
(2010) 10 BOM CK 0021
In the Bombay High Court
Case No : Criminal Appeal No. 558 of 2009

Kapil and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2012) 1 DMC 93

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : Sadhana S. Jagtap, for the Appellant; B.J. Sonawane, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—Challenge in this appeal is to the judgment rendered by learned Sessions Judge in Sessions Case No. 89/2008 whereby both the appellants have been convicted for the offences punishable under Sections 498-A and 304-B read with Section 34 of the I.P. Code as well as Section 306 read with Section 34 of the I.P. Code. They have been each sentenced to undergo rigorous imprisonment for one (1) year and to pay fine of Rs. 1,000, in default to undergo rigorous imprisonment for ten (10) days for the offence punishable u/s 498-A read with Section 34 of the I.P. Code, to undergo rigorous imprisonment for seven (7) years and to pay fine of Rs. 2,000, in default to undergo rigorous imprisonment for fifteen (15) days for the offence punishable u/s 304-B read with Section 34 of the I.P. Code and to undergo rigorous imprisonment for one (1) year and to pay fine of Rs. 1,000, in default to undergo rigorous imprisonment for ten (10) days for the offence punishable u/s 306 read with Section 34 of the I.P. Code.

2. The appellants were tried along with other two (2) accused persons for the

offences indicated above. They were the original accused Nos. 1 and 2, respectively, whereas other co-accused Smt. Sangita and Sundar were the original accused Nos. 3 and 4. Both the latter two (2) accused have been acquitted of the charges by the learned Sessions Judge.

3. It is an admitted fact that deceased Pradnya was married to the appellant No. 1 on 18th November, 2005. Her father is ex-Militaryman. The father of deceased Pradnya is inhabitant of Mathura. Her three (3) sisters are married. Somewhere before settlement of her marriage with the appellant No. 1 - Kapil, his mother had died. The marriage was settled through intervention of PW-3 Shashikant Sharma, who happens to be her distinct relative whereas the appellant No. 2 - Laxman is his maternal uncle. Considering his relationship from both the sides. PW Shashikant Sharma inter-middled in the settlement of the marriage. Out of the wedlock, deceased Pradnya gave birth to a female child on 1st August, 2006. In the night between 23rd and 24th December, 2007, a little after midnight, deceased Pradnya committed suicide by hanging herself in the matrimonial home. Her brother (PW-2 Dinesh Saraswat) lodged the FIR (Exh. 48) at City Police Station, Jalgaon, alleging that deceased Pradnya was subjected to unbearable matrimonial cruelty on account of non-fulfilment of the unlawful demands put forth by the appellants and she died under the unnatural circumstances as a result of the cruel treatment given to her and that she committed the suicide which was instigated by conduct of the appellants.

4. The prosecution case is that the appellants were dissatisfied with the quantum of dowry amount paid and the ornaments given, at the time of marriage. The deceased - Pradnya was being maltreated by them due to nonpayment of dowry amount upto their satisfaction, also due to giving of less items of ornaments and articles than expected by them, and as such, she was being troubled by them. They used to demand Rs. five (5) lacs from her parents for the purpose of their hotel's business. The appellant No. 1-Kapil use to beat her under influence of liquor. She narrated the instances of matrimonial cruelty to her father and brother during her telephonic communications with them. The father and the brother used to console her. They used to tell her that the domestic quarrels may vanish after some time. Somewhere in the month of February, 2007, her father received telephonic communication to the effect that Pradnya was being ill-treated due to her failure to fetch Rs. five (5) lacs from him. The appellant No. 1.- Kapil desired her to fetch such amount in order to pay loan borrowed by him for running business of a hotel. The appellants used to drive her out of the house and, at a times beat her. She used to narrate the instances of matrimonial cruelty to her parents and her brother during her visits of their house. Her father visited Jalgaon in order to solve the problem. He pleaded with the appellant to give good treatment to Pradnya. He resided with PW Shashikant Sharma through whom he tried to plead with the appellants. There was no change in the behaviour of the appellants vis-a-vis deceased Pradnya. Consequently, her father took Pradnya to his house at Mathura. On 27th October, 2007, the appellant No. 1 informed Pradnya that he will take her back to his house from Gwalior Railways

Station where she shall come down from Mathura. Her father took her to Gwalior Railway Station wherefrom the appellant No. 1 - Kapil took back deceased Pradnya to his house at Jalgaon. For some days, thereafter the matrimonial life was without hassels. The appellants, however, revived the ill-treatment after about a couple of weeks. She could not tolerate the beating and ill-treatment any more and as such, committed the suicide in the matrimonial home in the relevant night by hanging herself to a ceiling fan, by means of a rope. Her brother (PW Dinesh) visited Jalgaon after receiving telephonic information from PSI Kolte of City Police Station about the ghastly incident of suicide committed by Pradnya. He lodged the FIR (Exh.48) at the City Police Station, Jalgaon. The police conducted the spot panchanama. The dead-body of Pradnya was referred for post-mortem examination. There were ligature marks found around her neck. On basis of the material gathered during course of investigation, the appellants were charge-sheeted for the offences punishable u/s 498-A read with Section 34, Section 304-B read with Section 34 and Section 306 read with Section 34 of the I.P. Code.

5. In response to the charge (Exh. 36), both the appellants pleaded not guilty. They alleged that they have been framed in a false case. They alleged further that the neighbouring witnesses, such as PW-4 Nagraj Patil and PW-6 Kapurchand Kohari are having grudge against them and, therefore, have come forward to substantiate the false charge. They further alleged that deceased Pradnya was hot-tempered and used to beat the female child without any reason or rhyme and, therefore, there used to be the quarrels between the spouses. She had left their house on one occasion in the fit of anger but came back because her parents declined to allow her to reside with them. They submitted that she had committed the suicide by self-hanging in a fit of anger, though they had given her good treatment.

6. The questions to be determined are:

(i) Whether deceased Pradnya was subjected to matrimonial cruelty which could have been so unbearable that she was driven to path of committing the suicide?

(ii) Whether the death of Pradnya was unnatural, within period of seven (7) years of the marriage, and she was subjected to matrimonial cruelty soon before her death on account of non-fulfilment of the unlawful demand for Rs. five (5) lacs?

(iii) Whether both the appellants shared common intention and have been rightly convicted and sentenced by the Trial Court ?

7. Before 1 embark upon scrutiny of the prosecution evidence, it may be said that the marriage between the appellant No. 1-Kapil and deceased Pradnya was brought about due to intervention of PW-3 Shashikant Sharma. He was admittedly the mediator in the said marriage. There is no dispute about the fact that the appellant No. 2 is his maternal uncle. His blood relation with the family of deceased Pradnya is not so close as compared to the relation with the appellants. The parents of deceased Pradnya hail from Mathura. It is of common

knowledge that Jalgaon is far away from Mathura and ordinarily, the marriage could not have been settled without the intervention of common mediator known or related to both the parties. It is in this background that the testimony of PW-3 Shashikant Sharma assumes significance.

8. From the testimony of PW Shashikant Sharma, it may be gathered that at the time of engagement ceremony for the marriage, the appellants enhanced the demand for dowry amount. The issue was discussed between the appellant No. 2 and her father. Still, however, the father of Pradnya maintained silence on the issue and instructed PW Shashikant Sharma that after going to Mathura, he will inform about his reply to the enhanced demand for the dowry. His evidence shows that father of Pradnya communicated to him that the marriage proposal will not be considered and he did not wish to maintain the relationship any more because the dowry demand was increased even before performance of the marriage. Being inter-middler, PW Shashikant Sharma informed such message of her father to the appellants. His version purports to show that the appellants visited his house and expressed regrets. He transmitted the message of the appellants to father of deceased Pradnya and, therefore, the proposal was revived. Thus, the commencement of the matrimonial relationship was in turmoil at the inception itself.

9. PW Shashikant Sharma states that after 10/12 days of the marriage, Pradnya had been to his house. She informed him that the appellant No. 1 - Kapil told her that he would take revenge of her father because the latter had made his father to weep during the course of engagement ceremony. This part of the version of Shashikant Sharma reveals as to how the appellant No. 1 - Kapil had prepared his mind to teach a lesson to Pradnya and her father. His version further shows that Pradnya informed him that the appellants used to consume liquor and thereafter, beat her. His version further purports to show that somewhere in November, 2006, Pradnya was driven out of the matrimonial house along with her infant female child. During the relevant night, she had taken shelter in the house of a neighbour. She had contacted him on telephone and informed him about the incident of driving her out of the matrimonial home. He narrated as to how he had gone to the house of the neighbour of the appellants in the night time and made attempt to contact the appellants. In that night, till about 3 a.m., he was in the house of the neighbour where Pradnya was accommodated and though he tried to have access with the appellants, yet they did not give any response to him.

10. The testimony of PW Shashikant Sharma further reveals that the appellants told him that since Pradnya had been out of the house for the whole night during the earlier night, she was required to undergo test likewise that of Sita in Ramayana. He advised Pradnya to inform the incident to her parents at Mathura. She declined to inform her father on the ground that the latter is an old aged person and will be put to unnecessary mental tension. His version further shows that he informed about the said incident to PW-2 Dinesh, who happens to be

brother of deceased Pradnya, because it was necessary to put them on guards. His version further shows that somewhere in February, 2007, he received a telephonic information from neighbour of the appellants, by name Shri Kothari to visit the house of the appellants immediately because both the appellants had beaten Pradnya and she was likely to be done to death. He, therefore, went to the house of the appellants. He noticed that both the appellants were absent from the house, but Pradnya was sitting inside the house with torn clothes and there were some marks of violence on her person. On inquiry by him, Pradnya narrated to him that both the appellants had beaten her. She requested him to save her and told him that else, the appellants would kill her. His version reveals that he took Pradnya to his house along with her infant female child. He thereafter communicated the incident to her father. His version reveals that somewhere after midnight, both the appellants visited his house. They were under the influence of liquor. He informed them that the incident of beating administered to Pradnya was communicated to her father and the latter was supposed to visit Jalgaon after 2/3 days and thereafter, they were to take decision about her returning to the matrimonial house. His version reveals that both the appellants thereupon addressed abuses to him and created a scene. He, therefore, telephonically informed the police. Both the appellants had to be removed from his house by the police. He lodged a report with Jilha Peth Police Station against the appellant No. 1-Kapil. His version reveals that after about three (3) days, father of Pradnya came to Jalgaon and took her with him at Mathura. He does not know as to when she returned to Jalgaon thereafter, but within few days of her returning to house of the appellant, she again visited his house. His version purports to show that Pradnya came to his house somewhere before about 11/2 months of her sad demise. She narrated to him and his wife what the appellant No. 2 used to make forcible attempt to feed mithai (sweetmeat) in her mouth and sometimes, had barged in her room, without knocking the entrance door while she was feeding milk to the female child. In other words, she had narrated to him about the nasty acts of the appellant No. 2 which indicated his attempts to outrage her modesty or rather to overstep and behave like a philander. His behaviour with her was unbecoming of a father-in-law.

10-A. A few days after such complaints of deceased Pradnya, as per version of PW Shashikant Sharma, he received telephonic information from her cousin that she had been found dead due to hanging inside the matrimonial home. Neither of the appellants had informed him as to what had happened to Pradnya. His version purports to show that after arrival of the brother of Pradnya i.e. PW-2 Dinesh, the FIR was lodged. He admits that parents and brother of deceased Pradnya stayed with him during hearing of the Sessions case. He further admits that the witnesses gave their statements before the police in Hindi language which he transcribed in Marathi for the purpose of record. He admits that previously, he used to run a book-depot at Chalisgaon and later on, got shifted the business to Jalgaon. He admits that house of the appellants is specious like a

bungalow. His version reveals that the appellants run a hotel in front of railway station at Jalgaon. Their hotel is styled as "Krishna Hotel". He further admits that he was a witness in a rape case, but does not know whether certain strictures were passed against him in the judgment of the Sessions Court. There appears omission in his police statement regarding the telephonic information given by the neighbour of the appellants i.e. Kapurchand Kothari regarding beating of Pradnya by the appellants and that they were likely to eliminate her. He admits that his civil and criminal litigations are going on in the Courts at Jalgaon. He admits that since before settlement of the marriage, he was knowing that the appellant No. 2 was in a habit of drinking liquor. He does not recollect whether he had given such information to parents of Pradnya before the settlement talks were finalized. His version reveals that Pradnya was being treated by a Gynaecologist by name Dr. Nanda Jain. His version reveals that for routine check-up, his wife used to accompany Pradnya to the clinic of Dr. Nana Jain.

11. On going through the testimony of PW Shashikant Sharma, it may be gathered that in spite of lengthy cross-examination, nothing of much importance could be gathered so as to dislodge his version. As stated before, he is more closely related to the appellants as compared to the parents of deceased Pradnya. What appears from his testimony is that he attempted to safeguard Pradnya from the outrageous conduct of the appellants as and when he came across her complaints about their ill-behaviour and ill-treatment meted out to her. He has no substantial reason to speak lie. He has no particular grudge against the appellants. He acted like a responsible marriage mediator and councillor. It is unfortunate that he could not mend ways of the appellants, for giving good treatment to Pradnya and could not stop her matrimonial plight. The core of his evidence has remained un-shattered notwithstanding a searching cross-examination.

12. Coming to the version of PW-4 Nagraj Patil, it is explicit that he is the next door neighbour of the appellants. He runs a S.T.D. booth in his residential premises. His version purports to show that the matrimonial life of deceased Pradnya was unhappy. He deposed that Pradnya used to visit his S.T.D. booth in order to contract her father. He could gather from the conversation of Pradnya with her father that she was being troubled in the matrimonial home. His version further shows that there used to be frequent quarrels between the appellants and Pradnya. He had intervened in such quarrels. His version further shows that in the relevant night, wife of another neighbour, by name, Shri Kothari, visited his house and narrated to him that quarrel had taken place between the appellant No. 1-Kapil and Pradnya whereafter Pradnya requested her to look after the minor daughter because she was leaving the matrimonial house. The wife of said neighbour (Shri Kothari) urged him to search for Pradnya. He went to house of the appellants and called Pradnya by her nick name i.e. "Rani" from the windows of the house. There was no response to his call. However, the female child awoke due to his calls and start crying. He noticed that the house was locked from inside. He, therefore, went to hotel of the appellants. He told the

appellant No. 2 about such incident in presence of the appellant No. 1. Even after one (1) hour, the appellants did not return to their house. The witness (PW4 Nagraj) became more anxious and again went to hotel of the appellants. It was only thereafter that the appellant No. 1 returned to his house and made attempts to open the latch of the entrance door. This conduct of the appellants is significant. The door was opened by inserting a pipe through the window. The witness states that they noticed that the female child of Pradnya was weeping. It was found that bedroom of the house was locked. The door was broke open. They noticed, after forcing entry in the bedroom that dead-body of Pradnya was hanging to a ceiling fan. A spot panchanama was drawn in his presence. He corroborates the recitals of the spot panchanama (Exh.56). The recitals of the spot panchanama would show that deceased Pradnya was hanging to the ceiling fan by means of a Saree tied around her neck. In other words, she got herself hanged to the ceiling fan by tying a Saree to the fan of which noose was put around her neck.

13. True, PW Nagraj Patil admits that there was a cabin to the S.T.D. booth and, therefore, ordinarily, the conversation could not be heard by any person outside the cabin if the telephone was being used by the customer. Still, however, one cannot be oblivious of the fact that the deceased-Pradnya was the next door neighbour of PW Nagraj Patil and he could have been more curious due to her visits to the S.T.D. booth in spite of the fact that there was a telephone connection available in her matrimonial house. It is highly probable that due to her expressions on the face, the body language and other suspicious movements. PW Nagraj became more curious and used to clandestinely listen to the telephonic conversation between herself and her father, He could know that she was calling her father at Mathura from the S.T.D. booth. It is also more probable that he was simultaneously using another telephonic communication while she was talking to her father. She was young and inexperienced woman. She confided in him while telling her grievances about the unhappy matrimonial life. There is nothing unnatural about the conduct of PW Nagraj Patil. His version corroborates the fact that the matrimonial life of Pradnya had become miserable due to the ill-treatment at hands of the appellants. His version also indicates that soon before her death, she was so much so disgusted that she left the minor female child unattended and hanged herself inside the bedroom. This is one of the significant circumstance which lends corroboration to the case of prosecution.

14. This takes me to the version of PW-6 Kapurchand Kothari, He too is the next door neighbour of the appellants. His version purports to show that there use to be frequent quarrels between the appellants on the side and Pradnya on the other. He had given word of advice to the appellant No. 1-Kapil to refrain himself from beating the wife i.e. Pradnya because the appellant No. 1 use to beat her. He states that inspite of such advice, there was no change in the behaviour of the appellant No. 1-Kapil. His version reveals that a problem had occurred during course of engagement ceremony of the appellant No. 1 and Pradnya because of demand for payment of Rs. five (5) lacs and on account of the payment of less

dowry, the appellants were ill-treating and harassing deceased Pradnya. His version purports to show that Pradnya herself had disclosed to him about the ill-treatment meted out to her at hands of the appellants. His version further shows that somewhere after the birth of the female child, she was driven outside the matrimonial house. She had to take shelter in the house of a neighbour by name Shri. Sharma. He states further that somewhere in the month of February, 2006 Pradnya was beaten up and had been driven out of the house. She was required to take shelter in the neighbouring house and later on, PW Shashikant Sharma had taken her to his house. He narrated as to how the incident of suicide committed by Pradnya was noticed by the neighbours after the neighbours got such information and barged in the house of the appellants. He admits that he had sold residential block to the appellant No. 2 and had transferred loan account in his name, which was the loan borrowed by him. He admits that in the year 2007, an amount of Rs. one (1) lac was unpaid loan amount in respect of the said residential block alienated in favour of the appellant No. 2. The learned Advocate for the appellants would submit that there is inconsistency between the demanded amount of Rs. five (5) lacs for repayment of such loan and actual amount of loan which had remained unpaid. She would urge, therefore, to discard the versions of the witnesses on account of such inconsistency. I find it difficult to countenance the argument. The demand was not being made only for the repayment of the loan, but it was also for business of the hotel. It is admitted by PW Kapurchand Kothari that the quarrels between the spouses used to take place due to flimsy reasons and they were the domestic quarrels. The learned Advocate for the appellants would submit that such minor instances of quarrel will not amount to the matrimonial cruelty in as much as, it can be termed as the wear and tear of the matrimonial life. P.W. Kapurchand admits that after the incident, while conducting the spot panchanama, the appellant No. 1 - Kapil had reached the house and had started weeping. He admits that the appellant No. 1 - Kapil was saying that Pradnya was quarreling with him on account of her desire to visit house of her parents and had scratched him by nails. He admits further that the appellant No. 1 was telling the members of the group of the neighbours that there was no reason for Pradnya to committed suicide. The learned Advocate for the appellant would submit that considering the immediate conduct of the appellant No. 1 - Kapil, it is conspicuous that the suicide was due to hyper sensitivity of Pradnya and her insistence to go to house of her parents for which the appellant No. 1 - Kapil might have denied the permission. I do not agree. Unless there was compelling reason for Pradnya to leave the matrimonial house, ordinarily, she would not have become so force. The reaction of the appellant No. 1 could be termed as an act of defence or in the form of crocodile tears.

15. The prosecution case is further corroborated by PW-2 Dinesh. He is real brother of deceased Pradnya. His testimony cannot be dislodged only because he is close relative of deceased Pradnya. His version reveals that there was demand for dowry amount and Pradnya was being ill-treated due to nonpayment of the

demand amount of Rs. five (5) lacs. His version purports to show that when he had visited the hospital where Pradnya had delivered the female child on 2nd August, 2006, she had disclosed to him that the appellants were complaining of less payment of the dowry amount and, therefore, had asked her parents to bear the medical expenditure required for her delivery in the hospital. He had paid the hospital charges accordingly. His version reveals that somewhere in February, 2007, again Pradnya had disclosed to him that the appellants were harassing and ill-treating her due to non-fulfilment of the demands of Rs. five (5) lacs. She told him that they were beating her and had driven her out of the matrimonial home. She was required to take shelter in the house of a neighbour. His version reveals that PW Shashikant Sharma had fetched Pradnya from the house of neighbour and had taken her to his house in the course of said incident which occurred in the month of February, 2007. He narrated as to how Pradnya was being subjected to matrimonial cruelty. His version goes to show that Pradnya was post-graduate (M.A.). He comes from an educated and cultured family. The appellant No. 1 - Kapil is not a graduate.

16. What emerges from the conduct of the appellants is that there was some complex about education of Pradnya, dissatisfaction of the appellants due to non-payment of the demanded dowry amount and hence, there were frequent quarrels between the spouses. He admits that the FIR lodged by him was narrated in Hindi language but was transcribed in Marathi by PW Shashikant Sharma. The FIR (Exh. 48) shows that deceased Pradnya used to inform him and her father that they shall not worry about the instances of quarrels and beating at hands of the appellants because it was their family dispute and the conduct of the husband may be changed. The expression of the words "gharelu zagda hai" as used in the FIR are to be read in context of the other recitals thereof. The learned Advocate for the appellants would submit that the minor family disputes, which could be termed as wear and tear of the matrimonial life could not be regarded as the instances of the matrimonial life could not be regarded as the instances of the matrimonial cruelty, in order to attract the provisions of Section 498-A of the I.P. Code. As stated before, the words so used are not the original words used by PW Dinesh and moreover, they are required to be read along with the other recitals of the FIR.

17. The versions of abovenamed four (4) witnesses, unmistakably, prove that deceased Pradnya was being ill-treated, beaten up and subjected to matrimonial cruelty by the appellants during the short span of her matrimonial life in their house. It has come on record that about 11/2. months before the unnatural death of Pradnya, she was beaten up by the appellants and had been driven out of the house. It has also come on record that after such incident, she was required to take shelter in the house of a neighbour and thereafter, she was temporarily shifted to the house of PW Shashikant Sharma from where she was taken back to Mathura by her father. As stated before, the incident of beating administered to Pradnya is proved by PW Shashikant Sharma and PW-6 Kapurchand Kothari. They have no business to speak lie in this behalf. Needless

to say, it is duly proved that deceased Pradnya was being maltreated, harassed and troubled by the appellants during her stay in their house. Before ending her life, she had informed the neighbour that she was going away and had requested her to look after the minor daughter. It is explicit that some untoward incident had occurred in the relevant evening. Since it had occurred within the four-walls of the house, after the death of Pradnya, there was no direct evidence available about nature of the said incident. The unnatural death of Pradnya within about two (2) years and couple of months of the marriage, is shrouded by the suspicious circumstances. It can be inferred that she was subjected to cruelty soon before her death on account of non-fulfilment of the dowry amount demanded by the appellants.

18. In *G.V. Siddaramesh v. State of Karnataka*, I (2010) DMC 336 (SC) : I (2010) SLT 771 : I (2010) CCR 404 (SC) : 2010 Cri.LJ. 1649, the Apex Court held that when the ingredients of offence punishable u/s 304-B of the I.P. Code have been satisfied, pointing towards the guilt of the appellant, the conviction would be proper. The presumption available u/s 113-B of the Evidence Act also can be invoked in the fact situation of the present case. The appellants did not give satisfactory explanation about the cause of the death of Pradnya during their statements u/s 313 of the Criminal Procedure Code. The observations of the Apex Court in the given case may be usefully quoted as follows:

It is difficult how different people react to different situations. The threats by the husband of the deceased over the course of two days, when the deceased was in her matrimonial home might have been enough for the deceased who was in a fragile state of mind to reach breaking point and end her life. Therefore all the ingredients of Section 304-B have been satisfied, pointing towards the guilt of the appellant.

19. It is not necessary to elaborately discuss the remaining evidence tendered by the prosecution. The testimony of PW-5 Dr. Atul reveals that on 24th December, 2007, at about 4.45 a.m. the appellant No. 1 - Kapil was clinically examined by him. He noticed an abrasion on nose and a abrasion on right side of the face below the eye of the appellant No. 1. He also noticed one abrasion on right side of his neck. He accordingly issued medico-legal certificate (Exh. 60). It is most important to notice that the clinical examination also showed that mouth of the appellant No. 1-Kapil was smelling of alcohol. The pupils of his eyes were semi-dilated. The Medical Officer, therefore, issued medico-legal certificate (Exh. 61). It is explicit, therefore, that the appellant No. 1-Kapil had been in drunken condition since some time before the clinical examination. The presence of scratches or abrasions on his person are indicative of some fierce quarrel between the spouses and the untoward incident which ultimately drove deceased Pradnya to commit the suicide in the relevant night.

20. The post-mortem notes (Exh. 66) are duly corroborated by PW-7 Dr. Shilpa Rane. She was Medical Officer attached to the Civil Hospital, Jalgaon at the relevant time. She noticed ligature marks on the neck of deceased Pradnya. It

was found that there was fracture of both greater horns of hyoid bones and internal haemorrhage was caused. The death of Pradnya was caused due to cardio-respiratory arrest due to the asphyxia caused as a result of her hanging. Though it is suggested to PW Dr. Shilpa that mental illness may aggravate behaviour of the patient, leading to commission of the suicide, yet, there is absolutely nothing on record to show that deceased Pradnya was suffering from any mental disorder as such. In fact, the independent witnesses viz. PW Nagraj, PW Kapurchand Kothari, etc. were never suggested about the mental disorder of deceased Pradnya being cause of her self-hanging in that night.

21. The versions of PW-1, Shobha, PW-8 ASI Shriram Patil and PW-9 PSI Ashok Kolte pertain to the investigation part which followed registration of the FIR. The FIR was registered by PW-8 ASI Shriram Patil. It is the version of PW-1 Shobha that in the relevant night, she had visited residential house of the appellants. She attended the spot panchanama (Exh.44). The dead-body of Pradnya was got removed from the ceiling fan in her presence. She is neighbour of the appellants and her presence at the time of spot panchanama cannot be doubted for any reason. The version of PW-9 Ashok Kolte (PSI) goes to show as to how the steps were taken during course of investigation of crime. Nothing of much importance could be gathered from his cross-examination

22. The learned Advocate for the appellants relied upon observations in case of Sunil Bhiku Yadav and Others v. State of Maharashtra, 2009 All Mr. (Cri.) 3645; Durga Prasad and Another v. State of M.P., II (2010) DMC 153 (SC) : III (2010) CCR 65 (SC) : V (2010) SLT 83 : 2010 AIR SCW 3673; and Rajendra s/o. Dongar Patil v. State of Maharashtra, 2010 All Mr. (Cri.) 169, in support of her contention that the offences punishable u/s 498-A and 304-B of the I.P. Code are not established because there is no sufficient material to show that the deceased was subject to cruelty or harassment by the appellants "soon before her death". It is argued that presumption available u/s 113-B of the Evidence Act is not available in the circumstances of the present case.

23. The Apex Court in Ashok Kumar v. State of Haryana, II (2010) DMC 291 (SC) : III (2010) CCR 188 (SC) : V (2010) SLT 555 : 2010 All Mr. Cri) 2642 (S.C.), succinctly clarified the meaning of the expression "soon before her death" as used in Section 304-B of the I.P. Code. It is held that concept of reasonable time is best criteria to be applied. It is observed that the cruelty or harassment of the wife on account of non-fulfilment of the demand of dowry should not be so ancient whereafter, the couple and the family members had lived happily. It is observed further that the question has to be determined in the background of the facts and circumstances of each case. In the present case, the unlawful demand of Rs. five (5) lacs was not given up by the appellants. Hardly about a couple of months prior to the incident deceased Pradnya was beaten up by the appellant No. 1- Kapil and was found weeping inside the house when PW Shashikant Sharma had visited house of the appellants after receiving such information. It has come on record that PW Kapurchand Kothari had advised the

appellant No. 1 Kapil to refrain himself from beating the wife (Pradnya). However, there was no change in the behaviour of the appellants. The appellants subjected Pradnya to cruelty during the short span of the couple of years of the marriage. Therefore, her domestic life was so miserable that in the meanwhile, she had to go back to house of her parents for some period. In *Uday Chakraborty and Others Vs. State of West Bengal*, , the Apex Court held that the expression "son before her death" as used in Section 304-B of the I.P.C., has to be given its due meaning as the Legislature has not specified any time which would be the period of prior to the death, that would attract the provisions of Section 304-B. Obviously, it is only when the instances of the matrimonial cruelty are so stale that the matrimonial discord caused due to such instances had vanished, the provisions of Section 304-B may not be made applicable. In the instant case, there was continuous matrimonial cruelty meted out to deceased Pradnya. In the relevant evening, some untoward incident did occur within the four-walls of the house and, therefore, she wanted to leave the matrimonial house keeping the minor daughter in the care of her neighbour. The only inescapable conclusion, therefore, is that soon before her death, Pradnya was subjected to the matrimonial cruelty and as such, committed the suicide under unnatural or suspicious circumstances. Needless to say, the appellants are rightly convicted by the learned Sessions Judge for the offences punishable under Sections 498-A and 304-B read with Section 34 of the I.P. Code. However, once the conviction is rendered for offence punishable u/s 304-B of the I.P. Code, it was not necessary to record conviction for the offence punishable u/s 306 of the I.P. Code. The learned Sessions Judge committed an error while convicting the appellants for the offence punishable u/s 306 read with Section 34 of the I.P. Code, which was uncalled for. Hence, the order of conviction requires modification to that extent.

24. In the result, the appeal is dismissed. The impugned judgment of conviction and sentence is maintained though the nature of conviction and order of sentence is modified by deleting the order of conviction and sentence for the offence punishable u/s 306 read with Section 34 of the I.P. Code, from the operative part of the impugned judgment. To this extent, the final order of the Sessions Court be deemed as modified and the remaining part thereof stands maintained.