
(2009) 07 BOM CK 0019
In the Bombay High Court
Case No : Criminal Appeal No. 1158 of 2003

Balasaheb Changdeo Ghule	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2, 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 302, 304B, 306, 34

Citation : (2009) 07 BOM CK 0019

Hon'ble Judges : Ranjana Desai, J; R.G. Ketkar, J

Bench : Division Bench

Advocate : S.K. Shinde, Sagar Kasar and Satyajit Dighe, for the Appellant; V.R. Bhonsale, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—The appellant, who is original accused 1 was tried along with three others, who are original accused 2 to 4 respectively (since acquitted), in Sessions Case No. 1 of 2003 for offences punishable under Sections 498A, 302, 304-B read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code, (for short, "the IPC"). The accused were charged for having murdered Jayashree @ Jijabai (for convenience "the deceased" or "Jijabai") or in the alternative for having subjected her to cruelty for dowry soon before her death.

2. By the impugned judgment and order dated 25/8/2003, learned Additional Sessions Judge, Niphad convicted the appellant of the offence punishable u/s 498A of the IPC and sentenced him to suffer RI for a period of three years and to pay a fine of Rs. 5,000/-, in default, to suffer further RI for a period of 3 months. He was also convicted of the offence punishable u/s 304-B of the IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer further RI for a period of 6 months. Substantive sentences were

ordered to run concurrently. The appellant was acquitted of the offences punishable under Sections 302 and 201 read with Section 34 of the IPC. The rest of the accused were acquitted of all the charges. The appellant has challenged his conviction and sentence in this appeal. For the sake of convenience, we shall refer to the other accused as accused 2 to 4 respectively.

3. It is necessary to give the gist of the prosecution case.

On 30/9/2002, Dinkar Ghule son of accused 3 went to Police Patil Rangnath Barku Kurade (PW-1) and informed him that a corpse of an unknown woman is seen in the well in his field in village Jalgaon, Nevur and requested him to come to the spot. Rangnath went to the field and found a corpse of a woman floating in the water in the well. He went to the Yeola Taluka Police Station and gave information about the said incident at 19.15 hours on the same day. The information was registered as Accidental Death No. 39 of 2002. ASI Mahale went to the spot in the morning. He carried out an inquest panchnama. The corpse had decomposed to some extent but, there were some injuries on it and, hence, he forwarded it for the postmortem examination to the Rural Hospital, Yeola. Postmortem was done and the medical officer opined that the death was caused because of cardio respiratory failure due to asphyxia due to throttling.

4. On the same day, Nitin Gavane (PW-2) and Walubai Gavane (PW-4) i.e. the brother and the mother of deceased Jijabai respectively were taken to Rural Hospital, Yeola by Nitin's maternal uncle Kadam, who had sometime before inquired with them on phone as to where the deceased was and he was informed that she had gone to her in-law's house on 27/9/2002. On reaching the Rural Hospital, Yeola, they saw the corpse of a woman. They were convinced that it was Jijabai. Hence, after the cremation, PW-2 Nitin lodged the complaint (Ex-41) at 20.10 hours.

5. In his complaint, PW-2 Nitin, inter alia narrated the manner in which the deceased was ill-treated by her in-laws and how demand of money was made from her. PW-2 Nitin stated that the in-laws of the deceased used to ill-treat and insult her because she could not fulfill their demand of money. They used to tell her that her parents did not give sufficient dowry and, therefore, she should bring Rs. 40,000/- for Hero Honda Motorcycle. They conspired and killed her and threw her corpse in the well because Rs. 40,000/- were not paid to them. We shall advert to this more in detail a little later. On the basis of this complaint, investigation was set into motion. After completion of investigation, the accused came to be charged as aforesaid.

6. In support of its case, the prosecution examined as many as 7 witnesses. The star witnesses of the prosecution are PW-2 Nitin Gavane, the brother of the deceased and PW-4 Walubai Gavane, the mother of the deceased. Details of investigation have been given by PW-7 PI Chandrakant Thorat, who was attached to Yeola Police Station at the relevant time. The accused pleaded not guilty and claimed to be tried. The accused did not lead any evidence. According to the

accused, they were falsely implicated in the case. After perusing the evidence on record, learned Sessions Judge acquitted accused 2 to 4 and convicted the appellant as aforesaid and, hence, this appeal by the appellant.

7. We have heard, at great length, Mr. Shinde, learned Counsel appearing for the appellant. Learned Counsel submitted that the evidence on record consists of interested testimony of brother and mother of the deceased, which does not inspire confidence. He submitted that the prosecution has not adduced evidence of any independent witnesses to substantiate its case. He submitted that the evidence on record does not satisfactorily establish the identity of the deceased. He drew our attention to the evidence of PW-3 Balnath Ghule, the Police Patil, who stated that the corpse of a woman was taken out from the well in his presence and that he could not state whose corpse it was. He submitted that there is also discrepancy about the colour of the saree, which is mentioned in the inquest panchnama and the colour of the saree which is mentioned by PW-1 Kurade and mentioned in Ex-39 which is the report made by him. He further submitted that the evidence of PW-2 Nitin Gavane and PW-4 Walubai Gavane does not indicate that the alleged demand of money had any connection with dowry. He drew our attention to the definition of the term "dowry" as found in Section 2 of the Dowry Prohibition Act, 1961 (for short, "the Dowry Act"). Dowry is defined thereunder as "any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or 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". He submitted that there is no evidence on record to indicate that the money allegedly demanded from the deceased had any connection with the deceased's marriage with accused 1. In this connection, learned Counsel relied on the judgments of the Supreme Court in Appasaheb and Another Vs. State of Maharashtra, Shivanand Mallappa Koti Vs. The State of Karnataka, , Sukhram Vs. State of Maharashtra, , M. Srinivasulu Vs. State of A.P., , Hira Lal and Others Vs. State (Govt. of NCT) Delhi, and Kaliyaperumal and Another Vs. State of Tamil Nadu,

8. Learned Counsel pointed out that learned Judge has recorded a finding that the demand of money by all the accused in connection with the marriage of the deceased is not proved by the prosecution. He submitted that therefore learned Judge could not have convicted accused 1 u/s 304-B of the IPC. Learned Counsel further submitted that assuming cruelty is established that would be sufficient to convict the accused u/s 498A of the IPC but unless there was evidence of dowry demand, Section 304-B of the IPC would not be attracted. In this connection he relied on the judgment of the Supreme Court in Pyare Lal Vs. State of Haryana, Learned Counsel pointed out that the deceased had lodged a complaint against all the accused in the police station at Yeola on 30/3/2000. Thereafter, there was a compromise in the police station in 2000 and it was agreed that accused 1 and the deceased would stay separately in the village and accordingly it is the case of

the prosecution as stated by PW-4 Walubai that they resided separately for a period of one month. Learned Counsel submitted that there is nothing to indicate that the deceased and accused 1 stayed together after the period of one month and they were staying together at the time of the incident. He submitted that this is evident from the evidence of PW-2 Nitin who has stated that on 1/10/2002 his maternal uncle asked him on phone whether the deceased was staying with the in-laws or with her parents. Learned Counsel submitted that the incident in question took place on 30/9/2002 much after the compromise. The alleged ill-treatment was prior to the compromise. Therefore, there is no proximity between the ill-treatment or cruelty allegedly meted out to Jijabai and her death. Hence, the presumption u/s 113B of the Evidence Act will not arise in this case. Learned Counsel submitted that PW-2 Nitin Gavane and PW-4 Walubai Gavane had made improvements in their evidence in the court. The omissions in their evidence are vital omissions and they suggest that the prosecution has concocted the case of dowry death. Learned Counsel submitted that therefore this is a fit case where the conviction and sentence should be set aside.

9. Ms. Bhonsale, learned A.P.P. appearing for the State on the other hand, submitted that the prosecution has established its case beyond reasonable doubt. She submitted that the evidence on record clearly establishes that the demand for money was in connection with the marriage of the deceased. In this connection, she relied on the judgments of the Supreme Court in *The State of Andhra Pradesh Vs. Raj Gopal Asawa and Another*, *Vidhya Devi and Another Vs. State of Haryana*, and *Pawan Kumar and Others Vs. State of Haryana*. She submitted that the demand for dowry may be direct or indirect. In a given case, there may not be direct demand for dowry but the demand may be for things like scooter, car, etc. If the circumstances suggest that such demands were in the nature of demand for dowry as they had connection with marriage, conviction u/s 304-B should follow. Learned A.P.P. submitted that there were several injuries on the deceased. Therefore, the case of the prosecution that the deceased was assaulted and then pushed in the well is made out. The injuries suffered by the deceased indicate that before she was thrown in the well, she was beaten up. Learned A.P.P. submitted that this is, therefore, a fit case where the conviction should be maintained.

10. Before we come to grips with the other rival contentions, it is necessary to deal with the attempt made by the defence to dispute the identity of the dead body found in the well. Genuineness of the inquest panchnama, Ex-22 has been admitted by the defence. It is pointed out to us that in the inquest panchnama, the sari found on the corpse recovered from the well is described as of faint yellow colour having dots. Our attention is drawn to the evidence of PW-1 Kurade, police patil of village Jalgaon, Nevur. He has stated that on 30/9/2002 at 5.00 p.m., Dinkar Ghule, the son of Changdeo Ghule (original accused 3 since acquitted) came to him and informed him that a corpse of an unknown person was floating in the well situated in his field. According to PW-1 Kurade, he went with Dinkar Ghule to the well at 6.00 p.m. and saw the dead body. He then made

a report at the Yeola Police Station which is at Ex-39. Learned Counsel pointed out that in the said report the sari worn by the deceased is described as red colour sari. Learned Counsel further pointed out that PW-3 Balnath Ghule who is the panch to the inquest panchnama has admitted its contents but has not identified the corpse as that of the appellant's wife. Learned Counsel submitted that it is therefore extremely doubtful whether the corpse recovered from the well was that of the wife of the appellant.

11. It is not possible for us to accept this submission. So far as report, Ex-39 is concerned, its truthfulness becomes suspect because it is lodged on the say of the brother of the appellant who had gone on to say that the corpse was of an unknown person. PW-1 Kurade has stated that when he went to the well except the members of the family of the accused nobody was present and they told him that corpse was of an unknown person. The corpse was not taken out at 6.00 p.m. when PW-1 Kurade went there. It was taken out when inquest panchnama was made at 7.45 p.m. Colour mentioned in the inquest panchnama was ascertained when the corpse was taken out and therefore that colour will have to be accepted as the colour of the sari found on the corpse rather than the colour mentioned in report, Ex-39 and as deposed to by PW-1 Kurade. PW-3 Balnath Ghule's refusal to identify the corpse is not surprising because he has admitted in the cross-examination that the appellant is related to him. PW-2 Nitin, brother of the deceased identified the corpse as that of his sister. PW-5 Walubai the mother of the deceased also identified the corpse as that of her daughter. In our opinion, therefore, identity of the corpse as the wife of the appellant can hardly be doubted.

12. It is necessary to go to the post-mortem notes before approaching the depositions of the witnesses. The cause of death is stated to be "cardio-respiratory failure due to asphyxia due to throttling." Column 17 notes twenty six surface wounds and injuries and column 18(a) states that all injuries are ante-mortem. Left side thyroid cartilage fracture and abrasions around the neck are noticed. Medical certificate, Ex-50 issued by the Medical Officer, Rural Hospital, Yeola (Nasik) states that the injuries received by the deceased on her head below her eyes could be caused by hands and the neck of the deceased was pressed by hands. The certificate further states that the deceased died 24 hours prior to the post-mortem. The post-mortem was done on 1/10/2002 at 3.45 p.m. Therefore, the death must have been caused at about 3.45 p.m. on 30/9/2002. The suggestion made by the defence that the deceased was not staying with the appellant is not well founded. From the evidence of PW-2 Nitin and PW-4 Walubai, it appears that the accused used to ill-treat the deceased. They wanted Rs. 40,000/- for purchasing Hero Honda motorcycle. She used to tell them how badly she was treated in the matrimonial home when she used to come to her parents. About one year back, the deceased was driven out of her house by her in-laws after beating her. She lodged a complaint in the police station. A compromise was effected and due to the mediation of the uncle of the appellant, the deceased went back to the matrimonial home. About 2 to 3 days prior to the

incident, the deceased was again driven out of the house. She came to her parents' house. Her father explained to her that he did not have money to give her in-laws. On 27/9/2002, she returned to her in-laws, but kept her son with her parents. PW-2 Nitin has clearly stated that at that time she was staying with her in-laws. This version has not, in any way, been damaged in the cross-examination. It is not even suggested to PW-2 Nitin and PW-4 Walubai that after the compromise the deceased was staying with her parents. Therefore, the prosecution has established that prior to her death, the deceased was staying with the appellant. If the deceased was staying with the appellant, the appellant must explain how the deceased received such injuries. The case of suicide is not consistent with ante-mortem injuries of this nature. Nothing has been brought on record to suggest that anyone else was interested in killing the deceased or this could be the job of someone else. It was for the appellant to explain how the deceased received the injuries. He has failed to do so. Adverse inference needs to be drawn against the appellant.

13. It is now necessary to go to the material evidence on record. PW-2 Nitin stated in his evidence that the deceased lived peacefully with the accused for about one year after marriage. Thereafter, all the accused started demanding money for purchasing tempo and for running a hotel. On that count, they started beating the deceased. They used to beat her and drive her out of the house. This happened on two or three occasions. The father of the deceased used to take her back to the house. He used to tell accused 3 i.e. the father-in-law of the deceased that they did not have money to fulfill their demand. But the conduct of the accused did not improve. The deceased lodged a complaint on 30/3/2000 at the police station. Thereafter, there was a compromise. The deceased was sent back to the matrimonial house. However, the appellant started beating her and making a demand of Rs. 40,000/- for purchasing motorcycle. Two to three days prior to the incident, the deceased was beaten up and driven out of the house. The deceased came to her parents house and narrated the incident. Her father told her that he did not have money and sent her back. She returned to her in-laws alone. She kept her son with her father. This version of PW-2 Nitin has remained unscathed in cross-examination. The demand of Rs. 40,000/- made by the appellant for purchasing Hero Honda Motorcycle and beating given by him to her has not been challenged in the cross-examination. PW-2 Nitin denied that he had falsely stated that Rs. 40,000/- were demanded for purchasing motorcycle. PW-2 Nitin's evidence establishes the role played by the appellant in this heinous crime. Though he did not describe the demand of Rs. 40,000/- as related to dowry his complaint Ex-41 bears out this case. Besides, no omissions have been brought on record in his cross-examination.

14. PW-4 Walubai, the mother of the deceased supported PW-2 Nitin. She stated that for about one year after the marriage, the deceased was treated properly in her matrimonial home. Thereafter, the accused started beating her. They used to ask the deceased to bring money for running a hotel and for buying a tempo. The deceased used to come home and tell her woes to her parents. This witness

specifically stated that it is the appellant who used to beat the deceased and drive her out. She corroborated PW-2 Nitin on the aspect of compromise. She stated that as per the compromise, the appellant and the deceased were to stay separately. Accordingly, they resided separately for one month. But the deceased came to the parents' house and told her that the appellant was not staying with her in the separate house and, therefore, she had taken all the utensils to the house of the accused. She also told her that the accused were asking for Rs. 40,000/- for purchasing motorcycle.

15. In the cross-examination of PW-4 Walubai, certain minor omissions have been brought on record. It appears that she did not tell the police that the deceased told her that the appellant does not stay with her in the tenanted house but stays in his house in the field and, therefore, she had taken the utensils to her in-laws' house in the field. She also omitted to tell the police that on two occasions, they had given Rs. 10,000/- to the deceased for giving that amount to the appellant. These omissions do not make PW-4 Walubai an unreliable witness. They are minor omissions. On the major aspect, like demand of Rs. 40,000/- and beating of the deceased by the appellant, there are no omissions. She has not been cross-examined on the material aspect. We have no reason to disbelieve her. In our opinion, PW-2 Nitin and PW-4 Walubai are reliable witnesses.

16. Relying on judgments of the Supreme Court, it is contended that the appellant cannot be convicted u/s 304-B of the IPC because assuming some demands of money were made, there is no co-relation between the demands and marriage of the appellant and, therefore, the alleged demand will not fall within the ambit of the term "dowry" as defined under the Dowry Act. It was argued that the witnesses never stated that the demand of Rs. 40,000/- was related to dowry. It was also argued that there is no proximity between the incident in question and the alleged cruelty because the parties had entered into a compromise in 2000. We shall, therefore, refer to relevant provisions of law and the judgments cited by the parties.

17. Section 304-B of the IPC reads as under :

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.

(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.

18. Section 2 of the Dowry Act reads as under:

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 mahr in the case of persons to whom the Muslim Personal Law applies.

19. Section 498A of the IPC reads as under:

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 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.

20. Section 113B of the Evidence Act raises a presumption as regards dowry death. It reads as under:

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.

21. Having seen the provisions of law, we shall first turn to a recent judgment of the Supreme Court in Prem Kanwar Vs. State of Rajasthan, In that case, the accused were charged u/s 306 and Section 304 Part B of the IPC and u/s 4 of the Dowry Act. The trial court had observed that the deceased had committed suicide; that the death had taken place within seven years of marriage, that when the deceased had gone to her father's house for her brother's marriage, nobody came to take her home; that when the prosecution witnesses had gone to the matrimonial house of the deceased, her mother-in-law expressed displeasure and asked them to take away the deceased and that the statement of the mother-in-law is objectionable to some extent, but no case of dowry death or abetment of suicide is made out from her statement. The trial court acquitted

all the accused. On appeal by the State, the High Court maintained the acquittal of all the accused except that of the mother-in-law. The mother-in-law was sentenced for the offences alleged against her. It was argued before the Supreme Court, inter alia, that there has to be an agreement at the time of marriage in view of the words "agreed to be given" occurring in Section 2 of the Dowry Act which contains definition of the term "Dowry" and in the absence of any such evidence, there can be no demand of dowry. The Supreme Court negated this submission while upholding the High Court's judgment. Following are the material observations of the Supreme Court.

The offence alleged against the accused is u/s 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 accused 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.

22. Thus, circumstantial evidence plays an important role in dowry deaths. From the evidence on record, inference can be drawn that there was a dowry demand. Demand for dowry could be direct or indirect. There may be no direct evidence of agreement. Yet, the circumstances may be so eloquent that demand for dowry could be easily spelt out.

23. It is necessary to examine the present case in the light of the above judgment. PW-2 Nitin has spoken about the ill-treatment meted out to the deceased. He stated that she used to be driven out of the matrimonial house because her father could not fulfill the demand of money made by her in-laws. There was a compromise. But that did not work. The ill-treatment continued. The appellant started beating the deceased. He demanded Rs. 40,000/-for purchasing motorcycle. Though PW-2 Nitin does not describe this demand as a dowry demand in his evidence, in his FIR, Ex-41, he states that the appellant and

other accused used to tell the deceased that her parents had not given enough dowry and, therefore, she should bring Rs. 40,000/- from them for the purchase of a motorcycle. PW-4 Walubai also referred to this demand in her evidence. She stated that the accused wanted Rs. 40,000/- for buying a motorcycle. In our opinion, if this demand is examined against the backdrop of other circumstances like the earlier ill-treatment, the deceased coming to the parents' house, complaining about the appellant, her leaving the child with her parents and going back to the matrimonial home and her death with ante-mortem injuries, the only inference that can be drawn is that the demand of Rs. 40,000/- was a dowry demand and was in connection with the marriage of the appellant and the deceased.

24. In Pyarelal's case, on which Mr. Shinde has placed reliance, the Supreme Court was considering whether the appellant therein can be held guilty of offence u/s 304-B of the IPC on account of the suicide committed by his wife within seven years of marriage, which can be called dowry death. The deceased therein had got married to the appellant therein on 27/8/1983. Relations between the two deteriorated. The appellant was stated to be beating the deceased and making demands for money. There was a compromise on 1/2/1987. In terms thereof, the deceased went to the house of the appellant. The deceased consumed poison in the appellant's house on 19/12/1987 and died. The case of the prosecution as stated by PW-11, the father of the deceased was that on two previous Sundays prior to the death i.e. on 6/12/1987 and 13/12/1987, the deceased visited PW-11. The deceased complained that the appellant was harassing and maltreating her. She expressed her desire to live with PW-11. On facts, the Supreme Court came to a conclusion that the evidence of PW-11 was simple and plain that the death of the deceased was occasioned not on account of any demand of dowry but because of various other factors. The Supreme Court observed that the demand of dowry arose after the marriage over which there were differences between the parties which were settled and got receded when the deceased resumed cohabitation with the appellant on 2/2/1987. The Supreme Court observed that there is no whisper thereafter of any dowry and, therefore, cruelty inflicted on the deceased is not a relevant circumstance to maintain the conviction u/s 498A of the IPC. The Supreme Court observed that unless there was evidence of dowry demand, Section 304-B of the IPC would not be attracted. In our opinion, this judgment will have to be confined to its own facts. In this case, evidence of PW-2 Nitin and PW-4 Walubai, the brother and mother respectively of the deceased establish that after the compromise, the ill-treatment did not subside. The deceased on her every visit to the parents' house used to narrate the incidents of cruelty. Thus, there is no question of differences receding. As we have already noted, the circumstances on record clearly establish that the appellant was ill-treating the deceased for dowry.

25. In Appa Saheb's case, the deceased was married to appellant 1 Appa Saheb about two and half years prior to the date of the incident which took place on 15/9/1991. On that day, the deceased took poison and died in the house of

appellant 1. The Supreme Court considered the evidence of the mother and the father of the deceased and on facts, came to a conclusion that the deceased was subjected to harassment by the appellants on account of domestic reason as stated by the father and mother of the deceased. The Supreme Court came to a conclusion that the demand of money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the word is normally understood. The Supreme Court observed that the evidence adduced by the prosecution did not show that any demand for dowry as defined in Section 2 of the Dowry Act was made by the appellant as what was allegedly asked for was some money for making domestic expenses and for purchasing manure. The Supreme Court observed that since the essential ingredient of Section 498A of the IPC that is the demand for dowry was not established, the conviction of the appellant cannot be sustained. In our opinion, this judgment is not applicable to the present case. In this case, the demands were not made on account of any financial stringency or for meeting some urgent domestic expenses like purchasing manure. The demand of Rs. 40,000/- was made for purchasing a Hero Honda Motorcycle. Therefore, this demand cannot be termed as a demand for some urgent domestic cause. We have already discussed how it amounts to a dowry demand related to the marriage. Reliance placed on this judgment is, therefore, misplaced.

26. In Shivanandan's case, the appellant was married to one Shobha (the deceased), who was the daughter of PW-1 and PW-2, the father and the mother respectively. The deceased received burn injuries in her house. The prosecution's case was that the appellant set her on fire for not fulfilling the demand of dowry. On facts, the Supreme Court observed that the evidence on record on the aspect of demand of dowry could not be relied upon. The Supreme Court observed that the letters on which the prosecution had placed reliance had no reference to any demand of dowry. In fact, in Ex-P-2, the deceased had written to her mother that she had promised to pay for some article which the mother-in-law has purchased and that she was embarrassed that her parents were not paying the money though her mother-in-law has never asked for it. The Supreme Court observed that this was not the case of demand for any property or any valuable security. On the contrary, the deceased had objected to her parents not paying for something which her mother-in-law had spent money. To the similar effect, was letter Ex-P-3. Another letter, Ex-P-4 also did not speak of any demand and this letter was written three years prior to the occurrence. The Supreme Court observed that the evidence indicated that half of the marriage expenses were borne by the appellant and his family and in the circumstances the prosecution had failed to prove offence u/s 498A of the IPC which was alleged against the appellant and members of his family. It must be stated here that the appellant and the members of his family were also charged u/s 302 of the IPC but the trial court had acquitted them. In our opinion, the facts of the case cannot be equated with the facts of the present case. In this case, there are no letters on record demolishing the case of demand of dowry. There is the testimony of both and

mother of the deceased which inspires confidence. A few days prior to her death, the deceased had come home and told her parents that she was ill-treated as her parents were not in a position to pay money to her in-laws. The deceased had sustained ante-mortem injuries. The evidence in this case is much stronger than the evidence in Shivanandan's case, which was before the Supreme Court.

27. In M. Srinivasulu's case, the deceased was married to appellant 1 on 21/5/1989. The case of the prosecution was that due to persistent ill-treatment and cruelty meted out by the appellant and members of his family, on 17/9/1992 at 9.30 a.m., the deceased set herself ablaze and died with 100% burn injuries in the hospital. On facts, the Supreme Court came to a conclusion that the prosecution version primarily rested on three documents and careful reading of those documents which were addressed by the deceased showed that there was in fact no allegation of any demand of dowry made by the accused. The Supreme Court discussed all the three letters wherein the deceased had expressed that she was happy in her in-laws' place and her in-laws were taking good care of her. In one letter she had written that she was forced to marry the accused against her wishes and later on it created a lot of problems for her. The Supreme Court observed that the underlying effect of the letters was that the deceased was not agreeable to get married to the appellant, she wanted to continue her studies and she was married against her wishes. In one letter, she had said that she did not want to go to her parents' house for Gangamma festival as her husband was taking due care of her. The Supreme Court noted that there was no mention of any demand for dowry in these letters. Therefore, the conviction under Sections 498A and 304-B of the IPC cannot be maintained. In this case, there is no evidence on record suggesting that the deceased was happy in her husband's house. In fact, the evidence discloses that the relations were so strained that talks of compromise took place, that compromise was reduced into writing and then the deceased went to the appellant's house. Thereafter she was again driven out. She used to go to her parent's house and complain about the ill-treatment and her parents used to send her back. It is, therefore, difficult to equate the facts of Srinivasulu's case with the facts of the present case. This judgment is, therefore, not applicable to the present case.

28. In Hira Lal's case, at the time of marriage there was no demand for dowry, but subsequently demands were made and ill-treatment was meted out to the deceased. The Supreme Court was considering whether the ill-treatment was soon before the death. The Supreme Court noted that the differences between the husband and the wife were ironed out on 30/11/1998 by way of settlement. There was no definite evidence about ill-treatment meted out to the deceased at any time, having immediate proximity to the death of the deceased on 14/4/1999 to attract Section 304-B of the IPC. This judgment does not help the appellant to canvass his submission that to constitute "dowry demand", the demand must have direct connection with the marriage. In any case, so far as proximity of the ill-treatment to the death is concerned, the evidence on record clearly establishes that though there was compromise in 2000, the compromise

fell through and ill-treatment of the deceased continued. The deceased on her visits to her parents house used to tell them how she was ill-treated. In fact, the deceased had ante-mortem injuries. Therefore, cruelty not only mental but physical, is proved by the prosecution. The deceased went to her matrimonial house two to three day's prior to the incident. Therefore, there is proximity between her death and ill-treatment.

29. Learned Sessions Judge has acquitted the other accused of all the charges which include charge u/s 498A of the IPC. The State has not appealed against that acquittal order and, therefore, we do not want to comment on that part of the prosecution case. But, in our opinion, the appellant has rightly been convicted under Sections 498A and 304(B) of the IPC. Admittedly, the death occurred within seven years of the marriage of the deceased with the appellant. The ante-mortem injuries suffered by her establish that soon before her death, she was subjected to cruelty. There was a demand for Rs. 40,000/- which the deceased's father could not fulfill. Circumstances establish that the harassment was in connection with dowry demand. Presumption u/s 113B of the Evidence Act must, therefore, arise. The appellant's failure to explain how the deceased received ante-mortem injuries provide an important link in the chain of circumstances. In our opinion, in this case, all the circumstances unerringly point to the guilt of the appellant. The appeal, therefore, has no merit and is accordingly dismissed.