75 even at about 6.30 or 7 a.m. the accused and Veena Rani had to go to the house of PW-9 Shri Hari Om to seek a solution. Even in front of PW-9 Shri Hari Om, the accused had insisted that Veena Rani should get him a sum of Rs. 1,000 forthwith. When Veena Rani pleaded inability to make immediate payment, the accused told her that he did not care even if she went to hell but he wanted immediate payment. When Veena Rani stated in despair that she had enough of torment and that she preferred death to living, the 622 accused added fuel to fire by saying that she may put an end to her life the very same day and she need not wait till the next day to quit this world. Such an utterance by the accused would have certainly been seen by Veena Rani as an. instigation to her to commit suicide. Otherwise, she would not have set fire to herself within a short time after she reached home. One significant factor to be noticed is that but for being spurred to action, Veena Rani would not have ,easily reconciled herself to forsaking her one and a half year old son and commit suicide. No mother, however distressed and frustrated. would easily make up her mind to leave her young child in the lurch and commit suicide unless she had been goaded to do so by someone close to her. Yet another factor to be borne in mind is that there is no evidence as to what transpired between the accused and Veena Rani after they had left the house of PW-9 Shri Hari Om. The only two persons who could speak about it are the accused and Veena Rani and since she is dead it is only the accused who can throw some light on the matter. Strangely enough, the accused has not said anything about it in his statement under Section 313 Cr. P.C. He has not said a word that he had assuaged the wounded feelings of Veena Rani before he left for Court. His silence on this aspect of the matter would therefore mean that he had not changed his stand subsequently. We may now look to the relevant provisions of the law. Section 306 I.P.C. under which the accused was charged reads as under:

"306 I.P.C. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." Section 107 I.P.C. sets out as to what- constitutes abetment. The Section reads as follows:

"107. A person abets the doing of a thing, who-- First. Instigates any person to do that thing; or Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the

doing of that thing; or Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that thing. 623

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

Illustration (omitted)

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

The learned Additional Sessions Judge has in the course of his judgment observed that Explanation-II to Section 107 I.P.C. would also be attracted to the facts of the case. The relevant portion in the judgment reads as under:

"Thus when the circumstances attending this case are read alongwith the aforesaid Explana- tion No. II given under Section 107 I.P.C., it is clear that the accused prior to the commis- sion of the suicide by Veena Rani, had con- stantly committed certain acts and that has facilitated the commission of suicide and thus he had aided in the committing of that said act by Veena Rani."

A few lines below the Sessions Judge has given his finding as under: "The question of abetment actually depends upon the nature of the act abetted and the manner in which the abetment was made. The offence of abetment is complete when the alleged abettor has instigated another to commit the offence. It is not necessary for the offence of abetment that the offence must be committed. It is only, in the case of a person abetting an offence by intentionally aiding another to commit that offence and the uttering of hot words by the accused to his wife in the presence of Shri Hari Om PW 9 clearly indicates that the accused had abetted an act complained of."

From the portion extracted above, it may be seen that though the Addl. Sessions Judge has observed that Explanation Il would have 624 relevance to the case, he has in fact awarded conviction to the accused on the basis that the accused had instigated Veena Rani to commit suicide and had thereby abetted the commission of suicide by Veena Rani. Having regard to the evidence in the case, there can be no doubt whatever that the Addl. Sessions Judge was perfectly right in holding that the accused had instigated Veena Rani to commit suicide and therefore he would be guilty under Section 306 I.P.C. A person can abet the commission of an offence in any one of the three ways set out in Section 107. The case of the accused would squarely fall under the first category, viz. instigating a person to do a thing. In such circumstances, the need to invoke Explanation I1 does not arise. Mr. Mehta contended that since Explanation Il to Section 107 I.P.C. has no application to the facts of the case and since the Addl. Sessions Judge has convicted the accused on the premise that Explanation H is attracted, the High Court was right in setting aside the conviction of the accused. We are unable to accept this argument because the Addl. Sessions Judge: though he has referred to Explanation II, has actually found the accused guilty only on the ground he had abetted the commission of the offence by instigation. When the evidence is of so compulsive and telling a nature against the accused, the High Court, we regret to say, has dealt with the matter in a somewhat superficial manner and acquitted the accused on the basis of imaginary premises. The High Court has failed to comprehend the evidence in its full conspectus and instead it has whittled down the evidence by specious reasoning. To mention a few, the High Court has failed to give due weight to the letter Veena Rani wrote to her brother on 10.9.1975 merely because in the last line she has written "in any way there is nothing to worry. This time everything will be alright." This one sentence in the letter cannot efface the frantic nature of Veena Rani's appeal for money to satisfy the demand of the accused. As regards the last letter dated 14.9.75, the High Court has totally lost sight of it. The High Court has failed to see that unless Veena Rani was very desperate, she would not have written to her mother for money within four days of the letter to her brother. As regards the happenings on the morning of 15.9.75, the High Court has failed to grasp their gravity. Unless a serious quarrel had taken place, the accused and Veena Rani would not have gone to the house of PW 9 Shri Hari Om in the early hours of the morning itself to seek a solution to the problem. Despite PW 9 Shri Hari Om counselling patience, the accused refused to relent and insisted upon

immediate payment of 625 Rs. 1,000 and made it clear that the money was more impor- tant to him than Veena Rani's life and that if Veena Rani wanted to die, she may put an end to her life the very same day and give him relief forthwith. The High Court has viewed the accused's conduct and utterances as of no consequence because PW. 9 Shri Hari Om has stated in crossexamination that he thought it was "an ordinary quarrel between the husband and wife as they had been doing so previously also."

The High Court has failed to realise that the effect of the accused's utterances on Veena Rani's mind should be assessed in the context of the overall evidence in the case and not on the basis of the opinion of PW 9 Shri Hari Om about the nature of the quarrel. PW 9 Shri Hari Om despite his having been the counsel for Veena Rani, could not have realised the effect of the utterances of the accused on the mind of Veena Rani. Furthermore the High Court has failed to notice that the accused has not thrown any light as to what transpired between him and Veena Rani after they had left the house of PW 9 Shri Hari Om. The fact that Veena Rani had forsaken her young son and had set fire to herself within a short time after reaching home will go to show that she would not have acted in that manner unless she had felt instigated to commit suicide by the utterances of the accused. The High Court, besides unfortunately failing to give due weight to the evidence in the case, has drawn certain inferences which are not at all warranted. For example, the High Court has stated that since Veena Rani was an earning member, the accused would not have stood to gain by instigating her to commit suicide. This inference is totally wrong because the clear evidence in the case is that the accused had placed greater value on the payment of the money demanded by him than upon the life of his wife. Then again, the High Court has remarked that Veena Rani was suffering from depression and a diseased mind and hence she would have committed suicide. We are at a loss to know wherefrom the High Court derived material to draw this conclusion. Far from there being any evidence, to show that Veena Rani was having a diseased mind, PW 5 Krishan Dutt and PW 12 Nathu Ram, have stated that Veena Rani was a woman of gentle and amiable disposition. She was working in the Bank without any complaint whatever about her mental condition. Even the accused has not stated that she was of diseased mind. We are, therefore, more than satisfied that the judgment of the High Court suffers from serious errors and infirmities and is therefore manifestly unsustainable. Mr. Mehta relied upon the observations in Sri Ram v.U.P. State, [1975] 2 SCR 622 to contend that even if the accused had told Veena Rani that money was more important to him than her life and that she 626 can put an end to her life the very same day instead of waiting for the morrow, it cannot be construed that the accused had done anything to facilitate the commission of suicide by Veena Rani as would attract Explanation II to Section 107 I.P.C. We do not find any merit in the contention. The facts in Shri Ram's case were entirely different.

The question in that case was whether by shouting that "the Vakil has come", Violet, one of the accused, had abetted the commission of the offence of murder of one Kunwar Singh by the other accused persons who were hiding behind a shisham tree and coming out of their place of concealment and one of them shooting Kunwar Singh with a gun carried by him. Though the Sessions Judge and the High Court had held that Violet's act would amount to abetment of the commission of the offence of murder in terms of Explanation II to Section 107 I.P.C., this Court held that "apart from the words attributed to Violet, there is nothing at all to show that she was aware of the nefarious design of Sia Ram and his associates." It was in that context this Court observed as follows. "Thus in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107."

In the instant case, we have already seen that the committing of suicide by Veena Rani was due to the accused's instigation. It is not a case where Veena Rani had wanted to commit suicide for reasons of her own and the accused had facilitated her in the commission of suicide. It was then urged by Mr. Mehta that since two views could be taken of the evidence we should not allow the appeals and set aside the acquittal of the accused solely on the ground that the view taken by the High Court does not commend itself for our acceptance. We are fully alive to the position in law that where two views could reasonably be taken of the prosecution evidence in a case, the Appellate Court should not interfere with the acquittal of an accused merely because the view taken by the Trial Court and/or the High Court was less acceptable than the other view which could have been taken on the evidence. This principle will however have no application where the evidence does not afford scope for two plausible views being taken but still the Trial Court or the High Court acquits an accused for reasons 627 which are patently wrong and the error leads to an element of perversity pervading the judgment. As to what

would constitute instigation for the commission of an offence would depend upon the facts of each case. Therefore in order to decide whether a person has abetted by instigation the commission of an offence or not, the act of abetment has to be judged in the conspectus of the entire evidence in the case. The act of abetment attributed to an accused is not to be viewed or tested in isolation. Such being the case, the instigative effect of the words used by the accused must be judged on the basis of the distraught condition to which the accused had driven Veena Rani. Full well knowing her helpless state and frustration, if the accused had told her that he set greater store on the sum of Rs. 1,000 required by him than her life and that she can die the very same day and afford him early relief, it is not surprising that Veena Rani committed suicide a little later on account of the accused's instigation. It would not be out of place for us to refer here to the addition of Sections 113A and 113B to the Indian Evidence Act and Sections 498A and 304B to the Indian Penal Code by subsequent amendments. Section 113A Evidence Act and 498A Indian Penal Code have been introduced in the respective enactments by the Criminal Law (Second amendment) Act, 1983 (Act 46 of 1983) and Section 113B of the Evidence Act and 304B Indian Penal Code have been introduced by Act No. 43 of 1986. The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113A and 113B in the Indian Evidence Act and Sections 498A and 304B in the Indian Penal Code. By reason of Section 113A, the Courts can presume that the commission of suicide by a woman has been abetted by her husband or relation if two factors are present viz. (1) that the woman had committed suicide within a period of seven years from her marriage, and (2) that the husband or relation had subjected her to cruelty. We are referring to these provisions only to show that the Legislature has realised the need to provide for additional provisions in the Indian Penal Code and the Indian Evidence Act to check the growing menace of dowry deaths. In the present case, however, the abetment of the commission of suicide by Veena Rani is 628 clearly due to instigation and would therefore fail under the first clause of Section 107 I.P.C. In the light of our conclusions, the appeals have to be allowed and the conviction of the appellant under Section 306 I.P.C. has to be restored. The question however arises as to whether the sentence of 4 years R.I. awarded by the Sessions Judge should also be restored. Mr. Mehta, learned counsel made a fervent plea for leniency on the ground that more than 11 years have elapsed since the High Court acquitted the accused and the accused is now leading a settled life and that he and his family members would be ruined if he is to be sent back to prison to serve any further term of sentence. Learned counsel also stated that the accused has undergone imprisonment in connection with the case for a period of about 10 months and, therefore, even if we are to restore the conviction, we may reduce the sentence to the period of imprisonment already undergone. Shri Suri. Learned counsel appearing for the State submitted that the State was only anxious that the error committed by the High Court in acquitting the accused should be set right. He also added that in the event of the substantive sentence being reduced, the accused should be called upon to pay a heavy fine. Taking all factors into consideration, we think that the ends of justice would be met if we substitute the sentence awarded to the accused with the sentence of imprisonment for the period already undergone by him and enhance the sentence of fine from Rs.500 to Rs.20,000 with a direction that out of the fine amount, if paid, a sum of Rs. 18,000 should be paid to the father of Veena Rani for bringing up Veena Rani's minor son Manish. The High Court judgment is accordingly set aside and the appeals are allowed and the conviction of the accused under Section 306 I.P.C. is restored but the sentence is modified to the period of imprisonment already undergone and fine of Rs.20,000 in default thereof to suffer R.I. for two years. Out of the fine amount if paid, Rs. 18,000 will be given to the appellant in Crl. Appeal No. 477 of 1978 for being utilised for the maintenance of Veena Rani's son, Manish. One month's time from today is given to the accused to pay the fine. R.S.S. Appeals allowed. 1 ?629

PETITIONER: STREE ATYACHAR VIRODHI PARISHAD ETC. ETC. Vs. RESPONDENT: DILIP NATHUMAL CHORDIA & ANR. DATE OF JUDGMENT08/02/1989

BENCH: SHETTY, K.J. (J) BENCH: SHETTY, K.J. (J) RAY, B.C. (J)

CITATION: 1989 SCR (1) 560 1989 SCC (1) 715 JT 1989 (1) 247 1989 SCALE (1)330

ACT: Criminal Procedure Code, 1973: ss. 227 & 22.8: Sessions Judge framing charge and making order in support thereof--High Court whether has jurisdiction to interfere--Law must be allowed to take its own course unless glaring injustice found. Indian Penal Code, 1860: ss. 304B & 498A—Dowry offence-All round attempt to cover up by family members than to expose it-Necessity .for investigating agency to pene-trate every dark corner and collect all evidence--Courts to display greater sensibility to criminality and avoid soft justice.

HEADNOTE: The deceased was seen in flames on the first floor of her in-laws house crying for help within five days of her marriage with the younger brother of the respondent. While neighbours rushed to her rescue and extinguished the flames, the inmates of the house did not render any such help. The respondent who was on the first floor was seen coming down the stairs. The deceased succumbed to the burn injuries in the hospital on the same day. In her dying declaration recorded by the Executive Magistrate, she stated that when she was preparing tea in the kitchen her saree caught fire accidently. The parents of the deceased suspected foul play by her in-laws and lodged a report with the police. An investiga-tion.of the case revealed that the deceased had met hostile atmosphere soon after her marriage. The parents gave state-ments that the in-laws demanded unreasonable dowry which could not be complied with and that at the wedding ceremony they had behaved badly on the payment of insufficient dowry. Her brother who had gone to bring her back home was not permitted to meet her. The maid servant sent along with her was also sent back. The respondent and his father were charge sheeted under s. 306 read with s. 34 I.P.C. The trial court came to a prima facie conclusion that it was not a suicide but homici-dal death. Accordingly, a charge under s. 302 I.P.C. was framed against the respondent. The respondent's father was, however, discharged.

561 The High Court dismissed the revision petition of the State against the respondent's father. Wile accepting the respondent's revision it took the view that the fact that the accused was passive was of no consequence that it all depends upon the mental response and reaction of an individ-ual whether he faces the risk and attempts to extinguish the flames or quietly watches the incident, that it does not show that the accused actively committed the act of burning or actively added the commission of suicide, and held that the charge under s. 302 against him was not made out, and there was not even a case against him to frame charge under s. 306 I.P.C. The appellant, a social welfare organisation and the State preferred appeals to the Supreme Court. On the question: Whether the High Court was justified in interfering with the charge framed by the trial court against the respondent, and whether it was necessary to put his father also on trial with the material on record. Partly allowing the criminal appeals,

HELD: 1. The High Court was not justified in interfering with the charge framed by the trial court against the re- spondent accused. 2. The trial court had considered every material on record in support of the charge framed. It had also given reasons why a charge under s. 302 I.P.C. was warranted against the respondent even though the police had charge-sheeted him under s. 306 I.P.C. Section 227 Cr.P.C. which confers power to discharge an accused was designed to pre-vent harassment to an innocent person by the arduous trial or the ordeal of prosecution. The power has been entrusted to the Sessions Judge who brings to hear his knowledge and experience in criminal trials. If he after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. State of Bihar v. Ramesh Singh, [1978] 1 SCR 257 and Union of India v. Prafulla Kumar Samal & Anr., [1979] 2 SCR 229 at 234-35, referred to. 3. Self restraint on the part of the High Court should he the rule unless there is glaring injustice staring the Court in the face. In the 562 instant case, it had discharged the respondent mainly relying on the dying declaration as if it has been conclusively proved to be the true and faithful version of the deceased. It did not advert to the report of the Chemical Analyser in which he found kerosene residue on each and every garment of the deceased, and the post-mortem report which indicated that besides burn injuries the deceased had sustained contusions on the back shoulders which might have been caused with a blunt round object. The events that preceded the death of the deceased also did not receive any consideration. The statements of brother,

father and the maid servant of the deceased have been ignored. The respondent was seen coming down from the staircase when the deceased was crying for help. The manner in which he went on at that time, if true, did not bring him credit. The approach made by the High Court, therefore, cannot be accepted. [569C; 566H; 567A-C] 4. Although it was the moral obligation of respondent's father as manager of the family to protect the deceased and safeguard her life and he had failed to perform that obligation, that by itself without anything more is not sufficient to frame a charge against him. The discretion exercised by the trial court in discharging him was, therefore, correct.[569E]

JUDGMENT: CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 486 to 489 of 1984. From the Judgment and Order dated 5.4.1984 of the Bombay High Court in Criminal Revision Application No. 166/83 and Criminal Revision No. 234 of 1983 respectively. M.C. Bhandare, A.M. Khanwilkar and Mrs. H. Wahi for the Appellants.

S.B. Bhasme and R.A. Gupta for the Respondents. The Judgment of the Court was delivered by . K. JAGANNATHA SHETTY, J. These four appeals, by leave, arise out of the common judgment of Bombay High Court dated April 5, 1984 in Criminal Revision Applications 166 and 234 of 1983. Criminal Appeal Nos. 486 and 487 of 1984 have been preferred by an Organisation called "Stree Atyachaar Virodhi Parishad". It is an association committed to prevent atrocities on women. Criminal Appeal Nos. 488 and 489 of 1984 are by the State of Maharashtra. 563

The case relates to the death of a newly married girl called Chanda. On June 15, 1981, Chanda was married to Ramesh. The eider brother of Ramesh is called Dilip and Nathumal is their father. The marriage of Ramesh and Chanda took place at Nerparsopant, District Yavatmal. On the next day of the marriage, the bride and groom returned to the house of the latter at Arvi. On June 19, 1981, they had gone to Amravati to have prayers in the Devi Tampie. They came back in the same evening. The day following was a fateful day. At about 2.30 PM on June 20, 1981, Chanda was seen with flames on the first floor of the residential building, with frantically crying for help. That attracted some of the neighbours from the ground floor. They rushed to rescue Chanda. Three of them are: Bhanrao, Ballu alias Nandu and Ramdas. They extinguished the flame which was practically engulfing Chanda. The inmates in the house, however, did not render any such help. Dilip who was on the first floor was seen coming down the stairs.. Shortly, thereafter two doctors came and the police also arrived. Chanda was taken to Ervin Hospital at Amravati in an unconscious condition. She died in the hospital at about 9.00 pm on the same day. Before the death, her dying declaration was said to have been recorded by the Executive Magistrate. It was stated therein that when she was preparing tea in the kitchen, her saree caught fire accidentally and consequently she received the burn injuries. The parents of Chanda were informed of the death. They suspected foul play by the in-laws of Chanda. They lodged a report at Amravati Police Station complaining that Chanda's death might have been the outcome of tension due to demand of dowry. The Crime Branch of the CID investigated the case and charge-sheeted Dilip and Nathumal under sec. 306 read with sec.34 IPC. It was alleged that the Chanda has committed suicide by burning herself and Dilip and Nathumal abetted her. An investigation of the case revealed that Chanda had hostile atmosphere soon after her marriage. She was not treated well in her husband's house. Vijay, her brother and Mani Chand, father have given statements that the in-laws demanded unreasonable dowry which could not be complied with. Even at the wedding ceremony, it seems, that they behaved badly on the payment of insufficient dowry. After the marriage, when Vijay came to take his sister back home as per custom, he was not even permitted to meet her. Kamala Bai, the maid servant accompanying Chanda was also sent back. She has also 564 given detailed version about the unfavourable atmosphere around Chanda. In addition to the statements of witnesses, there is a report of the Chemical Analyser and post-mortem report. These indicate that the death of Chanda could not be by accidental fire. The trial court after considering all the facts and circumstances appearing on record and after heating the counsel for accused and Public Prosecutor was of priraa facie opinion that it was not a suicide but homicidal death. Accordingly, the charge under sec. 302 IPC was framed against Dilip. Nathumal, however, was discharged holding that the allegations against him do not justify the framing of any charge. There were two revision applications before the High Court of Bombay. The State filed a revision challenging the validity of discharge of Nathumal. Dilip on his part questioned the correctness of the charge framed against him and demanded his discharge also. The High Court dismissed the revision preferred by the State while accepting the revision of Dilip. The High Court was of opinion that the charge under sec. 302 against Dilip was misconceived and there is not even a case against him to frame charge under sec. 306 IPC. He was accordingly discharged. The primary question

for consideration before us, is whether the High Court was justified in interfering with the charge framed by the trial court against Dilip? The next question to be considered is whether it is necessary to put Nathumal also on trial with the material on record. We have perused the judgments of the courts below and heard counsel on both sides. We gave our anxious consideration to the material on record. Section 227 of the Code of Criminal Procedure having beating on the contentions urged for the parties, provides:

"227. Discharge--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."565

Section 228 requires the judge to frame charge if he consider that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject matter of consideration by this Court. In State of Bihar v. Ramesh Singh, [1978] 1 SCR 257, Untwalia, J., while explaining the scope of the said sections observed (at 259):

"Reading the two provisions together in juxta pesition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under sec. 227 or sec. 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused." In Union of India v. Prafulla Kumar Samal & Anr., [1979] 2 SCR 229 at 234-35, Fazal Ali, J., summarised some of the principles:

"(1) That the Judge while considering the question of flaming the charges under sec. 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out. (2) Where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in 566 framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under the present Code is a senior and experienced Judge cannot act merely as a Post Officer or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, sec. 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor it is necessary to delve deep into various aspects. All that the Court has to consider is whether the

evidenciary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into. So much is, we think, established law. To be fair to the accused, we have examined the material on record and also perused the statements of some of the witnesses. From the report of the Chemical Analyser, it will be seen that kerosene residue was found on each and every garment of the deceased. The post-mortem report also indicates, 567 besides burn injuries, that Chanda had sustained contusions on the back shoulders. According to the doctor who conducted the postmortem, those contusions might have been caused with the blunt rounded object. The learned Judge of the High Court has not adverted to these facts although the contention of the Public Prosecutor in this regard has been noticed. Not merely that, the events that proceeded the death of Chanda did not receive any consideration. The statements of brother and father of Chanda and also that of Kamala Bai--the maid servant of Chanda have been ignored. The conduct of Dilip which was highlighted in the context and circumstances, was brushed aside with little significance. It is said that Dilip was coming down from the staircase when Chanda was crying for help. The manner in which he went on at that time, if true, did not bring him credit. The High Court, however, said:

"That the accused was passive is neither here nor there. It all depends upon the mental response and reaction of an individual whether he faces the risk and attempt to extinguish the flames or quietly watches the incident. By no interpretation could it be stretched to show that the accused either actively committed the act of burning or actively aided the commission of suicide."

Counsel for the State was very critical of the attitude adopted by the High Court in dealing with the case. His criticism to some extent is not unjustified. It may not be out of place to mention that "dowry" which is a deep rooted social evil appears to be the cause of ever so many unfortunate death of young ladies. It is an offence brutal and barbaric. It is generally committed inside the house and more often with a circumstance to give an impression that it was a suicidal death. There will be all round attempt to cover up such offence by the family members rather than to expose it. The Government has come forward with legislations from time to time to protect women and to punish those who commit attrocities on them. In 1961 the Dowry Prohibition Act (Act 28 of 196 1) was passed prohibiting the taking or giving dowry. By the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) Chapter XX-A was introduced in the Penal Code with sec. 498-A creating a new offence of cruelty. It provides for punishment to husband or his relatives if they harass a woman with a view to coerce her to meet any unlawful demand for property. Section 174 of the Criminal Procedure Code was also amended to secure post-mortem in 568 case of suicide or death of a woman within seven years of her marriage. Section 113-A has been introduced in the Evidence Act, 1872 raising presumption of cruelty as defined under sec. 498-A IPC against the husband or his relatives if the wife commits suicide within a period of seven years from the date of her marriage. These provisions reflect the anxiety of the representatives of our people to deal firmly the menace of dowry deaths. Again, there are sweeping changes made in the Dowry Prohibition (Amendment) Act, 1984. A new offence called 'Dowry death' has been created by introducing sec. 304-B in the Penal Code. It raised presumption of culpability against the husband or relative hitherto unknown to our jurisprudence. It provides that where the death of a woman is caused by any bums or bodily injury or 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'. The section also provides hat such husband or relative shall be deemed to have caused her death and shall be punished with imprisonment for a minimum of seven years but which may extend to life imprisonment. We are referring to these provisions not that they are attracted to the present case. It is only to emphasize that it is not enough if the legal order with sanction alone moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of the society. The investigating agency must display a live concern and sharpen their wits. They must penetrate into every dark corner and collect all the evidence. The Court must also display greater sensitivity to criminality and avoid on all counts "soft justice". In the instant case the trial court has considered every material on record in support of the charge framed. The trial court has also given reasons why a charge under sec. 302 IPC is warranted against Dilip even though the police charge sheeted him under sec. 306 IPC. The High Court has gone on a tangent mainly relying on the dying declaration as if it has been conclusively proved to be the true and faithful version of the deceased. Apart from that, we are unable to compromise ourselves with the approach made and the opinion expressed by the High Court in respect of many of the matters. We wish to add a word regarding interference by the High court against a charge framed by the

Sessions Court. Section 227 which 569 confers power to discharge an accused was designed to pre- vent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self restraint on the part of the High Court should be the rule unless there is a glaring injustice stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed. The counsel for the State was equally critical upon the discharge of Nathumal. It was argued that Nathumal being the manager of the family ought to have taken care of Chanda and without his connivance, none would have demanded dowry and put Chanda on fire. It is true that it is his obligation as manager of the family to protect Chanda and safeguard her rights. We have no doubt that he has failed to perform his moral obligation. But that by itself without anything more is not sufficient to frame a charge against him. We, therefore, agree with the discretion exercised by the trial court and leave it at that.

In the result and for the reasons stated, we allow the criminal appeals to the extent indicated only as against Dilip. We set aside the order of the High Court and restore that of the trial court. The appeals against Nathumal are dismissed. His discharge is confirmed. We direct the court to proceed with the trial expeditiously. Before parting with the case, we must place on record the useful service rendered by 'Stri Atyachar Virodhi Pari- shad' in this case. It is a social welfare organisation. It has come up to this Court spending its own money by prefer- ring the appeals. We very much appreciate the object of the organisation and the assistance rendered- P.S.S. Appeals allowed partly. 570

PETITIONER: SHOBHA RANI Vs. RESPONDENT: MADHUKAR REDDI DATE OF JUDGMENT12/11/1987

BENCH: SHETTY, K.J. (J) BENCH: SHETTY, K.J. (J) RAY, B.C. (J)

CITATION: 1988 AIR 121 1988 SCR (1)1010 1988 SCC (1) 105 JT 1987 (4) 433 1987 SCALE (2)1008

ACT: Hindu Marriage Act, 1955: Section 13(1)(i-a)-`Cruelty'- Demand for dowry-Whether cruelty-Whether wife entitled to decree for dissolution of marriage- `Intention'- Whether necessary to constitute and prove cruelty in matrimonial cases. Dowry Prohibition Act, 1961: `Dowry'-Demand of-Whether amounts to cruelty entitling wife to decree for dissolution of marriage. Indian Penal Code, 1860: Section 498A-`Cruelty'-What is-Demand for dowry-Whether amounts to cruelty-Whether wife entitled to decree for dissolution of marriage.

HEADNOTE: The appellant-wife, a post-graduate in biological sciences, married the respondent-husband, a medical doctor on December 19, 1982. Soon after, relations between them became bitter. Ultimately, the appellant-wife moved the court for divorce on the ground of cruelty. Her main complaint was about the dowry demanded by the husband or his parents.

The trial court rejected the appellant's case on the ground that there was no satisfactory evidence that the demands were such as to border on harassment. The High Court also rejected her case and held that the appellant appeared to be hypersensitive and imagined too much and too unnatural things, that the demand for money had to be viewed from a proper angle, and that there was nothing wrong in the respondent, who was a doctor, asking his rich wife to spare some money. Allowing the appeal by special leave,

HELD: 1.1 In order to curb the evil practice of dowry, the Parliament enacted the Dowry Prohibition Act, 1961 prohibiting the giving or taking of dowry. But, as the pernicious practice continued in some communities, the Dowry Prohibition (Amendment) Act, 1984 was enacted with considerable changes in the parent Act. Likewise, the Indian Penal Code, 1860 was amended by introducing an entirely new offence with regard to criminal jurisdiction. Section 498A was introduced providing for punishment to the husband or the relative of the husband of a woman, subjecting her to cruelty. [1015F-H] new dimension has been given to the concept of cruelty. Explanation to s. 498A of the Indian Penal Code provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman), and harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would constitute cruelty. [1016E-F] 1.2 Cruelty simpliciter is a ground for divorce under section 13 of the Hindu Marriage Act. However, the word `cruelty' has not been defined. Indeed, it could not have been defined. It has been used in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem to determine it. It is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of cruel treatment and the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. [1013E-H; 1014A]

1.3 The matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage, if not admitted, requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases. [1016G]

1.4 Evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. This is the requirement of the offence of cruelty defined under s. 498A of the Indian Penal Code. It is not so under s. 13(1)(i-a) of the Hindu 1012 Marriage Act, 1955. The cruelty need not be only intentional, wilful or deliberate. It is not necessary to prove the intention in matrimonial offence. From the context and the set up in which the words `cruelty' has been used in s.

13(1)(i-a), intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained or, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been deliberate or wilful ill-treatment. [1020F-H; 1021A-C] 1.5 The matrimonial duties and responsibilities are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. In matrimonial cases, the Court is not concerned with the ideals in family life. It has only to understand the spouses concerned as nature made them, and consider their particular grievance. [1014B,F] Sheldon v. Sheldon, [1966] 2 ALL E.R. 257, 259, Gollins v. Gollins, [1963] 2 All E.R. 966 1972 and Narayan Ganesh Dastane v. Sucheta Narayan Dastane, [1975] 3 SCR 967 1978, referred to.

JUDGMENT: CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3013 of 1987. From the Judgment and Order dated 30.7.1986 of the Andhra Pradesh High Court in A.A.O. No. 1491 of 1985. S. Madhusudan Rao, K.K. Gupta and Rakesh Kumar Gupta for the Appellant. K.V. Sreekumar and B. Parthasarthi for the Respondent. The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. We grant special leave and proceed to dispose of the appeal. Shobha Rani is the appellant. Her husband is Madhukar Reddi who is respondent before us. The wife is post-graduate in biological 1013 sciences. The husband is a medical doctor. They were happily married on December 19, 1982. But their happiness did not last longer. They started exchanging letters with bitter feelings. Then they began to accuse each other. At one stage, they thought of winding up by mutual consent. It was perhaps out of disgust. it would have been better, if it had happened. But unfortunately, it did not materialise. Ultimately they landed themselves in the Court. The wife moved the Court for divorce on the ground of cruelty. Before referring to further facts, let us consider the law. The cruelty simpliciter is now a ground for divorce under Sec. 13 of the Hindu Marriage Act (Act 25 of 1955). Section 13 provides, so far as it is material: "13 Divorce (1) Any marriage solemnized whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party .....

(i) ..... (i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty, or xxxx xxxxx xxxxx xxxxx Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or 1014 considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may

constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/ realm of cruelty. These preliminary observations are intended to emphasize that the Court in matrimonial cases is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in Gollins v. Gollins, [1963] 2 All. E.R. 966 (1972):

"In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman." Chandrachud, J. (as he then was) in Narayan Ganesh Dastane v. Sucheta Narayan Dastane, [1975] 3 SCR 967 (978) said:

"The Court has to deal, not with an ideal husband and an ideal wife (assuming anysuch exist) but with parti- 1015 cular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures." With these principles in mind, we may now unfold the story with which the wife came to the Court seeking dissolution of her marriage. She made several grievances. We may ignore all but one. The one and the only one with which we are concerned is her complaint about the dowry demand by the husband or his parents. The dowry is a deep rooted evil in the society. It started as customary presents with love and affection. In olden days, it was customary to give some presents to the bride and bridegroom and his family at the time of marriage. The parents of the bride or their relations out of affection and good intention used to provide the couple something to fall back upon in case of need. The system started at a time when girls were generally not very much educated and even if they were educated they were unwilling to take up gainful employment. There was also less opportunity for them either to supplement the family income or to become financially independent. There was yet another reason for such customary gifts. The daughter then was not entitled to a share in the joint family properties when she had a brother. Hence the father out of affection or other consideration used to give some cash or kind to the daughter at the time of marriage. The right of the father to give a small portion of even the family property as a gift to the daughter at the time of her marriage was recognised. But unfortunately over the years new practice developed. The boy or his family members started demanding cash or kind from the brides parents. They started demanding dowry as a matter of right. The demand more often extended even after the marriage. There were instance of harassment of the wife, if the demand was not complied with. In order to curb this evil practice, the Parliament enacted the Dowry Prohibition Act, 1961 (Act No. 28 of 1961). The Act prohibited the giving or taking of dowry. But in spite of this enactment, the pernicious practice continued in some communities. The Joint Committee of Parliament appointed to examine the working of the Dowry Prohibition Act remarked "the evil sought to be done away with by the Act, on the other hand, increased by leaps and bounds and has now assumed grotesque and alarming proportions." Again the Parliament intervened. The Dowry Prohibition (Amendment) Act, 1984 was enacted with considerable changes in the parent Act. Likewise the Indian Penal Code was amended by introducing of an entirely new offence hitherto unknown to criminal jurisprudence. Sec- 1016 tion 498 A has been introduced in the following terms:

"498 A. Husband or relative of husband of a woman subjecting her to cruelty; whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purposes 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."

A new dimension has been given to the concept of cruelty. Explanation to Sec. 498 A provides that any willful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or

health (whether mental or physical of the woman) would also amount to cruelty. 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 would also constitute cruelty. We are, however, not concerned with criminal offence either under the Dowry Prohibition Act or under the Indian Penal Code. We are concerned with a matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage. Such cruelty if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases. This Court has not accepted the test of proof beyond a reasonable doubt. As said by Chandrachud, J. in Dastane case (Ibid at p. 976):

"Neither section 10 of the Act which enumerates the 1017 grounds on which a petition for judicial separation may be presented nor section 23 which governs the jurisdiction of the Court to pass a decree in any proceedings under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied" on a preponderance of "probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases."

Let us now turn to the evidence in this case. It consists of that of wife as P.W. 1 as against the evidence of husband as R.W. 1. The parties have also produced the letters exchanged between them. There appears to be no doubt that the husband or his parents were demanding dowry from the appellant. The husband in his letter Ex. Al dated August 28, 1983 wrote to the wife:

"Now regarding Dowry point, I still feel that there is nothing wrong in my parents asking for few thousand rupees. It is quite a common thing for which my parents are being blamed, as harassment."

The wife in her evidence before the Court has stated:

"My Mother-in-law always used to make demand for money from my parents. I used to tell my parents about what was happening to me in that house. I used to keep silent when my mother-in-law made demands for money. The respondent also sometimes used to make demands for money. I used to tell him as to why should I ask money from my parents, and I also used to tell him that I would not ask my parents. But he used to reply that such things were only there in olden times and not now and that therefore, I should ask money from my parents. There were fixed deposits receipts in my name in the Bank upto one and a half to two lakhs. Besides this there was house plot in my name at Jubilee Hills. I was afraid of telling my husband and my parents in law that I would not ask my parents for money. 1018 This I was afraid because I had an apprehension that something would be done to me either physically or mentally if I told them so. I entertained this apprehension because this went on regularly every day, that is their demands for money.

I was afraid to go back again to the respondent's house because I felt that the pestering for money will go on like this. I, therefore, developed aversion for going back to the respondent. For that reason, I joined as a school teacher.

" The trial court or the High Court did not state that there was no demand for money. The case of the wife was, however, rejected on the ground that there was no satisfactoy evidence that the demands were such as to border on harassment. The trial court said:

"Though one would not justify demands for money, it has to be viewed in this perspective. The respondent is a young up coming doctor. There is nothing strange in his asking his wife to give him money when he is in need of it. There is no satisfactory evidence that the demands were such as to border on harassment."

In regard to the admission by the husband in his letter dated August 28, 1983 as to the dowry demanded by his parents, the trial court observed:

"The letter should be read as a whole. The respondent has an explanation to make and has made one in the cross-examination. He is trying to confess. It is clear from the attitude of the petitioner that she is prone to exaggerate things. That is evident from her complaint of food and the habit of drinking."

"Either because of her over sensitivity or because of her habit of exaggeration, she has made a mountain of mole-hill. Further, for the reasons best known to her, the petitioner 1019 has not examined her father. There is no explanation why he has not been examined in support of her contention that the respondent and his parents were harassing her for money.

"The High Court also went on the same lines. The High Court said that the wife appears to be hypersensitive and she imagines too much and too unnatural things. The High Court then observed:

"Though one would not justify demands for money it has to be viewed in the circumstances from a proper angle. The respondent is a doctor, if he asks his rich wife to spare some money, there is nothing wrong or unusual."

This is not a case where the husband requested his wife to give some money for his personal expenses. The High Court appears to have misunderstood the case. It has evidently proceeded on a wrong basis. It proceeded on the ground that the husband wanted some money from his wife for his personal expenses. If the demand was only of such nature we would have thrown this appeal away. The wife must extend all help to husband and so too the husband to wife. They are partners in life. They must equally share happiness and sorrow. They must help each other. One cannot take pleasure at the cost of the other. But the case on hand is not of a failure on that front. It has been admitted by the husband himself in his letter dated August 28, 1983 addressed to the wife that his parents demanded dowry. But he wrote to the wife that there was nothing wrong in that demand of his parents. This is indeed curious. He would not have stated so unless he was party to the demand. The wife has stated in her evidence that there were repeated demands for money from her monther- in-law. Her evidence cannot be brushed aside on the ground that she has not examined her father. It was not the case of the wife that the dowry was demanded directly from her father. The evidence of the father was therefore not material. It is also not proper to discredit the wife as hypersensitive or prone to exaggeration. That would be judging the wife by our style of manners and our standard of life. That we cannot apply. We must try to understand her feelings and then search for the nugget of truth in the entire evidence. The contents of Ex. Al should not be read in isolation. It must be viewed against the background of accusations in the letter dated December 26, 1983 written by advocate for the wife to his counter-part. The relevant portion of the letter reads:

1020 "In the background of these, the worst form of ill trestment that is meted out to our client was constant harassment for monies. It may be brought to your notice that prior to marriage on demand by your client's father a sum of Rs. 17,000 was given and also a Scooter thereafter. It may be brought to your notice that one other main reason for your client to dowry deaths which are very frequently seen now-a-days in papers. It may be pointed out that your clients philosophy is that since our client's are financially sound, there is no wrong for your client's parent to ask for few more thousands. It may be pointed out and brought to your notice that it appears your client's sole object of marriage was to get the monies standing in the name of our client transferred to his name. It would be better to understand that money that stand in our client's name are somwhere about two lakhs. It is not out of place to mention that your client's behaviour and treatment with our client could only be said to be a pointer for seeking these monies alone and marriage was a device....."

The cumulative effect of all the circumstances and the evidence of parties lead to the conclusion that the demand of dowry went on with the support of the husband. The High Court while dealing with this part of the case has observed that there is no evidence to show that the demands were such as to cause harassment to the wife. The High Court appears to have misconstrued the scope of cruelty in matrimonial affairs. The evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. It is the requirement of the offence of `cruelty' defined under sec. 498A of the Indian Penal Code. Sec. 13(1)(i-a) of the Hindu Marriage Act provides that the party has after solemanization of the marriage treated the petitioner with cruelty. What do these words mean? What should be the nature of cruelty? Should it be only intentional, wilful or deliberate? Is it necessary to prove the intention in matrimonial offence? we think not. We have earlier

said that cruelty may be of any kind and any variety. It may be different in different cases. It is in relation to the conduct of parties to a marriage. That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. There may be instance of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouses. In such cases, even if the act of cruelty is established, the intention to commit cannot be 1021 established. The aggrieved party may not get relief. We do not think that that was the intention with which the Parliament enacted sec. 13(1)(i-a) of the Hindu Marriage Act. The context and the set up in which the word 'cruelty' has been used in the section, seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or rutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment. The same is also the line of reasoning adopted by the House of Lords in Gollins v. Gollins, [1963] 2 All E.R. 966 at 976 where Lord Evershed said:

"I am unable to accept the premise that "cruelty" in matrimonial proceedings requires or involves of necessity the element of malignity- though I do not of course doubt that if malignity be in fact established it would be highly relevant to a charge of cruelty. In my opinion, however, the question whether one party to a marriage has been guilty of cruelty to the other or has treated the other with cruelty does not, according to the ordinary sense of the language used by Parliament, involve the presence of malignity (or its equivalent); and if this view be right it follows, as I venture to think, that the presence of intention to injure on the part of the spouse charged or (which is, as I think, the same thing) proof that the conduct of the party charged was "aimed at" the other spouse is not an essential requisite for cruelty. The question in all such cases is, to my mind, whether the acts or conduct of the party charged were "cruel" according to the ordinary sense of that word, rather than whether the party charged was himself or herself a cruel man or woman..... Bearing in mind the proper approach to matrimonial offence, we are satisfied that the facts and circumstances brought out by the appellant in this case do justify an inference that there was demand for dowry. The demand for dowry is prohibited under law. That by itself is bad enough. That, in our opinion, amounts to cruely entitling the wife to get a decree for dissolution of marriage. 1022 In the result, we allow the appeal and in reversal of the judgments of the courts below, we grant a decree for dissolution of the marriage. In the circumstances of the case, however, we make no order as to costs. N.P.V. Appeal allowed. 1023