

(2020) 06 GAU CK 0046

In the Gauhati High Court

Case No : Criminal Appeal No. 12, 17, 343 Of 2018

Abinash Suklabaidya

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 03-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B

Dowry Prohibition Act, 1961 — Section 2

Evidence Act, 1872 — Section 32, 32(1), 113B, 114

Citation : (2020) 06 GAU CK 0046

Hon'ble Judges : Mir Alfaz Ali, J;S. Hukato Swu, J

Bench : Division Bench

Advocate : M Biswas, S Jahan, Z Kamar

Final Decision : Allowed

Judgement

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Mir Alfaz Ali, J",,,

1. Appellants Abinash Suklabaidya, Anukul Suklabaidya, Adhir Suklabaidya and Smt. Dipti Suklabaidhya stood convicted u/s 304-B read with Section",,,

34 IPC. Appellant Abinash Suklabaidya was sentenced to rigorous imprisonment for 8 (eight) years and fine of Rs. 10,000/- (Rupees ten thousand)",,,

with default stipulation. Anukul Suklabaidya was sentenced to rigorous imprisonment for 7 (seven) years and fine of Rs. 5,000/- (Rupees five",,,

thousand) with default stipulation. Appellants Adhir Suklabaidya and Dipti Suklabaidya were sentenced to rigorous imprisonment for 3 (three) years",,,

and fine of Rs. 3,000/- (Rupees three thousand) each with default stipulation.",,,

2. Crl. A. 12/2018 and Crl. A. 17/2018 were filed by the accused/appellants challenging the conviction recorded and sentence awarded by the learned",,,

Sessions Judge. CrI. A. 343/2018 was filed by the informant, father of the victim, challenging the acquittal of the accused/appellants of the charge u/s",,,

302 IPC and imposition of inadequate sentence.,,,

3. All the three appeals having arisen out of the same judgment and order passed by the learned Sessions Judge, Silchar, in Sessions Case No. 27 of",,,

2013, are taken up together for hearing and disposal by this common judgment.",,,

4. As per prosecution case, Anurupa Suklabaidya was married to the appellant Abinash Sukblaidya on 24-02-2011. At the time of marriage the",,,

parents of the deceased paid dowry, whatever was possible for them. But being dis-satisfied with the dowry, the five accused persons named in the",,,

FIR including the present appellants started harassing the deceased, daughter of the informant both physically and mentally since after few days of the",,,

marriage. The deceased informed her father (the informant) about the demand and harassment meted out to her, however, he advised the deceased to",,,

keep patience and to continue with the marital life. The victim was brought on â??niorâ?, (a ceremonial visit of the bride to parental house) by her",,,

father and she was taken back by the appellants on 10-08-2011 at 4 p.m. However, on 11-08-2011 appellant Adhir Suklabaidya informed the father of",,,

the deceased, that her daughter was seriously ill. Immediately they rushed to the matrimonial home of the deceased and found her hanging in the",,,

bathroom. Suspecting that the accused persons might have killed the victim in a pre-planned manner, PW-7, Chitta Ranjan Suklabaidya, father of the",,,

victim lodged an â??Ejharâ? with the police station, which was treated as First Information Report and Silchar P.S. Case No. 1330/2011 was",,,

registered u/s 304-B IPC. In course of investigation, police visited the place of occurrence, prepared sketch map, recorded the statement of the",,,

witnesses and inquest on the body of the victim was conducted by PW-5, J.R. Lalsim, Circle Officer. The inquest report was proved as Ext.-1. Post",,,

mortem examination was conducted by Dr. Y.N. Singha (PW-8), who found as follows :",,,

â??(1) Dark red and bluish injury over the left side of the chest 4 x 3 cm. in the fourth and fifth intercostals space in the mid axillary line. (2) Hairline",,,

tissues as fracture united at mid auxiliary point over the fourth rib of left side and (3) Healed abrasion over the dorsum of right wrist measuring 2 x 1.5",,,

cm. An oblique non-continuous ligature mark present in the neck above the level of the thyroid cartilage measuring 23 x 1.5 cm. with dry,,,

parchmentised appearance of the ligature mark, with discontinuity containing to the position of knot present over the right mastoid area.",,,

In the opinion of the autopsy doctor, death was due to asphyxia as a result of ante mortem hanging, which was suicidal in nature. All the injuries were",,,

ante mortem caused by blunt force object and time of death was within 12 to 24 hours approx. before the post mortem examination.,,,

5. On conclusion of investigation, charge-sheet was laid against the appellants u/s 304-B/34 IPC.",,,

6. During trial, learned Sessions Judge framed charges against the appellants u/s 304-B/302 read with Section 34 IPC, to which they pleaded not",,,

guilty. 9 (nine) witnesses were examined by the prosecution in order to bring home the charges. On conclusion of the prosecution evidence, the",,,

accused/appellants were examined u/s 313 CrPC. During examination u/s 313 CrPC all the appellants pleaded innocence and examined one witness,,,

as DW-1. On appreciation of evidence, learned Sessions Judge convicted the four accused/appellants u/s 304-B IPC and awarded sentence as has",,,

been indicated above. However, the learned Sessions Judge acquitted the appellants of the charge u/s 302 IPC.",,,

7. Aggrieved by the conviction and sentence, the accused/appellants preferred the instant CrI. Appeal No. 12/2018 & CrI. A. No. 17/2018. The",,,

informant, father of the victim also filed CrI. Appeal No. 343/2018 against the order of acquittal of the appellants u/s 302 IPC and imposition of",,,

inadequate sentence u/s 304-B IPC.,,,

8. We have heard Mr. A.M. Bora, learned senior counsel for the accused/appellants and Mr. Z. Kamar, learned counsel for the informant. Also heard",,,

Ms. S.Jahan, learned Additional Public Prosecutor, Assam for the State/respondent.",,,

9. Learned senior counsel Mr. A.M. Bora assailed the impugned judgment of conviction and sentence basically on the ground, that demand of dowry",,,

and harassment and torture for or in connection with demand were not proved beyond reasonable doubt, inasmuch as, the prosecution witnesses have",,,

made considerable embellishment in their evidence and specific allegation of demand for money was brought for the first time in court. Learned Addl.,,,

Public Prosecutor, Ms. S. Jahan supporting the conviction and sentence of the accused/appellant contended, that charge u/s 304-B IPC against the",,,

appellants was fully established beyond reasonable doubt calling for no interference by this Court.,,,

10. Mr. Z. Kamar, learned Sr. counsel representing the informant/appellant argued with vehemence that there were sufficient evidence on record to",,,

establish the charge u/s 302 IPC and the learned trial court wrongly recorded the order of acquittal of the accused persons u/s 302 IPC. Further,,,

contention of Mr. Kamar was that the learned Sessions Judge committed gross illegality by imposing sentence of imprisonment lesser than the,,,

minimum prescribed for the offence u/s 304-B IPC.,,,

11. We have considered the submission made by the learned counsels for both the sides and also meticulously scrutinized the evidence and materials,,,

brought on record.,,,

12. Regard being had to the rival contention raised by the learned counsels in the two sets of appeals, we feel it appropriate to start with the appeals",,,

against acquittal preferred by the informant.,,,

13. The prosecution witness No. 8, Dr. Y.N. Singha, who conducted the post mortem examination on the body of the deceased, conclusively opined in",,,

his evidence as well as in the post examination report (Ext.-4), that the death of the deceased Anurupa was caused due to asphyxia as a result of ante",,,

mortem hanging, which was suicidal. The medical evidence as to cause of death of the victim remained unshaken. However, learned counsel, Mr. Z.",,,

Kamar referring to the oral testimony of the PW-6, Dr. Ashutosh Suklabaidya and certain observation of the autopsy doctor in the post mortem report,",,

more particularly availability of semi-digested food in the stomach and time of death, sought to impress upon this Court, that the death was homicidal in",,,

nature and the learned trial court ignored those evidence on record and held the death of the victim to be suicidal solely on the basis of the opinion of,,,

the autopsy doctor. The PW-6, Dr. Ashutosh Suklabaidya, uncle of the deceased, deposed that he had seen Anurupa's body hanging from a",,,

wooden batten in the bathroom and her feet was touching the floor and the body was hanged with a piece of cloth, which contained multiple knots, i.e.",,,

more than one knot. According to him, it was a case of homicidal death and not suicidal. Admittedly the PW-6, who happens to be the maternal uncle",,,

of the deceased and a surgeon by profession was working as Head of the Department of Surgery, Tezpur Medical College at the time of deposing in",,,
court and he was working as an Associate Professor in the Department of Surgery, Silchar Medical College, at the time of occurrence. Except the",,,
oral testimony of the PW-6, who has been a doctor himself and a professor of Surgery, there was no other evidence to show that the ligature had",,,
more than one knot. Evidently his previous statement recorded u/s 161 CrPC, which was confronted to him and confirmed through investigating",,,
officer, shows that he did not mention about multiple knots in his previous statement recorded u/s 161 CrPC immediately after the occurrence and for",,,
the first time in court he stated that there were multiple knots and also sought to give his opinion as to the nature of death. We also noticed the",,,
evidence of this witness as a whole, which clearly shows, that he made considerable improvement in his deposition. The omissions in the previous",,,
statement of PW-6 being a close relation of the victim and a Professor of Surgery having the knowledge of the implication of multiple knots, in our",,,
considered opinion amounted to contradiction on material facts, and as such, the statement of PW-6 for the first time in court as to multiple knots in",,,
the ligature hardly inspires confidence, more particularly when, the autopsy doctor mentioned about single knot over the right mastoid area. This apart",,,
PW-6 having not been examined as an expert, his opinion as to cause of death was irrelevant and of no consequence inasmuch as, the same was",,,
contrary to the expert opinion of the autopsy doctor.,,,

14. As per defence version, the victim committed suicide on 11-08-2011 in between 9 to 10 am in the morning. From the medical evidence, it was",,,
apparent that post mortem examination was conducted at 5.25 pm on 11-08-2011 and according to the autopsy doctor death was within 12 to 24 hours,,,
before the post mortem examination. Referring to the findings of the autopsy doctor that the stomach contained semi digested food materials and his,,,
opinion regarding the time of death, Mr. Z. Kamar contended, that death of the deceased could not be in between 9 to 10 am or after 5.25 am on 11-",,,
08-2011. Mr. Kamar submits that the evidence of the doctor negated the defence version, that death of the victim occurred after 9 am and thereby",,,
created doubt about the defence version of committing suicide by the deceased at about 9.30 to 10 am.,,,

15. Refuting the submission of Mr. Kamar, learned senior counsel for the informant, Mr. A. M. Bora contended that medical opinion cannot reflect",,,

the time of death with arithmetical accuracy. The opinion of the doctor regarding the time of death is always tentative and there may be an error or,,,

variation of four to five hours. To bolster his submission, Mr. Bora placed reliance on Pattipati Venkaiah -VS- State of Andhra Pradesh (1985) 4 SCC",,,

80, wherein the Apex Court observed that medical science is not yet so perfect, as to determine the exact time of death, nor the same can be",,,

determined in a computerized or mathematical fashion so as to be accurate to the last second. The doctor clearly mentioned in the post mortem,,,

examination report and in his evidence that death was within 12 to 24 hours approximately before the post mortem examination, which itself suggested",,,

that the time of death opined by the doctor was not accurate, rather approximate and therefore, the error or variation of 4/5 hours, in the opinion of the",,,

doctor regarding the time of death appears to be quite natural, inasmuch as, it is not possible to pinpoint the exact time of death with mathematical",,,

accuracy. Mr. Kamar further contended that the presence of rigor mortis as mentioned in the post-mortem report also suggested that death was,,,

before 9.30 am. We see no force in this submission, reason being that even if the death had occurred at about 9.30 am, there was a gap of about 8",,,

hours between the death and time of post-mortem examination. No evidence was brought on record that rigor mortis could not form within eight,,,

hours, rather according to the literature on medical jurisprudence rigor mortis starts after about 2/3 hours of death, which is also subjected to climate",,,

condition, temperature etc. Reference may be made to Modi's Text Book on Medical jurisprudence and Toxicology, wherein the starting of rigor",,,

mortis has been stated as follows "TIME OF ONSET --- This varies generally in different cases, but the average period of its onset may",,,

be regarded as three to six hours after death in temperate climate and it may take two to three hours to develop. In India it usually commences in one,,,

to two hours after death.",,,

16. Mr. Kamar further sought to impress upon this Court on the basis of the stomach contents of the deceased as mentioned in the post mortem,,,

report, that the death of the victim occurred much prior to 9.30 to 10 am and contended that the presence of semi digested food contents in the",,,

stomach was indicative of the fact, that death of the deceased occurred at night sometime after dinner and the time gap between taking food (dinner)",,,

and death was very short. We do not find any substance in this submission too, for the simple reason, that even if the death was after 9 Oâ??clock in",,,

the morning, the presence of semi digested food in the stomach was quite probable, inasmuch as, the deceased might have taken breakfast in the",,,

morning also. This apart, the stomach content alone cannot determine the time of death conclusively or with exactitude inasmuch as, the stomach",,,

contents also depends on the power and process of digestive function of a particular person.,,,

17. Referring to the oral testimony of prosecution witnesses, Mr. Kamar further contended that one of the leg of the deceased was found touching the",,,

floor and there was no material in the bathroom, where the victim could stand and commit suicide. In order to commit suicide by hanging, one has to",,,

stand on some object, so as to enable the body to suspend. Absence of any object in the bathroom to stand as well as one leg of the victim touching",,,

the floor suggested that the body was hanged after strangulation, submits Mr. Kamar. PW-9, the investigating officer, stated in his evidence, that he",,,

found one bolt (â??chitkariâ?) lying on the floor. According to him, height of the roof from the floor was 7 to 8 feet and there was one bucket and a",,,

drum in the bathroom full of water. He also stated that feet of the victim was found touching the floor. The prosecution witnesses also stated that one",,,

foot of the victim was found touching the floor and the other foot was on the wooden frame in the bathroom and the body was leaning towards the",,,

wall. The photographs of the place of occurrence, which has been proved as M.Ext.5 also shows, that one of the foot or toes of the deceased might or",,,

might not be touching the floor, inasmuch as, the leg including toes was covered by sari which is seen touching the floor. The other foot was found",,,

touching the wooden frame on the side of the wall. The fact of the victimâ??s toes touching or about to touch the floor, per se does not rule out the",,,

factum of suicidal hanging, nor the same could brush aside the other evidence including the medical evidence. Thus, the M. Ext.-5 and the evidence of",,,

the PW-9 does not support the submission made by Mr. Kamar that there was nothing in the bathroom over which the victim could stand before",,,

hanging.,,,

18. True it is, the court is not bound by the medical opinion and therefore the court is also not denuded of the power to decide the cause of death on",,,

the basis of the overall evidence brought on record including the medical evidence. But the fact remains is that the determination of cause of death",,,

requires some expertise in medical science, which the court may not possess. Therefore, the established principle is that unless the medical evidence",,,

suffers from inherent defect or is found to be palpably contrary to the established medical norms or protocol, court cannot brush aside the medical",,,

opinion to place his/its own opinion. The Apex Court in Mafabhai Nagarbhai Raval Vs. State of Gujarat reported in (1992) 4 SCC 69 observed that",,,

â??it is needless to say that the doctor, who has examined the deceased and conducted the post mortem examination is the only competent witness to",,,

speak about the nature of injuries and the cause of death. Unless there is something inherently defective, the court cannot substitute its own opinion",,,

for that of the doctorâ?. In Mohd. Zahid- Vs.- State of T.N. reported in (1999) 6 SCC 120, the Apex Court held that â??sufficient weightage should",,,

be given to the evidence of the doctor, who has conducted post mortem examinationâ??.",,,

19. In Saheb Rao Mohan Berad -Vs.- State of Maharastra reported in (2011) 4 SCC 24,9 the Apex Court observed that unless the opinion of the",,,

doctor is inherently defective, the court will not discard its evidence to substitute its own opinion for that of the doctor. The Apex Court held as under",,,

:-",,,

â??14. True it is that few signs of drowning were found on the dead body in the post-mortem examination and the doctor though cognizant of the",,,

same came to the definite conclusion that the deceased died of strangulation. In our opinion, the doctor who examined the deceased and conducted the",,,

Hanging,,Strangulation,

1.,Most suicidal,1.,Mostly homicidal

2.,"Face â?" Usual pale and

petechiae rare.",2.,"Face â?" congested, livid and marked with petechiae.

3.,"Saliva- Dribbling out of mouth

down on the chin and chest.",3.,Saliva- No such dribbling.

4.,"Neck â?" Stretched and

elongated in fresh bodies.",4.,Neck --- Not so.

5., "External signs of asphyxia usually

not well marked.",5., "External signs of asphyxia, very well marked (minimal if death

due to vasovagal and carotid sinus effect.

6., "Ligature mark- Oblique,

noncontinuous placed high up in

the neck between the chin and

the larynx, the base of the groove

or furrow being hard, yellow and

parchmentlike.",6., "Ligature markâ?"Horizontal or transverse continuous, round the

neck, low down in the neck below the thyroid, the base of the

groove or furrow being soft and reddish.

7., "Abrasions and ecchymoses round

about the edges of the ligature

mark, rare.",7., "Abrasions and ecchymoses round about the edges of the ligature mark, common.

8., "Subcutaneous tissues under the

markâ?"White, hard and

glistening.`,",8., "Subcutaneous tissues under the markâ?" Ecchymosed.

9., Injury to the muscles of neck,9., Injury to the muscles of neckâ?" common.

10., "â?"Rare.

Carotid arteries, internal coats

ruptured.",10., "Carotid arteries, internal coats ordinarily ruptured.

11., "Fracture of the larynx and

tracheaâ?"Very rare and may be

found that too in judicial hanging.",11., "Fracture of the larynx, trachea and hyoid bond.

12., "Fracture- dislocation of the

cervical vertebraeâ?"common in

judicial hanging.",12.,Fracture â?" dislocation of the cervical vertebraeâ?" Rare.

13., "Scratches, abrasions and bruises

on the face, neck and other parts

of the body Usually not present.",13., "Scratches, abrasions fingernail marks and bruises on the face,

neck and other parts of the body- Usually present.

14., No evidence of sexual assault.,14., No evidence of sexual assault.

15., "Emphysematous bullae on

surface of the lungs â?" Not

present.",15., "Emphysematous bullae on surface of the lungs â?" May be present.

30. In the instant case there is no dispute that the victim Anurupa met with an unnatural death (suicide by hanging) and that the death of the victim,,,

was within the period of seven years of marriage. Therefore, in order to answer the question whether the accused committed the offence of dowry",,,

death or to take a presumption of dowry death u/s 113-B of the Evidence Act, the prosecution in the present case is required to prove the above",,,

ingredient No. (iii), (iv) & (v). It is therefore, time to scrutinize once again, the evidence brought on record.",,,

31. The father of the victim, who lodged the FIR was examined as PW-7. He deposed inter alia as follows :-",,,

â??After about one and half month of the marriage my said victim daughter told me for giving an amount of Rs. 8 lacs for purchasing house and she,,,

approached me on behalf of her husband. I told about my inability. After that while she was staying in her matrimonial house used to inform me over,,,

telephone that she was not in a position to stay there for non-fulfillment of the demand of the aforesaid amount. She also informed me that she was,,,

subjected to torture both physically and mentally. â?!. On 31.07.2011 she attended the annual shraddha ceremony of her maternal grandmother,,,

Before that on that day she met me in my house and thereafter went to her maternal uncleâ??s house. She again reported to me about the torture for,,,

non-payment of the amount. She stayed for about 7 days at her maternal uncleâ??s house at village Malua. Abinash (husband of the deceased) also,,,

attended the shraddha ceremony and stayed there for one night and went back.

On 10-08-2011 my brother-in-law Bhabatosh brought her to her,,,
matrimonial house.â??,,,

32. However, PW-7, in the FIR lodged by himself did not state that his daughter told him on behalf of her husband for paying Rs. 8 lacs, rather made a",,,,
vague and omnibus statement that all the five accused persons named in the FIR, including the appellants started harassing her physically and mentally",,,,
demanding dowry after few days of her marriage. In his previous statement recorded u/s 161 Cr.P.C. also this witness did not state about the victim,,,

asking for Rs. 8 lacs on behalf of her husband. He also admitted to have not stated in his previous statement recorded u/s 161 CrPC that on,,,

31/07/2011 the victim visited him before going to her maternal uncleâ??s house to attend â??shraddhaâ?? ceremony,,,

33. PW-1, the brother of the victim deposed that at the time of marriage they gave gifts to his sister as per their capability and after marriage the initial",,,,

one and half month there was no complain from the victim. He further deposed that after one and half month, the victim was not well treated both",,,,

physically and mentally by the inmates of her matrimonial home as they were not satisfied with the gifts given at the time of marriage. He further,,,

deposed that the appellants wanted to purchase a house at a cost of Rs. 18 lacs and they told the victim to bring Rs.7,000/- or Rs. 8,000/- from her",,,,

parents, which they could not give, because of which, their relation with the appellants became bitter and the victim was subjected to mental and",,,,

physical torture. This witness also did not state in his previous statement about the appellants asking for Rs. 7 lacs to Rs. 8 lacs through the victim,,,

except making vague and bald statement of harassment.,,,,

34. According to PW-2, uncle of the victim, he heard that Anurupa (victim) had quarrel with her husband. He also stated to have heard from the",,,,

victim that accused persons were not satisfied with the gifts given at the time of marriage because of which she was mentally and physically tortured.,,,,

He further stated that all the accused/appellants demanded some money for purchasing house, for which she was unhappy and he advised the victim",,,,

to talk to her father. However, he did not state in his previous statement u/s 161 Cr.P.C. that the appellants demanded some money for purchasing",,,,

house, for which the victim was unhappy and he advised the victim to talk to her father. Thus, this witness also seems to have deposed about demand",,,,

of money by all the accused/appellant for purchasing house for the first time in court. According to him, the victim told him that the accused persons",,,

were not satisfied with the gifts given at the time of marriage, because of which, the accused persons subjected her to mental and physical torture.",,,

35. PW-3, another maternal uncle of the victim, stated that in the month of July, 2011, his elder brother Bhabatosh brought the victim to his house for",,,

attending shraddha ceremony of his mother and husband of the victim also accompanied her. The husband of the victim returned back on the next day,,,

and on 10/08/2011 Bhabatosh left the victim in her matrimonial home. According to him, when the victim came to his house to attend the annual",,,

â??Sharradhaâ? ceremony of his mother, he found the victim groaning and on being inquired by him, the victim told that she was mentally tortured by",,,

the accused persons and that her husband demanded Rs. 8 lacs. This witness also did not state in his previous statement, which was confronted to him",,,

and confirmed through the investigating officer, that when the victim came to his house, he noticed her groaning and on being asked by him, the victim",,,

told that she was subjected to mental torture or there was a demand of Rs. 8 lacs by her husband. He also stated for the first time in court that the",,,

husband of the deceased demanded Rs. 8 lacs from her or she was subjected to mental torture by all the appellants. This witness in his previous",,,

statement did not even made any whisper about any kind of demand or mental torture therefor.,,,

36. PW-4, brother of the victim deposed, that life of the victim in her matrimonial home was happy for 1 Â½ month and thereafter her life was not",,,

happy. He further deposed that she was suffering mentally and physically, as her in-laws were not satisfied with the gifts given at the time of her",,,

marriage and they also demanded a sum of Rs. 8 lacs through the victim. According to PW-4, the victim informed him about her trouble in life, when",,,

she visited her paternal home and also over phone. This witness also did not make any whisper in his previous statement recorded u/s 161 Cr.P.C that",,,

the appellants demanded Rs. 8 lacs and deposed for the first time in court regarding the demand of Rs. 8 lacs.,,,

37. PW-6 is Dr. Ashutosh Suklabaidya, another maternal uncle of the victim, who has been working as Head of the Department of Surgery in Tezpur",,,

Medical College stated in his evidence that while, the victim visited his house, she reported that her husband demanded Rs. 8 to 10 lacs as dowry and",,,

pressurized her to bring the same from her parents. But the said demand was not fulfilled and gradually the husband of Anurupa tried to avoid the,,, relationship with her parents and started mental harassment on her. This witness also did not state in his previous statement regarding the husband of,,, the victim demanding Rs. 8 to 10 lacs as dowry and pressurized her to bring the same from her parents. We have also perused his previous statement,,, for our satisfaction and we find that in his previous statement he did not state specifically that the husband of the victim demanded Rs. 8 to 10 lacs as,,, dowry and pressurized her to bring the same from her parents. He only made a vague statement regarding the husband of the victim asking the victim,,, to request her father for providing a little amount.,,,

38. What emerges from the oral testimony of all the six vital prosecution witness is that there was no evidence of any direct demand by any of the,,,

appellant, inasmuch as, all the PW-1, PW-2, PW-3, PW-4, PW-6 & PW-7 deposed that they were told by the deceased that the accused/appellants",,,

demanded money and she was subjected to physical and mental torture for non-fulfillment of the demand. Mr. Bora, learned counsel for the",,,

accused/appellants therefore, contended, that the oral testimony of the prosecution witness as to demand of money or harassment was not admissible",,,

being hearsay, inasmuch as, none of the witness had personal knowledge regarding the demand of money or harassment, and what they deposed was",,,

told by the deceased Anurupa. To bolster his argument, Mr. Bora relied on Nirud Ranjan Acharjee Vs. State of Tripura 2006 (3) GLT 751 as well as",,,

in Nishikanta Das and Ors. Vs. State of Tripura, 2015 (2) GLT (TR) 1023 and Inderpal-Vs.- State of Madhya Pradesh reported in (2001) 10 SCC",,,

376. learned Addl. Public Prosecutor, Ms. Jahan contended that the oral testimony of the prosecution (PW-1, PW-2, PW-3, PW-4, PW-6 & PW-7) as",,,

to what was told by the deceased regarding demand or torture was admissible u/s 32 (1) of the Evidence Act and the statement of the victim made",,,

before the prosecution witness cannot be discarded as hearsay. Ms. Jahan relied on Amar Singh â?Vs.- State of Rajasthan (2010) 9 SCC 64.,,,

39. Section 32 (1) of the Evidence Act provides as under :,,,

â??When it relates to cause of death. â??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.",,,

Such statements are relevant whether the person who made them 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.â??,,,

40. Section 32 of the Evidence Act is an exception to rule of hearsay, which provides that the statement of a dead person, irrespective of whether, the",,,

person making the statement was or was not under the expectation of death is relevant and admissible, if the statement satisfy the necessary pre-",,,

condition laid down in clause (1) of Section 32. Therefore, the statement, made by a dead person, though, may not come strictly within the concept of",,,

â??dying declarationâ?? is relevant and admissible under Section 32 (1) of the Evidence Act, when all the following three conditions are satisfied.",,,

(i) the statement must be as to the cause of his/her death.,,,,

(ii) as to any of the circumstance of the transaction which resulted in his/her death.,,,,

(iii) cause of that personâ??s death must be a question for consideration in the case.,,,,

41. This Court in Nirod Ranjan Acharjee- VS- State of Tripura (supra) held that â??unless the cause of death or the circumstances of the transaction,",,,

which resulted into death is in question, as envisaged u/s 32 (1) by the Evidence Act, the evidence given by any person as to what the deceased",,,

woman had reported to him of her would be nothing but hearsay. Viewed thus, it is clear, that the evidence given in the present case, claiming as to",,,

what the deceased Anurupa had told her brother, friends or relatives as regards the manner in which she used to be treated by her husband or in-laws",,,

would be nothing but hearsay in a charge u/s 498-A IPC or aid of Section 32 (1) of the Evidence Act would not be available to the prosecution to,,,

bring such reported statement on record as admissible piece of evidence when the charge framed u/s 306 or 304-B and/or 302 IPC has failed.â??,,,

42. In Nirud Ranjan Acharjeeâ??s case the statement of the deceased woman was considered in the context of a charge u/s 498-A IPC, inasmuch",,,

as, the other charges u/s 306, 304-B and/or 302 IPC failed and the question of death was not an issue for consideration in the case. Therefore, the",,,

statement of the dead woman was discarded as hearsay for the simple reason

that all the necessary conditions to invoke the provision of Section 32,,, (1) of the Evidence Act was absent. Thus, on factual matrix, the said decision, has no application in the instant case. In the case in hand, we are",,, dealing with a case, where death of a woman, whose statement to be considered was itself in question.",,,

43. In *Inderpal Vs. State of Madhya Pradesh* (2001) 10 SCC 73 6relied by learned Sr. Counsel, Mr. Bora, the Apex Court held that "unless the",,, statement of a dead person would fall within the purview of Section 32(1) of the Evidence Act, there is no provision under which the same can be",,, admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal), the statement must be as to the cause of",,, her death or as to any of the circumstance of the transaction which resulted in her death, in cases in which the cause of death comes into question. By",,, no stretch of imagination can the statement of Damyanti contained in Exhibit-P-7 or Exhibit-P-8 and those quoted by the witness be connected with",,, any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A IPC",,, disjuncted from the offence u/s 306 IPC, question of her death is not an issue for consideration and on that premise Section 32 (1) of the Evidence Act",,, will stand at bay so far as these materials are concerned.â? This was also a case, where conviction of the accused was recorded u/s 498(A) IPC and",,, in the context of the charge and conviction recorded u/s 498(A) IPC, the Apex Court held that the statement of a woman who was dead, could not be",,, considered admissible u/s 32 (1) of the evidence Act, as the cause of death was not an issue, in a charge u/s being 498(A) IPC. In the said case,",,, initially conviction was recorded u/s 306 IPC. However, the High Court found that the offence u/s 306 IPC was not proved and therefore, conviction",,, was recorded u/s 498(A) IPC. In that context, the Apex Court held that the offence u/s 498-A IPC having disjuncted from the offence u/s 306 IPC,",,, the question of death was not an issue for consideration and on that premise Section 32 (1) of the Evidence Act will also stand at bay, so far, the",,, charge u/s 498-A IPC was concerned. Therefore, in *Inderpal*â??s case also the Apex Court made it clear that in order to make the statement of a",,, dead person admissible in law with the aid of Section 32 (1) of the Evidence Act, the death of the person must be an issue for consideration and the",,,

statement must be as to the cause of her death or as to any of the circumstances of the transaction, which resulted in her death. This court in Nirud",,,

Ranjan Acharjee's case also reiterated the same principle.,,,

44. In Nisikanta Das & Anr.- Vs.- State of Tripura (supra) the accused/appellant was convicted u/s 304-B and 498-A IPC by the trial court.,,,

Honâ??ble Tripura High Court in appeal, formulated a question â?"â?"whether the statement of the victim relating to infliction of the cruelty as",,,

unlawful demand is admissible in the evidence in view of provision of Section 32 (1) of the Evidence Act ? On re-appreciation the High Court,,,

disbelieved the evidence regarding demand and also held that â?"In view of the law laid down by the Apex Court in Inderpal â?"Vs. State of Madhya,,,

Pradesh, those statement made allegedly by the victim cannot be accepted under Section 32 (1) of the Evidence Act and those are inadmissible.â?",,,

Admissibility and truthfulness or acceptability of evidence are two different things, the former is a question of law and the later is question of",,,

appreciation of fact. Be that as it may, in our humble opinion, the decision in Inderpalâ??s case was not correctly appreciated in Nishikanta Das-Vs.-",,,

State of Tripura, so far the application of Section 32 (1) of the Evidence Act was concerned.",,,

45. In Amar Singh Vs. State of Rajasthan (2010) 9 SCC 64, where the accused was facing charges u/s 304(B)/498(A) IPC, the Apex Court held in",,,

para 17, 18, 19 & 20 as under :",,,

â?"17. It is thus clear from the evidence of PW-4, as corroborated by the evidence of PW-5, that the deceased has made statements before them",,,

that her in-laws as well as the appellant have been demanding a scooter or Rs. 25,000/- for a shop and have been taunting and teasing her for not",,,

meeting the demand of dowry within a couple of months before her death. Such evidence of PW-4 and PW-5 with regard to the statements made by,,,

the deceased is no doubt hearsay but is admissible under clause (1) of Section 32 of the Evidence Act.,,,

18. Clause (1) of Section 32 of the Evidence Act provides that statements 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 personâ??s death comes into question, are",,,

themselves relevant facts. In the present case, the cause of death of the deceased was a question to be decided and the statements made by the",,,

deceased before PW-4 and PW-5 that the appellant used to taunt the deceased in connection with the demand of a scooter and Rs. 25,000/- within a",,,

couple of months before the death of the deceased are statements as to the circumstances of the transaction which resulted in her death within",,,

the meaning of Section 32 (1) of the Evidence Act.,,,

19. In *Pakala Narayana Swami V. King Emperor*, AIR 1939 PC 47 Lord Atkin held that circumstances of the transaction which resulted in the death",,,

of the declarant will be admissible if such circumstances have some proximate relation to the actual occurrence. The test laid down by Lord Atkin has",,,

been quoted in the judgment of Fazal Ali, J in *Sharad Birdhichand Sarda V. State of Maharashtra* and His Lordship has held that Section 32 of the",,,

Evidence Act is an exception to the rule of hearsay evidence and in view of the peculiar conditions in the Indian society has widened the sphere to",,,

avoid injustice. His Lordship has held that 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 statements would clearly fall within the four corners of Section 32",,,

and, therefore, admissible and the distance of time alone in such cases would not make the statements irrelevant.",,,

20. The difference in the English law and the Indian law has been reiterated in *Rattan Singh v. State of H.P.* and it has been held therein that even if",,,

the deceased was nowhere near expectation of death, still her statement would become admissible under Section 32 (1) of the Evidence Act, though",,,

not as a dying declaration as such, provided it satisfies one of the two conditions set forth in this Section. The argument of Mr. Sharma, therefore, that",,,

the evidence of PW-4 and PW-5 regarding the statements made by the deceased before them are hearsay and are not admissible is misconceived.",,,

46. Thus, the proposition of law is amply clear that the testimony of a witness as to what was stated to him by a person, who is dead, when relates to",,,

the cause of his/her death or to any of the circumstance of the transaction, which resulted in her/his death, though otherwise hearsay and may not",,,

come strictly within the purview of dying declaration, such statement is admissible under clause (1) of Section 32 of the Evidence Act, in a case, in",,,

which the cause of death of the person comes into question. Unless the statement relates to the cause of death or the circumstances of the transaction,,,

which resulted into death and the death of the person is in question in the case, the evidence given by any person as to what was stated by the dead",,,

person, shall not be admissible in evidence even with the aid of Section 32 (1) of the Evidence Act. Therefore, on the factual matrix, the decision",,,

rendered in Nirud Ranjan Acharjee â?Vs.- State of Tripura (supra) as well as Inderpal Vs. State of Madhya Pradesh (supra) would not help the,,,

defence, because in both the decisions charge was u/s 498(A) IPC and therefore, the cause of death of the person making the statement was not in",,,

question. In view of charge u/s 304-B IPC, the cause of death of the victim or the circumstances of the transaction resulting into her death is in",,,

question in the present case. Therefore, what the victim stated to her father or other relative would be admissible u/s 32 (1) of the Evidence Act.",,,

However, reliability and acceptability of the evidence as to any statement purportedly made by the dead person is altogether a different thing, which",,,

shall always be subject to the test of truth and reliability of the witness deposing regarding any statement of the dead person.,,,

47. The PW-3 (uncle) and PW-4 (brother) of the victim did not even make any whisper about the demand of money in their previous statement and,,,

both of them for the first time stated in court regarding the demand of Rs. 8 lacs. The PW-7, the father of the deceased, who lodged the first",,,

information report also did not state about any demand of Rs. 7 lacs or 8 lacs or 10 lacs whatever may be, in the FIR, and only a vague and bald",,,

statement was made in the FIR that the accused person being dis-satisfied with the gifts given at the time of marriage, had been harassing his",,,

daughter physically and mentally demanding more dowry. In his previous statement recorded u/s 161 Cr.P.C. also PW-7 did not make any specific,,,

statement regarding the demand of Rs. 8 lacs through the victim. PW-1, PW-2 & PW-6 also in their previous statement did not state regarding",,,

demand of Rs. 7, or Rs. 8 lacs or 10 lacs, as the case may be. Therefore, the oral testimony of all the six witnesses in court for the first time that for",,,

the purpose of purchasing house, the husband of the victim or his relatives demanded Rs. 7/8/10 lacs, as the case may be, through the victim was",,,

palpably improvement and embellishment, inasmuch as, such allegation did not find place in their previous statement recorded u/s 161 CrPC or in the",,,

FIR. All these six prosecution witnesses are admittedly close relations and members of the family of the victim. Having regard to the nature of,,,
accusation and the statement of the prosecution witness, who are all highly qualified persons, the omission on their part to state regarding the demand",,,,
for various amount of money for purchasing house by the husband of the victim or his relatives through the victim, in our considered opinion, amounted",,,,
to contradiction on material facts having potential to affect the credential of their testimony in court and such omission cannot be ignored as,,,
insignificant. We also took note of, that though PW-3, PW-6 and PW-7 deposed that demand was only from the husband of the victim, according to",,,,
PW-1 and PW-2, the demand was from all the appellants including husband of the deceased and, according to PW-4, brother of the victim, demand",,,,
was made by the in-laws of the victim. So far the harassment and physical and mental torture are concerned, except the vague and omnibus",,,,
statement, no specific allegation attributable to mental or physical harassment was available in the oral testimony of any of the prosecution witness.",,,,
The PW-3 and PW-6 stated only about mental torture. Admittedly none of the six witnesses had any personal knowledge about the demand of dowry,,,
or torture and they were allegedly told by the victim about the demand or harassment. The glaring inconsistencies as well as considerable,,,
improvement and embellishment in the oral testimony of all the six prosecution witnesses all of whom are relatives of the deceased, rendered their",,,,
testimony as regards the victim telling them about any demand of dowry or torture highly doubtful and unworthy of inspiring confidence.,,,,
48. True it is, relationship of a witness with the victim is not a factor to affect the credibility of a witness, nor the testimony of the witness can be",,,,
discarded as partisan for the relationship of the witness with the victim. Undoubtedly the credibility of a witness is required to be tested in the,,,
touchstone of reliability or trustworthiness and not by the relationship. If the testimony of a witness is found to be true and the witness stands the test,,,
of reliability, the relationship of such witness with the victim is of no consequence. However, what we noticed is that all the six prosecution witness",,,,
who are close relation of the victim do not appear to have withstood the reliability test, for the reasons indicated above. We also took note of, that out",,,,
of the 21 oral witnesses cited in the charge-sheet, prosecution examined only PW-1, PW-2, PW-3, PW-4, PW-6 & PW-7, who were admittedly close",,,,

relations and members of the family of the victim. Prosecution did not examine even a single independent witness, who were cited as prosecution",,,

witnesses in the charge-sheet. The accused persons however, examined one of the cited prosecution witness as DW-1, who deposed that the victim",,,

had normal relation with her husband and in-laws and the victim committed suicide in the bathroom. We have already indicated that the DW-1 was a",,,

natural and trustworthy witness and there was nothing to disbelieve her. For withholding of all the independent witnesses and examining only the",,,

relatives of the victim, in the facts and circumstances of the present case, an adverse inference under clause (g) of Section 114 of the Evidence Act is",,,

also available against the prosecution. However, all the infirmities in the oral testimony of the PW-1, PW-2, PW-3, PW-4, PW-6 & PW-7 seem to",,,

have escaped the notice of the learned trial court.,,,

49. One of the basic ingredients of the offence u/s 304-B IPC is cruelty or harassment by the husband or his relatives â??soon before death.â?,,,

Admittedly the victim remained in the house of her maternal uncle for 10 days from 31-7-2011. She was taken back to her matrimonial home on 10-,,,

08- 2011 in the afternoon by her maternal uncle and she committed suicide on the following day i.e., 11-8-2011 in the morning. No evidence was",,,

brought on record, that the victim was subjected to any cruelty or harassment after her coming back from the house of maternal uncle on 10-08-2011.",,,

Learned Public Prosecutor sought to rely upon the oral testimony of PW-1 and PW-6 to contend, that during the stay of the victim in her matrimonial",,,

home also she was subjected to harassment. Admittedly accused Abinash, the husband of the victim also attended the sraddha ceremony and after",,,

spending one night he went back home. According to PW-1, accused Abinash came to attend the Shraddha ceremony on 07-08-2011. PW-1 further",,,

deposed that quarrel ensued between the accused Abinash (husband of the victim) and deceased in the house of her maternal uncle regarding money,,,

for purchasing house and on 08-08-2011 Abinash went back to his house. However in his previous statement recorded u/s 161 CrPC, the PW-1 did",,,

not state about the quarrel between the victim and her husband in the house of his maternal uncle regarding money for purchasing house or for any,,,

other reason. According to PW-6, Abinash attended the function of shraddha ceremony which was held on 7th and 8th of August, 2011 and he stayed",,,

in their house. PW-6 also deposed that on the evening of 08-08-2011 Abinash went back leaving Anurupa (victim), and during his stay, Abinash was",,,

behaving normally with the victim. But the day on which he returned back home, he (PW-6) noticed Abinash rebuking the victim Anurupa. The PW-6",,,

further stated that on 09-08-2011 Abinash told the victim over phone to go back home immediately or not to go back forever. However, the PW-6 in",,,

his previous statement did not state about the accused threatening the victim over phone and deposed for the first time in court that the accused",,,

Abinash threatened the victim over phone. Had there been any quarrel between the victim and her husband or victim had been rebuked by her",,,

husband certainly other witness would have noticed the same. However, the testimony of the PW-1 that quarrel ensued between the victim and her",,,

husband or the testimony of the PW-6, that the accused Abinash rebuked the victim in the house of PW-3, while she was attending the shraddha",,,

ceremony were not supported by any other witness including PW-3, in whose house the sharadha ceremony was organized. Therefore, the oral",,,

testimony of the PW-1 and PW-6 for the first time in court, that accused Abinash rebuked the victim on 08/08/2011, or that quarrel ensued between",,,

them during the shraddha ceremony was hardly worthy of trust.,,,

50. If the evidence of PW-1 and PW-6, that quarrel took place between the accused Abinash and the victim or that Abinash rebuked the victim in the",,,

house of her maternal uncle is discarded, literally prosecution would be left with no legal evidence to establish that the victim was harassed or tortured",,,

physically and mentally for or in connection with any dowry soon before her death, reason being that as already indicated above, except vague and",,,

omnibus statement that victim was subject to physical and mental torture, there was no specific allegation attributable to torture or harassment",,,

physical or mental. Learned trial court also relied heavily on the testimony of PW-6 regarding some SMS in the mobile of the victim sent by the",,,

accused Abinash. The PW-6 deposed that he noticed the following message â?" â?? I killed a person. What will be future tense ?â? Sardaiju took out",,,

six people from a firing house, even though he was in jail ? etc. The PW-6 also deposed to have taken out print of those messages and handed over to",,,

police. Apparently police neither seized the mobile phone nor prosecution proved those messages as per law. Be that as it may, during examination u/s",,,

313 CrPC a question was put to the effect that "some disturbing messages were sent by you" to which the accused Abinash replied that those were mere joke. Evidently both the victim and her husband were highly educated persons. The above messages as indicated by the PW-6, were apparently some grammatical puzzle, which neither contained anything unnatural nor the same disclosed anything incriminating to connect them with any mental torture or harassment to the victim.

51. Our attention was drawn to some old injuries of the victim reflected in the post mortem report. As already indicated above, the victim was in her maternal uncle's house for 10 days immediately before committing suicide. Evidently the victim was left in her matrimonial home by her maternal uncle in the afternoon of 10-8-11 and she committed suicide on the following day morning. Therefore, even if it is assumed for the sake of argument that the old injuries reflected in the post mortem report were the result of physical assault by her husband or any other member of his family, physical assault or torture could not be held to be "soon before death". Though, the expression "soon before death" cannot be given a rigid connotation, the established principle is that there must be some close proximity between the harassment or torture and death or in other words, harassment or torture must stand the proximity test. If the time gap between the death and the harassment or cruelty is wide enough to neutralize the effect of the harassment on the mind of the victim, such harassment cannot be called "soon before death", reason being that there must be a living link between the effect of harassment related to dowry demand and the death. Therefore, even if it is assumed for the sake of argument, that the injuries, as reflected in the post mortem report was the result of the assault, there was no material on record to hold that such assault had any proximity or living link with death, inasmuch as, those injuries were old and healed injuries or at least not inflicted within 10 days of her death.

52. The Apex Court in Kaliya Perumal- Vs. State of T.N., (2004) 9 SCC 157, while examining the scope and ambit of the expression "soon before death" appearing in Section 304-B IPC observed in para 9 as under : --

9. 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. The 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. The 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 in by the prosecution. Soon before is a relative,,, term and it would depend upon the circumstances of each case and no straitjacket 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 the expression soon before used in Section 114 Illustration (a) of the",,,, Evidence of Act goods is irrelevant. soon after it lay the down the theft, that is either a court the may thief presume who has that received a man the who goods is in",,,, the knowing possession them to be stolen, unless he can account for his possession. The determination of the period depending which can",,,, upon come facts within and the circumstance term soon of before each case. is left suffice, to be however, determined to indicate by the that courts, the expression",,,, soon before would normally imply that the interval should not be much existence between the of cruelty approximate or harassment and live,,, link concerned between and the the effect death of in cruelty question. based There on must dowry be demand and the death concerned. If the alleged incident,,, of cruelty is remote in time and would have become a of no stale consequence." "enough not to disturb the mental equilibrium of the woman concerned, it",,,, 53. As already indicated above, prosecution has not been able to prove beyond doubt the allegation of demand for dowry beyond doubt and as such,",,, the injuries as reflected in the PM report, even if assumed to have been inflicted

by the husband of the victim or any relative of her husband, such",,,, injuries by no stretch of imagination can be held to be for or in connection with demand for dowry. In order to establish a charge of dowry death u/s,,, 304-B IPC or to take a presumption u/s 113-B of the Evidence Act, the torture or harassment must be for or in connection with dowry demand. What",,,, therefore, emerges from the evidence and materials brought on record is that the prosecution evidence fell short of proving the two basic ingredients",,,, of the charge u/s 304-B IPC, i.e., the harassment or cruelty by the appellant soon before death for or in connection with dowry demand as well as the",,,, demand of dowry itself.,,,

54. It is the cardinal principle of criminal justice, that in order to convict a person for an offence, the prosecution must prove all the essential",,,,

ingredients to constitute the offence charged, beyond all reasonable doubt. Even one of the ingredient is found absent, conviction cannot be recorded",,,,

for the offence of dowry death nor any presumption u/s 113-B of the Evidence Act can be drawn. The Apex Court in Gurdeep Singh -Vs.- State of,,,

Punjab & ors. reported in (2011) 12 SCC 408 dealing with the necessary requirement of proving a charge u/s 304-B IPC for drawing a presumption,,,

u/s 113-B of the Evidence Act held as under :,,,

â??We first take up the argument relating to Section 304-B and the presumption draw under Section 304-B pre-supposes several facts for its,,,

applicability, they being :",,,,

(i) death should be of burns or bodily injury or has occurred otherwise than under normal circumstances, (ii) within seven years of marriage ; and (iii)",,,,

soon before her death she had been subjected to cruelty or harassment by her husband or his relatives. This Court in Suresh Kumar Singh case (2009),,,

17 SCC 243; (2011) 1 SC Cri. 989 has held that even if one of the ingredients is not made out, the presumption under Section 113(B) of the Evidence",,,,

Act would not be available to the prosecution and the onus would not shift to the defence.â??,,,

55. Cumulative assessment of the evidence makes it abundantly clear that the two vital ingredients of the offence under Section 304-B IPC. i.e. the,,,

demand of dowry and the cruelty or harassment to the victim for or in connection with the demand of dowry soon before death, have not been proved",,,,

beyond reasonable doubt, and as such, in our considered opinion, the appellants,

at least, ought to have been given the benefit of doubt. Therefore, We",,,
are unable to concur with the findings of the learned Sessions Judge recording conviction and awarding sentence to the appellants u/s 304-B IPC.,,,
Accordingly, we set aside the conviction and sentence of the appellants u/s 304-B IPC giving them the benefit of doubt. Consequently the Criminal",,,
Appeal No.12/2018 and Criminal Appeal No. 17/2018 filed the accused/
appellants stand allowed and the Crl. Appeal No. 343/2018 filed by the,,,
informant/respondent stands dismissed.,,,
56. The appellants, if in custody be set at liberty forthwith if not required in any other case.",,,
57. Send back the record.,,,