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**(2015) 08 BOM CK 0214**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 08 of 2005**

Dnyaneshwar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 19-08-2015

**Acts Referred:**

Evidence Act, 1872 — Section 113, 113-B, 114  
Penal Code, 1860 (IPC) — Section 304-B, 498-A

**Citation :** (2015) 08 BOM CK 0214

**Hon'ble Judges :** B.P. Dharmadhikari, J;P.N. Deshmukh, J

**Bench :** Division Bench

**Advocate :** Anil Mardikar, Senior Advocate, for the Appellant; H.D. Dubey, APP, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

P.N. Deshmukh, J—This appeal takes exception to the judgment dated 20/12/2004 passed in Sessions Trial No. 104/2000 by the learned Additional Sessions Judge, Pusad, vide which the appellant/accused viz. Dnyaneshwar @ Nana Kashinath Jumade was convicted for the offence punishable under Sections 498-A of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 3,000/-, in default to suffer rigorous imprisonment for one year, and he was also convicted for the offence punishable under Section 304-B of the Indian Penal Code and was also sentenced to suffer rigorous imprisonment for life.

The accused was charged on the count that he being the husband of deceased Vandana, during the period from 17/06/1997 to 15/08/2000 at village Partur, District Jalna, where he was serving as teacher, subjected the deceased to cruelty by his willful conduct, which is of such a nature as is likely to drive Vandana to commit suicide on the count of her failure to fulfill demand on account of balance dowry amount to the extent of Rs. 15,000/- and a four wheeler vehicle.

Accused was further charged on the allegation that on 15/08/2000 at about 11:00 a.m. in the parental home of deceased at Umerkhed, District Yavatmal, deceased died sustaining burn injuries, otherwise than under normal circumstances within seven years of her marriage and the death is caused as accused subjected Vandana to cruelty and harassment soon before her death till 21/07/2000 on her failure to fulfill illegal demand, as aforesaid.

2. Case of the prosecution can be briefly stated as under :

"Deceased Vandana was married to accused on 17/06/1997 at Pandharkawada, District Yavatmal. The marriage was settled in the house of parental uncle of deceased viz. Dr. Vijay Mankar, when it was decided to give dowry in terms of cash to the tune of Rs. 80,000/- and a four wheeler vehicle. Out of said amount, Rs. 65,000/- in cash was given to accused in marriage and balance amount of Rs. 15,000/- was agreed to be paid along with four wheeler vehicle after marriage."

After the marriage was solemnized, Vandana cohabited with accused at Partur, District Jalna, where accused was serving as a teacher in Navodaya Vidhyalaya and was blessed with a daughter viz. Shakshi.

3. It is the case of prosecution that accused subjected deceased to cruelty on account of balance of dowry amount and four wheeler. Said fact was disclosed by deceased to PW-1 Ashish Raut, her younger brother and adopted son of PW-4 Dr. Yadavrao Raut, who alleged that his wife Dr. Vimal, after the death of parents of deceased in her childhood, had brought up her. Dr. Vimal w/o Yadavrao Raut is sister of natural father of Vandana and the complainant.

According to the prosecution's case, on 21/07/2000, Vandana for the last time spoke to PW-1 Ashish on phone informing him of the cruelty sustained by her from the accused and requested him to bring her from Partur. Thus, on 25/07/2000, PW-1 Ashish went to Vandana and brought her to Umerkhed, when accused is stated to have said to Vandana that she should not show her face unless she brings balance amount of dowry and four wheeler vehicle and extended threats of dire consequences on her failure to comply with the same. Vandana accompanied her brother Ashish to Umerkhed, where on 15/08/2000 she committed suicide by setting her ablaze and was admitted to Rural Hospital, Umerkhed, where she was declared dead.

4. On the strength of information of death of deceased received from the Medical Officer, Government Hospital by PW-6 Chandansingh Bais, Police Inspector, A.D. No. 26/2000 was registered by him at [Exh. 25] and investigated the same. During the course of which, he visited the hospital and drew inquest-panchnama [Exh. 28] in presence of the panchas and sent dead body of deceased Vandana for postmortem, of which postmortem report is issued by the Medical Officer at [Exh. 29]. He then visited the spot, which was in the house of PW-4 Dr. Yadavrao, drew spot-panchnama [Exh. 50] and seized ash, plastic can containing kerosene, one match sticks box and one burn match stick from the spot under

seizure-panchnama [Exh. 51].

On 18/08/2000, PW-4 Dr. Yadavrao produced one envelope [Exh. 52] addressed to him along with one letter therein [Exh. 55], which came to be seized under seizure-panchnama [Exh. 53] in the presence of panchas and Dr. Yadavrao.

On 23/08/2000, PW-1 Ashish lodged report to police vide Exh. 39. On the basis of said report, offence came to be registered vide Crime No. 89/2000 for the offences punishable under Section 304-B of the Indian Penal Code and was further investigated by PW-6 Chandansingh Bais, P.I. On the same day i.e. on 23/08/2000, PW-1 Ashish produced one diary [Exh. 41] and four letters alleged to be written by deceased, which are at Exh. 42(1) to Exh. 42(3) and Exh. 44, which came to be seized under seizure-panchnama [Exh. 45].

On 28/08/2000, accused came to be arrested under arrest-panchnama [Exh. 34]. During the course of investigation, marriage invitation card of deceased with accused came to be seized, which is at Exh. 33. On recording the statements of witnesses, it transpired to the Investigating Officer that after marriage of deceased, she was subjected by the accused to cruelty on account of demand of dowry, due to which she committed suicide, and thus on collecting postmortem notes [Exh. 61] and on completion of investigation, charge-sheet came to be filed against the accused before the learned Court of Judicial Magistrate First Class, Umarkhed. In the course of time, case came to be committed for its trial to the learned Sessions Judge. Charge was framed against the accused vide Exh. 46 for the offences punishable under Section 498-A, 304-B of the Indian Penal Code to which he pleaded not guilty and claimed to be tried. It is the specific defence of accused that during her lifetime, Vandana was suffering from epilepsy disease, due to which she committed suicide. The learned Trial Court, on considering the evidence and documents on record, convicted the appellant, as aforesaid. Hence, this appeal.

5. Heard learned Senior Counsel Mr. Anil Mardikar for the appellant and learned Additional Public Prosecutor Mr. H.D. Dubey for the State. According to the learned Counsel for the appellant, the learned Trial Court did not appreciate the evidence in its proper perspective and has discarded the evidence of the defence witnesses without sufficient cause. It is also submitted that the prosecution has not examined Dr. Vimal, wife of PW-4 Dr. Yadavrao, who had brought up Vandana after the death of her parents in her childhood, though according to the case of prosecution, said Dr. (Mrs.) Vimal at the time of incident was present. It is submitted that when the incident took place on 15/08/2000, there is no convincing reason put forth by the prosecution for lodging belated F.I.R., which came to be lodged by Ashish on 23/08/2000. It is also demonstrated as to why no investigation was carried out in A.D., which came to be registered on the death of deceased on 15/08/2000 itself, and as to why prosecution had not examined independent witnesses, though were available, or had not recorded their statements. It is also submitted that after the death of Vandana, information of her death was given to accused through defence witness DW-4

Prakashchandra Bhatt, at around 12:30 noon, however, before accused could reach to the house of Vandana, she was cremated at 06:00 p.m., in spite of her relative having being aware of the fact that approximately 6 to 7 hours are required to reach Umerkhed from Partur by a private vehicle. It is also contended that even otherwise from the evidence of PW-4 Dr. Yadavrao or from PW-1 Ashish, who are only witnesses relied by the prosecution on the point of ill-treatment and demand of dowry, their evidence is not convincing to be acted against the accused. With reference to diary [Exh. 41] and with reference to letters [Exh. 42(1) to Exh. 42(3), Exh. 44 and Exh. 55, it is contended that contents of these letters cannot be read since not proved and is further contended that in view of evidence on record, since there is variance in the handwriting of these documents, it was necessary to refer said documents to handwriting expert to make a foolproof case that the writing in these documents is of none other than deceased. However, as no such investigation is carried out, these documents are said to be of no consequence.

6. In the facts of appeal in hand, the learned Counsel for the appellant has relied upon the following judgments and has thus contended that the judgment of the trial Court needs to be set aside and quashed acquitting the accused.

"1. Biswajit Halder @ Babu Halder and Others Vs. State of West Bengal, (2008) CLT 281 : (2007) CriLJ 2300 : (2007) 1 DMC 539 : (2007) 5 JT 360 : (2007) 4 SCALE 462 : (2008) 1 SCC 202 : (2007) 4 SCR 120 .

2. Dudh Nath Pandey Vs. State of Uttar Pradesh, AIR 1981 SC 911 : (1981) CriLJ 618 : (1981) 1 SCALE 285 : (1981) 2 SCC 166 : (1981) SCC(Cri) 379 : (1981) 2 SCR 771 .

3. Gurdeep Singh v. State of Punjab and others, reported in 2012 ALL MR (Cri) 693 (S.C.).

4. Ramaiah alias Rama v. State of Karnataka, reported in 2015(1) Mh.L.J. (Cri.) 257."

7. Learned Additional Public Prosecutor on the other hand has submitted that evidence of PW-1 Ashish and PW-4 Dr. Yadavrao clearly establishes harassment sustained by deceased on account of non-payment of dowry and four wheeler immediately prior to her committing suicide on 15/08/2000, and thus submitted that evidence of these two witnesses along with other circumstantial and documentary evidence on record, which is in the form of letters written by deceased, establishes the charge leveled against the accused and has thus prayed that appeal, being devoid of merit, be dismissed.

8. Having considering the submissions advance, as aforesaid, we with the assistance of the learned Counsel for both the sides have scrutinized the evidence and documents on record. Having considering the charge [Exh. 46] leveled against the accused, we find that apart from ingredients of Section 498-A of the Indian Penal Code, basic ingredients to attract provisions of Section 304-B

of the Indian Penal Code, which are required to be proved by the prosecution are as follows :--

"(1) the death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;

(2) such death should have occurred within seven year of her marriage;

(3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(4) such cruelty or harassment should be for or in connecting with demand for dowry.

Alongside insertion of Section 304-B in IPC, the legislature also introduced Section 113-B of the Evidence Act. If Section, 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges is that if a married woman dies in unnatural circumstances at her matrimonial home within seven years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives."

9. In the light of above required ingredients, we have scrutinized the evidence of PW-1 Ashish, younger brother of deceased, who has stated that his sister deceased Vandana was married to accused on 17/06/1997 and talks regarding settlement of marriage took place in the house of Dr. Vijay Mankar at Pandharkawada. He has stated that he is adopted son of PW-4 Dr. Yadavrao Raut. Due to death of his natural parents in the year 1972 or 1973, he and deceased were thus brought up by PW-4 Dr. Yadavrao and his wife Dr. Vimal.

He further stated that at the time of marriage of deceased, it was decided to give Rs. 80,000/- to accused and a four wheeler, out of which Rs. 65,000/- was decided to be paid at the time of marriage and balance amount was decided to be paid with four wheeler vehicle after marriage. At the time of marriage, accused was working as teacher in Navodaya Vidhyalaya at Partur, District Jalna and thus Vandana cohabited with him at Partur. PW-1 Ashish further stated that Vandana used to call him frequently on phone informing that accused was troubling her for nonpayment of balance money and four wheeler. He further stated that on 21/07/2000, he received phone from Vandana calling him to take her away from Partur with him, as she was being troubled by accused. Thus, on 25/07/2000, he went to Partur in the morning and came back with Vandana with her daughter Shakshi, when accused is stated to have said her that till the balance amount and four wheeler is not given to him, she should not show her face. He has further stated that on 15/08/2000, she committed suicide by setting her on fire in the house of her parents at about 10:30 a.m. to 11:00 a.m., and on her admission to the Government Hospital, she was declared dead, upon

whom last rites were performed on the same day in the evening.

On scrutinizing above referred evidence of PW-1 Ashish, it is material to note that prosecution has admittedly not examined Dr. Vijay Mankar, the uncle of deceased, in whose house, marriage of deceased came to be settled with accused on having talk. No explanation is put forth for non-examination of such material witness on the point of terms of settlement of marriage, more particularly when the accused is charged for the offences punishable under Sections 498-A and 304-B of the Indian Penal Code. We further find it material to note that, according to evidence of PW-1 Ashish, he has stated that at the time of marriage talks, it was decided to give cash of Rs. 80,000/- to accused, out of which, Rs. 65,000/- was paid at the time of marriage and balance amount and four wheeler was to be paid after marriage. Having considering his evidence, as such, we find that there is no specific evidence establishing demand of said amount of Rs. 80,000/- or four wheeler vehicle as is set out by prosecution, but we find that above stated cash and four wheeler was decided to be given to accused, when his marriage came to be settled with Vandana.

On this point, there is no other material which can be considered except for evidence of PW-4 Dr. Yadavrao, who had stated that marriage of deceased was settled by her uncle Dr. Vijay Mankar in his house at Pandharkawada, at that time he was not present, though, according to him, he was present in the engagement ceremony. Though he had stated that prior to engagement, settlement talks took place in the house of Dr. Vijay Mankar, his further evidence, that it was settled in his presence to give Rs. 80,000/- as dowry and a four wheeler, out of which balance amount of Rs. 15,000/- and four wheeler was to be given after marriage, does not find to be convincing, when he had admitted that at the time of settlement of marriage, he was not present. While according to Ashish, the talks of settlement took place in house of his uncle Dr. Vijay Mankar, where he has specifically stated that it was decided to give cash of Rs. 80,000/- and four wheeler to accused. In view of aforesaid evidence, evidence of PW-4 Dr. Yadavrao to the effect that it was settled in his presence to give Rs. 80,000/- and four wheeler does not inspire confidence. Even otherwise from the evidence of neither of these witnesses, prosecution can be said to have brought on record that there was demand of Rs. 80,000/- or of four wheeler by the accused or his relatives, since in the evidence of both these witnesses, it has come on record that said amount and four wheeler was decided to be given to accused and as such does not establish any demand by accused or his relatives.

10. Reverting back to the evidence of PW-1 Ashish on the point of ill-treatment, what is stated by him is that while Vandana was cohabiting with accused at Umerkhed, on phone he was informed that accused was troubling her on account of balance amount of dowry and four wheeler. Said evidence of PW-1 Ashish is too short to find out as to what was the nature of trouble alleged to be sustained by Vandana. His evidence also does not establish as to how long before the incident, which took place on 15/08/2000, he was informed of such harassment

on phone by deceased, except for stating that while deceased was cohabiting with accused, she was frequently informing him on phone of trouble faced by her for balance amount of dowry and four wheeler, there is absolutely no other corroborative evidence on this aspect of the case. In that view of the matter, there is no specific evidence of ill-treatment being provided to the deceased at the hands of accused.

Similar is the evidence of PW-4 Dr. Yadavrao, when he has stated that whenever Vandana was coming to Umerkhed, she was complaining of accused of giving her mental and physical trouble. According to him, said trouble was caused for non-payment of dowry and four wheeler. However, above evidence of PW-4 Dr. Yadavrao appears to be materially improved, when he has stated that in his statement recorded by police, he has stated that at his house at Umarkhed, Vandana informed that she was mentally and physically troubled by accused for want of balance amount of dowry and four wheeler, however, he cannot state any reason why it is not recorded so. Said omission is duly got proved by defence from PW-6 Chandansing Bais, P.I., the Investigating Officer. On this aspect, evidence of PW-4 Yadavrao is also found contradictory, when he denied to have stated in the statement that whenever he asked deceased at Umerkhed, she was not telling him anything. The above stated portion marked "A" of his statement has been duly got proved by the prosecution from PW-6 Chandansing Bais, P.I., who has recorded his statement at Exh. 69, which reads as follows :

"when we used to ask her, she was not telling us."

11. On scrutinizing further evidence of PW-1 Ashish, he has stated that on the day of incident on 15/08/2000, his parents were in the house and he has lodged report on 23/08/2000. On the aspect of delay in lodging report, Ashish has stated that as his mental condition as well as of his parents and relatives was not good, no report could be lodged earlier. Even otherwise, he has admitted that till giving of complaint, there was no demand in writing with reference to balance dowry amount or four wheeler nor he or any other family member had taken any legal action against the accused nor had sent any notice to him. Moreover, Ashish has admitted that on the day of incident, police had visited their house and drew spot-panchnama, however, police had not made any enquiry either with him or with his parents, who were all present, nor they on their own made any complaint to police. Had it been a case of cruelty, having been provided by accused to Vandana after her marriage till her death, there appears to be no reason for Ashish or to his father Dr. Yadavrao or Dr. Vimal w/o Yadavrao Raut to disclose said fact to police, though they belongs to an literate family, as Dr. Yadavrao and his wife Dr. Vimal at the material time were Medical Officers.

Similar is the evidence of Dr. Yadavrao of there not informing police not lodging report till 23/08/2000. As such, only explanation put forth by complainant Ashish as well as his father Dr. Yadavrao for not lodging report of incident, which took place on 15/08/2000 till 23/08/2000, does not find to be convincing to be accepted more particularly when it is the case of prosecution that deceased prior

to the incident was continuously subjected to ill-treatment at the hands of accused on the count of non-payment of dowry and four wheeler.

PW-1 Ashish has further stated that after lodging report, he found one diary [Exh. 41] and four letters [Exh. 42(1) to Exh. 42(3) and Exh. 44] in the suitcase of Vandana, which he produced before the police, which came to be seized under seizure-panchnama [Exh. 45] in the night on 23/08/2000. Admittedly, there is no reference of any of such letters or diary in the report [Exh. 39] that the said documents appears to have been seized under panchnama [Exh. 45] at 08:35 p.m. on 23/08/2000. While report [Exh. 39] is received by police on the same day at 08:15 p.m. and on the basis of which, F.I.R. [Exh. 40] came to be registered. PW-1 Ashish, who claims to know handwriting of his deceased sister, as he along with Vandana took education at Umerkhed, has deposed that on page Nos. 22, 23, 25 to 28, 37 and 38, Vandana wrote about trouble sustained by her at the hands of accused. Similarly, according to Ashish, letters dated 09/06/1999, 28/03/1998, 12/04/1998 marked as Exh. 42(1) to 42(3) and letter dated 01/01/1999 [Exh. 44] are in the handwriting of Vandana. In the Trial Court, such letters and diary came to be exhibited subject to objection raised by the learned defence Counsel, which objection has been duly considered by learned Trial Judge noting that as PW-1 Ashish, who is younger brother of deceased Vandana, knows her handwriting, and has identified handwriting from the diary and letters to be of her, said documents can be read in evidence. Except as aforesaid, there is nothing on record to establish that the writing in above documents are of by Vandana and of nobody else. Admittedly, no investigation is carried out on this aspect and the reason put forth by the Investigating Officer for not carrying out investigation further by sending said handwriting to the handwriting expert is stated by PW-6 Chandansing Bais, P.I. that as the complainant Ashish in his statement has stated that the handwriting in diary and letters was that of deceased Vandana, he did not find it necessary to send diary and letters seized during the course of investigation to handwriting expert to seek his opinion. Though, evidence of Ashish on this aspect is also not clear, when he has admitted that handwritings on page Nos. 21 and 22 are different in look, however, according to him, it is of Vandana. He has further admitted that handwritings on page Nos. 22 and Exh. 42(1) are similar. In that view of the matter, it cannot be said that handwritings on these documents are same and thus we find much substance in the suggestion put to him that the handwritings in the letters are different from each others and that the handwritings in diary [Exh. 41] and letters [Exh. 42(1) to Exh. 42(3)] are not in the writing of Vandana, though said suggestions are duly denied by him. In the circumstances, it appears that the Investigating Officer, without further probing with reference to the handwritings on these documents, had relied upon the bare statement of Ashish, who claims to know the handwriting of deceased. In that view of the matter also, we do not find it safe to read the contents of said documents, since there is nothing on record to establish that these are written by deceased alone.

Even otherwise, the case of prosecution with reference to seizure of diary and letters when scrutinized on the basis of further evidence of Ashish, it reveals that the suitcase, where from he claims to have got the letters of deceased, was admittedly in the same room, where the incident took place on 15/08/2000 and which was visited by the police. Spot-panchnama is also drawn on the same day. However, there is no explanation put forth by the prosecution as to how these documents were located on 23/08/2000 i.e. eight days thereafter and were produced by Ashish to police.

12. Evidence of PW-4 Dr. Yadavrao reveals that he knew late Vasantryao Mankar and Smt. Sarita Mankar, who were natural parents of Ashish and deceased Vandana and had died about 20 years before. He has stated that Vasantryao was younger brother of his wife Vimal and at the time of his death, Ashish was aged four years and Vandana was aged between 5-6 years, to whom he brought up.

On the point of demand of dowry, he has stated that Vandana's marriage was settled by her uncle Dr. Vijay Mankar and he was not present at the time of settlement and, however, has stated that before engagement ceremony, in his presence it was settled to give Rs. 80,000/- as dowry and one four wheeler, out of which Rs. 65,000/- was to be given at the time of marriage and balance amount and a four wheeler was to be given after marriage. Above piece of evidence of PW-4 Dr. Yadavrao does not inspire confidence, as at one stage, he has specifically stated that marriage was settled at Pandharkawada by uncle of deceased and he was not present, however, in another breath, he states that prior to engagement ceremony, dowry was settled, as aforesaid. His evidence on this aspect is not convincing also for the reason that PW-1 Ashish did not state about presence of Yadavrao at the time of settlement of dowry as alleged. Moreover, the evidence of PW-1 as well as PW-4 is contrary to each other. As according to Ashish, at the time of marriage it was decided to give cash of Rs. 80,000/- to accused and one four wheeler and after marriage, balance amount of Rs. 15,000/- and four wheeler was decided to be given. While according to PW-4 Yadavrao, prior to engagement ceremony itself, it was decided to give as aforesaid. Admittedly, prosecution has not examined Dr. Vijay Mankar, who in this situation appears to be the most material witness, as he has settled marriage of deceased with accused and has also performed it.

On the point of ill-treatment, evidence of PW-4 Dr. Yadavrao as already discussed above, is by way of material omission when he has stated that whenever deceased was visiting to Umerkhed, she was not complaining about mental and physical torture provided to her by accused. Rest of his evidence corroborates with the evidence of Ashish on the aspect of Ashish on 21/07/2000 receiving telephonic message from Vandana and about his visiting to Partur and to bring her back to Umerkhed on 25/07/2000.

13. On the point of incident, PW-4 Yadavrao has stated that on 15/08/2000, when Vandana burnt herself and died, he was in the hospital, where he received message and accordingly reached home, where his wife Vimal was present. From

the evidence of PW-1 Ashish as well as from PW-4 Dr. Yadavrao, thus it has amply come on record that at the time of incident, though Dr. Yadavrao was not in the house, Vimal was present, however, for the reasons best known to the prosecution, she is not examined.

From further evidence of Dr. Yadavrao, it has come on record that on 18/08/2000, he informed police about his receiving letter dated 22/07/2000 [Exh. 55] in envelope [Exh. 52] on 29/07/2000, which is seized under seizure-panchnama [Exh. 53], dated 23/08/2000. According to PW-4 Dr. Yadavrao, he has informed about said letter to police on 18/08/2000, when police arrived for drawing spot-panchnama. In spite of that, it appears that no seizure was effected on that day itself, but same came to be seized on 23/08/2000. Similarly, we have noted that letter [Exh. 55] bears signature of Yadavrao below, which he had put date as 15/08/2000 while its seizure-panchnama is dated as 23/08/2000 and on the last page of said panchnama, PW-4 has signed and put date as 18/08/2000. Similarly, there appears to be overwriting on the date of seizure-panchnama and letter [Exh. 55] bears a signature of Yadavrao with date as 15/08/2000, while envelope [Exh. 52] is signed along with date as 18/08/2000. No satisfactory explanation is put forth by the prosecution on this aspect, when it is a specific case of PW-4 Yadavrao that on 18/08/2000, when police visited his house, he has produced letter of deceased dated 22/07/2000, which he had received on 29/07/2000, however, the same appears to have been seized on 23/08/2000. So far as overwriting on seizure-panchnama [Exh. 53] is concerned, the only explanation put forth by PW-6 Chandansing Bais, the Investigating Officer, is that before filing of charge-sheet, when he was scrutinizing the document, he noted this mistake with reference to date of seizure-panchnama appearing on Exh. 53 as 18/08/2000 and corrected to 23/08/2000, and the reason put forth by the Investigating Officer is that since offence was registered on 23/08/2000, he carried out correction on seizure-panchnama as aforesaid, which explanation does not stand for any reason as after death of deceased on 15/08/2000, A.D. was registered and during the course of its investigation, Investigating Officer had visited the spot and on 18/08/2000 and as per evidence of PW-4 Yadavrao, he has produced letter [Exh. 55] to the police along with its envelope [Exh. 52].

14. Evidence of PW-3 Sanjay Deshmukh, on this aspect when perused, it reveals that on 18/08/2000, he was called to act as panch in the house of PW-4 Yadavrao, where in his presence envelop [Exh. 52] with letter [Exh. 55] came to be seized under seizure-panchnama [Exh. 53]. In view of evidence of this independent panch-witness, we find no reason put forth by the Investigating Officer to effect change of date of seizure-panchnama from 18/08/2000 to 23/08/2000 only for the reason that crime was registered on that date as deposed by PW-6 Chandansing Bais, the Investigating Officer. In that view of the matter, apart from the alleged harassment as well as dowry demand, prosecution case is not convincing even on the count of investigation with reference to seizure of letters. Though in his further examination, PW-4 Dr. Yadavrao has deposed about handwriting on letters [Exh. 42(1) to Exh. 42(3) and Exh. 44] and

diary [Exh. 41] to be of Vandana, since he claims to be acquainted with her handwriting, said evidence needs to be ignored for the reason already stated aforesaid that merely because PW-1 Ashish as well as PW-4 Yadavrao had stated to police that said letters and contents from diary are in the handwriting of Vandana, the Investigating Officer took no steps to get their claim certified by forwarding said handwriting to handwriting expert. In the background of above evidence, having considering the fact that the statement of PW-4 Dr. Yadavrao was not recorded till 23/08/2000, we find substance in the case of accused of his false implication after lodging of belated report. The only reason put forth by PW-4 Dr. Yadavrao not to make any statement before police from 15/08/2000 to 23/08/2000 is stated to be that he was in confuse state of mind and whenever this topic was discussed he had increased palliation, which does not find to be sufficient to accept. In fact, we find that after death of Vandana on 15/08/2000, though A.D. was registered, no statements were recorded till offence came to be registered on 23/08/2000, as PW-6 Chandansing Bais, the Investigating Officer had admitted that during investigation of A.D., no statements of any witness were recorded till 23/08/2000. He claims to have knowledge of recording statements at the earliest. However, since in the instant case, statements were not recorded for a period of eight days, we find much substance when it is suggested to the Investigating Officer that statement of witnesses recorded during the course of investigation in A.D. are suppressed. As from those statements, it revealed that no offence was committed by the accused, which suggestion is denied by the Investigating Officer.

15. Coming back to the evidence of PW-4 Yadavrao, he admits to have not disclosed to police why the statement came to be recorded on 23/08/2000 about letter [Exh. 55]. As according to him, it was already seized by police on 18/08/2000. As already stated above, though Exh. 53 vide which letter [Exh. 55] came to be seized on 23/08/2000, PW-4 Dr. Yadavrao is firm about its seizure on 18/08/2000. Though in his earlier evidence, Dr. Yadavrao has stated that after the incident of 15/08/2000, his mental condition was not good and as such police did not record his statement. He has admitted that on 18/08/2000, when he produced letter [Exh. 55] to police, his physical condition was good. In view of above unreliable evidence and since material date with reference to seizure of letter and envelope differs, we find much substance, when it is suggested to Dr. Yadavrao that letter [Exh. 55] is a fabricated document to bring the case within the required ingredients of dowry death, though it is denied by him. In the later part of his cross-examination, PW-4 Dr. Yadavrao was suggested that prior to the incident, Vandana was under medical treatment for sustaining epilepsy attack and hallucination and delusion and thus in spite of receiving letter [Exh. 55] on 29/07/2000, no action was taken at his end, which suggestion is denied.

16. PW-4 Dr. Yadavrao was suggested that while prosecuting her studies for D.H.M.S., Vandana could not succeed in spite of appearing for four attempts as her mental condition was disturbed, which suggestion is also denied by Dr. Yadavrao.

17. Considering evidence of material witnesses namely PW-1 Ashish and PW-4 Dr. Yadavrao on the point of cruelty provided by accused to deceased Vandana and on demand of dowry, we do not find their evidence to be sufficient to attract provisions of Sections 498-A and 304-B of the Indian Penal Code. As in the evidence of neither of these witnesses, there are specific allegations of cruelty as required under the law to be established by the prosecution. The existence of cruelty cannot be proved merely because suicide has been committed or deceased died of unnatural death. Undoubtedly to a large extent, the concept of cruelty will be subjective, but no claim of cruelty can be made within objective basis. Thus, merely because victim has taken a drastic step of ending her life, it cannot be presumed that the treatment that was being given to her was cruel, so as to attract punishment provided for, in Section 498-A of the Indian Penal Code. Explanation to Section 498-A of Indian Penal Code makes it clear that cruelty means "any willful conduct, which is of such a nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman". The words "willful conduct" and "likely to" used in explanation clause (a) are significant. The words "likely to" used in the said clause show that clause (a) of explanation to Section 498-A of the Indian Penal Code requires a willful conduct to be of such a nature as would likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. The extent of cruel treatment needs to be objectively assessed in order to see whether a reasonable or average person would likely to be driven to commit suicide or cause grave injury to her on account of treatment.

18. From the evidence on record, there is nothing to establish that till the incident has occurred, deceased was subjected to cruelty to such an extent that she was likely to be driven to commit suicide. More particularly, when from 25/07/2000, she was in the house of PW-4 Dr. Yadavrao and the incident occurred after a gap of about 20 days thereafter. In that view of the matter and since PW-4 Dr. Yadavrao is also stated to be not aware as to the nature of death of deceased, at the cost of repetition, we emphasize that death of Vandana involved in this appeal by itself cannot be considered as proof of cruelty.

19. Prosecution has neither examined Dr. Vimal wife of PW-4 Dr. Yadavrao nor Dr. Vijay Mankar, the uncle of deceased, though material, and thus we find that it was bounden duty of prosecution to examine these material witnesses, particularly when it is no case of prosecution that if produced these witnesses, would not speak the truth. Under these circumstances, withholding the material witnesses from the Court thus casts serious reflection on the fairness of trial and thus even adverse inference in view of illustration (g) to Section 114 of the Indian Evidence Act can arise against the prosecution. As had these witnesses could have been examined, Dr. Vijay Mankar could have put light on the settlement talks, whatsoever, might have taken place at the time of settlement of marriage with the accused and as Dr. Vimal was found in the house at the time of incident, she must have come out with the true facts as to what transpired at the time of incident. In the light of above evidence on record, we find case relied on

by the appellant in the matter of Ramaiah alias Rama v. State of Karnataka, reported in 2015(1) Mh.L.J. (Cri.) 257 useful to be referred, wherein the Hon"ble Apex Court in paragraph 22 observed thus :

"Whether her death was accidental as claimed by the defence or it was a suicide committed by "L", is not clearly established. Had the allegations of demand of dowry and harassment of "L" been established thereby making it an offence under section 498-A, Penal Code, things would have been different. However, when dowry demand and harassment of "L" is not established, the inferences drawn by the High Court taking aid of section 113-B of the Evidence Act also to be discarded."

20. According to the evidence of PW-5 Dr. Dattatraya Kale, who has performed autopsy, he noted following external injuries.....

"As regards surface and injuries : - Head, neck, face, burn totally (9%). Both upper limbs burnt completely (18%). Only lower back and lower abdomen spared due to tight knicker (16+16). Both lower limbs burnt completely except foot (16+16). Genitalia not burnt due to tight knicker. Total percentage of burn 91%. All these injuries were anti mortem due to burns."

..... and certified cause of death as asphyxia death due to fire and has issued postmortem note [Exh. 61]. The Medical Officer has admitted that there are various causes by which death can be caused by asphyxia like hanging, throttling, suffocation, drowning, and also has stated that in the instant case, the death was due to suffocation. However, has in clear terms admitted that on the basis of postmortem note [Exh. 61], he cannot say whether the death was accidental, suicidal or homicidal death.

21. From the above discussed evidence, there is nothing to establish whether death of Vandana was accidental or it was suicidal. Had the allegations of demand of dowry and harassment to Vandana were established thereby making an offence under Section 498-A of the Indian Penal Code, the things would have been different. However, in the absence of such evidence and since we do not find dowry demand and harassment to Vandana to be established, provisions of Section 304-B of Indian Penal Code cannot put into play so as to attract presumption as to dowry death. It is necessary to show that soon before the death, deceased had been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry. When this essential ingredient has not been established in the present case, the question of drawing any presumption by invoking aforesaid provisions does not arise at all.

Moreover, it is the settled legal position that even if a single ingredients of Section 304-B of the Indian Penal Code is not made out, the presumption of Section 113 of the Indian Evidence Act will not be available to prosecution and no burden would shift upon the defence.

22. The appellant to establish his innocence and to prove his case had examined

DW-1 Nitin Jaiswal, who passed M.B.B.S., D.P.M. and was practicing at hospital at Yavatmal, where in the year 1999, accused had brought deceased wife Vandana for treatment, who was suffering from grand mal epilepsy, who whom he examined and found her current mental status with hallucinations particularly visual moderately present, delusions persecutory type moderately present with depressed mood. He diagnosed that patient was suffering from grand mal epilepsy with post epileptic psychosis and continued treatment after seeking opinion of Dr. Chandrashekhar Meshram. The expert has stated that he also noted her marital relationship with the spouse to be not good having suspecting his character and was found in a habit of writing irrational stories, irrational letters, making rangolies occasionally and having irrelevant talks on sustaining epileptic attack with abusive and assaultive behaviour, angry outburst, writing suicidal notes and letters without informing anyone. The mark-list of final year D.H.M.S. Course [Exh. 57] on record in respect of deceased Vandana when perused it reveals that consecutively she failed in the final year of above said examination in all four attempts. Which document corroborates the version of DW-1 Dr. Nitin Jaiswal. From the evidence of Dr. Jaiswal, it is further noted that Vandana was required to take treatment throughout her life span and has accordingly issued report [Exh. 75]. Nothing material could be achieved in his cross examination to doubt his evidence. Except for suggesting that false documents were prepared 15 days prior to his deposing before the Court, which is duly denied by DW-1 and that suggestion even otherwise does not stand for any reason as it was already suggested to PW-1 Ashish in the fag end of his cross-examination, which is recorded on 17/03/2004 that Vandana was provided treatment by DW-1 Dr. Nitin Jaiswal in the year 1999 for sustaining epilepsy, hallucination and delusion. In that view of the matter, we do not find any reason to disbelieve [Exh. 75] report issued by DW-1 Dr. Nitin Jaiswal.

23. The defence to dislodge the case of prosecution on account of dowry demand has examined DW-2 Bhaskar Raut, who has stated that Dr. Vijay Mankar, who is uncle of deceased and husband of his sister-in-law, was present at the time of settlement of marriage of accused with deceased, which came to be settled in the presence of parents of accused, brother, relatives, where it was agreed that marriage was to be solemnized at Pandharkawada and the marriage expenses were agreed to be born by both sides respectively and not to make any heavy expenses. Nothing material is elicited in his cross-examination except for suggesting that he was not present at the time of settlement of marriage and that it was agreed to pay Rs. 80,000/- in cash and a four wheeler to accused, out of which Rs. 65,000/- was agreed to be paid at the time of marriage and balance amount and four wheeler to be given after marriage, which suggestion is duly denied by him.

For the reasons stated aforesaid, thus, there is no convincing evidence of PW-1 Ashish and PW-4 Dr. Yadavrao on the point of settlement talks, if any, took place at the time of marriage of deceased and for non-examination of material witnesses on this aspect, we find nothing to discard the evidence of DW-2

Bhaskar Raut.

24. On perusal of evidence of DW-3 Sheikh Maroof Sk. Ahmed, it has come on record that on 25/07/2000, PW-1 Ashish, when visited Partur to bring his sister back along with him to Umerkhed, had met this witness in the college and handed over keys of her quarter for being supplied to accused. However, his evidence does not establish nor it is suggested to this witness in the cross examination that PW-1 Ashish, while taking Vandana with him to Umerkhed, at the time of handing over keys, had informed the reason for his taking Vandana with him. Similarly, evidence of this witness falsifies evidence of PW-1 Ashish of accused threatening deceased not to show her face till she brings the balance amount of dowry and four wheeler, as if accused at that time was present, there was no reason for PW-1 Ashish to give keys of house of accused to DW-3 Sheikh Ahmed.

25. Having scrutinizing evidence, as foresaid, and in view of the settled legal principle that the defence witnesses are entitled to equal treatment with those of the prosecution, we are therefore of the opinion that as a result of cumulative discussion as above, the appellant has to succeed as in this case, there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B of the Indian Penal Code. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained. We accordingly allow this appeal. We set aside the judgment of the Court below and pass the following order.

"? Criminal Appeal No. 8/2004 is allowed.

? The conviction imposed upon the appellant for the offences punishable under Sections 498-A and 304-B of the Indian Penal Code is set aside.

? His bail bond stands cancelled."