

(2016) 07 GUJ CK 0054

In the Gujarat High Court

Case No : Criminal Appeal No. 513 of 2011, 346 of 2011, 740 of 2011 and 742 of 2011.

Pradipsinh Nanubha Zala - Appellant @HASH State of Gujarat - Opponents/Respondents

Date of Decision : 22-07-2016

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304B, Section 498A

Citation : (2016) CriLJ 4779 : (2017) 1 DMC 709

Hon'ble Judges : Anant S. Dave and B.N. Karia, JJ.

Bench : Division Bench

Advocate : Mr. Rutvij Oza, App, for the Appellant State; Mr. B.B Naik, Sr Advocate With Mr. Pravin Gondaliya, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Anant S. Dave, J.(Oral) - These four Appeals arise out of a judgment and order dated 28th February 2011 rendered by the learned Presiding Officer & Special Judge (Atrocity), Fast Track Court No.1, Ahmedabad ((Rural) at Viramgam in Sessions Case No. 16 of 2010.

2. Criminal Appeal No. 513 of 2011 is preferred by the original accused no. 1- Pradeep Nanubha Jhala ("A-1" for brevity) who is convicted for offence punishable under Section 304-B of the Indian Penal Code and sentenced to suffer imprisonment for life. So far offence punishable under Section 498-A IPC is concerned, he is ordered to suffer one year simple imprisonment and pay fine of Rs. 200/-, in default thereof, to undergo simple imprisonment for a period of one month. For offence punishable under Section 4 of the Dowry Prohibition Act, 1961 A-1 is ordered to suffer simple imprisonment for a term of six months and pay fine of Rs. 200/-, in default thereof, to undergo simple imprisonment for a period of thirty days.

3. Criminal Appeal No. 346 of 2011 is preferred by the original accused no. 3- Hansaba, W/o. Nanubha Jhala ("A-3"for brevity) who is convicted for the offence

punishable under Section 304-B of the Indian Penal Code and sentenced to suffer imprisonment for seven years. For the offence punishable under Section 498-A IPC, she is ordered to suffer simple imprisonment for one year term and to pay fine of Rs. 500/-, in default thereof, to undergo simple imprisonment for a period of thirty days, and for the offence punishable under Section 4 of the Dowry Prohibition, A-3 is ordered to suffer simple imprisonment for a term of six months and pay fine of Rs. 200/-, in default thereof, to undergo simple imprisonment for a period of fifteen days.

4. Criminal Appeal No. 740 of 2011 is preferred by the State of Gujarat under Section 378(1)(3) of the Code of Criminal Procedure, 1973 ("CrPC" for short) challenging the acquittal of original accused no. 2- Nanubha Umedsinh Jhala and accused no. 4- Jaydeepsinh Nanubhai Jhala. And whereas,

5. Criminal Appeal No. 742 of 2011 is preferred by the State under Section 377 CrPC for enhancement of the sentence dated 28th February 2011 passed qua original accused Nos. A-1 Pradeepsinh Nanubhai Jhala and A-3 : Hansaba, W/o. Nanubha Umedsinh Jhala.

6. In the backdrop of a complaint filed by Mahendrasinh Maganji Chavda, father of the deceased-Hetalba, which was registered with Viramgam (Rural) Police Station, being I.C.R No. 70 of 2010 for the offence punishable under Sections 498-A, 302, 306, 304-B and 114 IPC read with Section 4 of the Dowry Prohibition Act, 1961. As per the case of prosecution, the complainant was residing at Limbodara, Taluka Kalol and marriage of his daughter Hetalba was held with A-1 on 20th February 2009, as per Hindu rites and rituals. A-2 and A-3 are father-in-law and mother-in-law of the deceased Hetalba, and whereas, A-4 Jaydeepsinh Nanubhai Jhala is brother-in-law, who are involved in the above offence. It is further case of the complainant that initially, the victim had no grievance against her in-laws, but after passage of time, the accused persons started causing physical and mental cruelty by pointing out mistakes in her conduct and dealing with in-laws. She was often insulted and humiliated on the ground that she had not brought sufficient dowry. The above fact was brought to the notice of the parents, however, initially they tried to pacify her by telling that they would be pursuing her in-laws and against the demand for Television and Fridge, a sum of Rs. 10,000/- in cash was given to the husband of the victim. Further, towards a demand of Rs. 5 lacs made by the husband of the daughter of the complainant, since financial condition was not healthy and they were not in a position to part with such a huge amount, it was refused and for which son-in-law i.e., A-1 was not happy. Having got fed up with mental and physical cruelty, on the morning of 25th May 2010, victim committed suicide by holding a live electric wire, and therefore, a complaint had been filed. At the end of the investigation, the Police filed charge sheet against the accused persons for the offence punishable under Sections 498-A, 302, 306, 304-B and 114 IPC read with Section 4 of the Dowry Prohibition Act, 1961, and therefore, the case was committed to the Court of Sessions and numbered as Sessions Case No. 16 of

2010, and was tried accordingly.

7. In view of the directions issued by the Apex Court in case of *Rajbir alias Raju v. State of Haryana*, (2010) 15 SCC 116, in the matter involving offence punishable under Section 304-B IPC, the accused are also to be tried under Section 302 IPC. The learned Addl. Sessions Judge in-charge of the trial, therefore, framed charge under Section 302 IPC. The accused were tried accordingly, which resulted into conviction and sentence of A-1 & A-3 and acquittal of A-2 & A-4, to which reference is made in the earlier paragraph of this judgment.

8. At the outset, Shri BB Naik, learned senior advocate appearing for the accused nos. 1 & 3 has taken us to Section 304-B; Section 306; Section 498-A IPC and Sections 2 and 4 of the Dowry Prohibition Act. One of the basic contentions of learned counsel for the appellants-accused is about failure on the part of the prosecution to bring out and establish ingredients of the above Sections and it is submitted that in a case to be tried under Section 304-B read with Section 113-B of the Indian Evidence Act, 1872, the prosecution has to prove five preliminary facts even by preponderance of probabilities, knowing that the death of a woman had been caused in abnormal circumstances by (a) her having burns or bodily injury; (b) her death occurs within seven years of marriage; (c) that she was subjected to cruelty or harassment by her husband or any relative of her husband; (d) in connection with any demand for dowry; and (e) that such cruelty or harassment meted out to her was soon before her death. According to him, the words, "soon before her death " would indicate that there must be a live link between the cruelty meted out to her from dowry demand and death of young woman so as to bring section 304-B IPC into operation. While Section 113-B of the Indian Evidence Act, 1872 mandatorily requires the Court to draw an adverse inference/presumption about guilt of the accused in case of dowry death and once prosecution has discharged its initial burden of proving it, even by preponderance of probability, all ingredients of dowry death as laid down under Section 304-B IPC, the same can be considered and not otherwise.

9. In the facts of this case, "dowry" as defined under Section 2 of the Dowry Prohibition Act, 1961 and ingredients therein viz., 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 at any time after the marriage, in connection with marriage of the said party. If perused carefully in the backdrop of the material surfacing on the record, no case is made out to attract the definition of "dowry" and accordingly any offence relating thereto.

9.1 Inter alia, a reference was made to Section 498-A IPC about harassment and cruelty in connection with demand of dowry to contend that no case is born out and by no stretch of imagination, it can be said to be a case of suicide even by the prosecution, and therefore, conviction and sentence recorded by the learned

trial Judge deserves to be quashed and set aside.

10. Learned advocate for the appellants has taken us to the following prosecution witnesses and documentary evidence. It is submitted that the death of the deceased was an accidental death caused due to electric shock and the same has come on the record from the deposition of Dr. Vijay Parshottambhai Prajapati (PW-1 : Exh. 12) that such type of injury was possible if an open TV cable wire is held by a person. According to the learned counsel for the accused-appellants, when evidence has come on the record that cable wire was passing through the electricity pole situated nearby and even as per the deposition of the panch witnesses and FSL about possibility of such cable wire coming into contact with electricity current from the electric pole, which ultimately resulted into unfortunate incident. That, ample evidence is available on the record which suggests that it was a case of accidental death and the trial Court has ordered conviction and sentenced the accused on the basis of conjectures and surmises.

10.1 Even the story of demand of dowry is also contrary to the record, and if testimonies of complainant Mahendrasinh Maganji Chavda (PW-5 : Exh. 26), who is father of the victim and Jayaba Mahendrasinh (PW-6 : Exh. 37), mother of the deceased and a person named Chavda Kanuji Manuji (PW-4 : Exh. 24) who was also instrumental in making the relationship of marriage between the parties and who is relative of both the parties - complainant as well as accused, it emerges that there are contradictions with vital omissions and when the complainant is confronted by defence about demand of Rs. 5 lacs, willingness on the part of one Ghanshyambhai, brother of the complainant and uncle of the deceased who paid Rs. 1 lac is not stated. Likewise, demand for Television and Fridge is also hearsay and no record is available. On the contrary, accused had already a Black/White Television with them, where unfortunate incident had taken place. It is submitted that no independent witness was examined and investigation was carried out by the Investigating Officer and failure on their part to place any details about mobile phone, etc., in respect of allegations and incident that has taken place on the previous day viz., 24th May 2010 at around 21:00 hours where daughter of the complainant had complained about she receiving electric shock, but after treatment at the hospital in Viramgam was brought back and while telling about the incident she was crying. On the next day, when the complainant along with his wife decided to visit matrimonial home of his daughter, a phone call was received from PW-4 Chavda Kanuji Manuji that his daughter Hetalba has again received electric shock and died. Thereafter, he returned to the village so as to take other relatives and acquaintance along with him and visited Government Hospital at Viramgam where post mortem was performed at around 15:00 hours, but no complaint was made to the Police. Later on in testimonies, it is deposed that some injuries were noticed on ankles of Hetalba. According to the learned counsel, this is also an improvement and omission in the complaint for which testimonies of the complainant is required to be discarded. Learned counsel has taken us through post mortem report and cause of death due to cardio respiratory failure due to electric shock. Though a final cause of death was to be

given after FSL report, but in the above report also, no injuries were noticed.

11. Heavy reliance is placed on the scene of offence panchnama Exh. 17 where in a wooden cabinet TV was placed and according to A-1, his wife Hetalba had received electric shock while connecting the wire of channel with TV. Even material emerges from the record about cable wire loosely hanging over electricity pole and receiving current intermittently. While taking us to other panchnama; including that of Inquest, it was submitted that the injuries marks were not noticed as they were not found by the panchas.

11.1 Along with above, reliance is placed on defence witness DW-1, 2 & 3, accused A-1, photographer and neighbour of the accused about manner in which incident had taken place and DW-2 photographer, who had taken photographs of Hetalba on the previous night of the incident. All would collectively go to show that the story put forth by the prosecution has no legs to stand and believing PW-4, 5 and 6 in spite of inconsistencies, discrepancies, omissions and contradictions and even improvements, the learned trial Judge has committed grave error in believing the case of prosecution, and accordingly, the impugned judgment and order of sentence deserves to be quashed and set-aside.

12. In brief, the submissions of learned counsel for the appellants are as under :-

(a) That, the death of the victim is accidental, as it is neither homicidal nor suicidal.

(b) No demand of dowry at the time of marriage or thereafter, or any other agreement at between the parties. Custom based gifts or items given or exchanged would not fall under definition of Section 2 of the Dowry Prohibition Act.

(c) No cogent and convincing, much less clinching evidence about cruelty or dowry is available on record.

(d) Above all, prosecution has failed to even bring home the charge under Section 304-B IPC, having not satisfied any of the ingredients. So is the case for Section 498-A IPC and other offence.

(e) Charge framed under Section 302 IPC on the strength of directions issued by the Apex Court in Rajbir alias Raju v. State of Haryana AIR 2011 SC 568 (Supra) was reversed in the later decision rendered in case of Jasvinder Saini & Ors. v. State (Govt. of NCT of Delhi), reported in (2013) 7 SCC 256.

(f) In spite of possibility of recording statement of witnesses other than relatives, only three interested witnesses were examined.

(g) Deceased never left or driven out of her matrimonial home.

(h) Fair and transparent investigation could have resulted into accused being not guilty. Had there been collection of proper material, evidence, etc. and by producing call-record of 24th May 2010 and 25th May 2010 on which reliance is

placed by the complainant.

(i) Testimonies of complainant (PW-5); Chavda Kanuji Manuji (PW-4) and Jayaben Mahendrasinh Zala (PW-6), if perused in juxtaposition, material improvements and vital omissions appear on record. Even contradictions are major, and therefore, none of the above witness is trustworthy and did not inspire confidence, and hence, unreliable.

(j) Inter alia, it is submitted that demand for financial help or assistance from in-laws, under the circumstances would never amount to dowry and not even cruelty.

(k) Alleged demand of Rs. 5 lakhs by A-1 for clearing recruitment of Police Sub Inspector itself is illegal. But, the facts reveals that written examination for recruitment for the post of Police Sub Inspector was held on 5th and 6th June ie., after 10 days of the incident.

(l) With regard to the above allegations, no mention is made by the complainant ? father of the victim and say of Chavda Kanuji Manuji, maternal uncle and Jayaben Mahendrasinh Zala (mother of the deceased) about uncle of the victim was to provide financial assistance suffer from vice of minor contradictions.

(m) FIR is delayed and the same is an afterthought.

(n) In spite of intimation given, cremation was not attended by the parents of the victim.

(o) Though complainant and his wife and other relatives reached, while post mortem was to be carried out, no grievance was raised.

(p) When two views emerge from evidence, the view which favours innocence of the accused to be adopted and collective evaluation and analysis of the evidence of the facts of this case reveal, which may be a case of accident and the same is not ruled out.

12.1 Learned senior advocate Mr. B.B. Naik has placed reliance on the following decisions viz., Sher Singh alias Partapa v. State of Haryana, (2015) 3 SCC 724 and in case of Major Singh & Anr. v. State of Punjab, (2015) 5 SCC 201 in support of his arguments about burden caused upon the prosecution to establish case beyond reasonable doubt and necessary ingredients under Section 304-B IPC and object and reasons behind insertion of Section 304-B with regard to dowry death and para 19 and 20 of the case explaining terms "soon before death" and approach of the Court while evaluating the evidence for the offence under Section 304-B.

12.2 Learned counsel has also placed reliance on a decision of Apex Court rendered in case of Appasaheb & Anr. v. State of Maharashtra, reported in (2007) 9 SCC 721 where requisites of dowry under Section 2 and how to be proceeded and constituted by the Court.

12.3 Relevant panchnama namely scene of offence, Inquest, testimonies of Doctor of Bhagyodaya Hospital and Medical Officer who carried out post mortem and prepared report, supports the case of accident. However, expression about remote possibility of death by suicide do not get any corroboration from any other evidence.

12.4 FSL report and connection of cable wire with Television which was loosely hanging over adjoining electricity pole having live electricity current and intermittently even cable wire was also receiving electricity current which resulted into accidental death. That the prosecution has to prove its case beyond reasonable doubt.

13. As against above, learned APP Mr. Rutvij Oza appearing for the respondent-State would strongly urge that the conviction recorded by the trial Court for a heinous offence like Section 304 B read with Section 498 A and Section 4 of the Dowry Prohibition Act is after proper appreciation of evidence on record and for which reasons are assigned and findings given and conclusion drawn do not even leave room of doubt about involvement of accused in crime and in such type of cases where crime take place within closed walls of a house; except the victim, in case she is able to disclose nature and cause of crime, available forensic evidence and other documentary material and say of the relatives of the victim assumes prime importance. It is submitted that indisputably, the incident of 24th May 2010 for which victim was taken to a private hospital at Viramgam was discharged against the medical advice and till 21:00 hours of the same day, relatives of victim-Hetalba or Police were not informed. That, such incident re-occurs on the next day and that cannot be termed as an accident in as much as Hetalba on the previous day had received electric shock and was quite aware about the consequences of touching unrepaired life wire. According to learned APP, if the scene of panchnama and testimonies of PW-4, 5 & 6 are seen along with DW-1/A-1, it emerges from the record that it was a position of TV in a wooden cabinet was such that ordinarily it was not possible to connect the cable wire and that injury caused on palm of the hand and little finger creates a strong circumstances about the death being homicidal. It is submitted that in the testimonies of PW-4, 5 & 6, it clearly surfaces on the record about demand for TV and Fridge and amount of Rs. 10,000/- in cash handed over to A-1. Further, PW-4 and PW-6 in their testimonies supported the case of prosecution and what is stated in the complaint about demand of Rs. 5 lakhs by A-1, since he had passed out physical and written test and was inclined to pay such amount to clear the next stage of examination. It is submitted that even if opinion of Doctors ? PW : 1 who performed post mortem and submitted report also support the case of prosecution. Since ample corroboration is available to the testimonies of PW-4, 5 and 6 with documentary evidences, conviction recorded and sentence ordered by the learned trial Judge deserves to be upheld and even acquittal ordered for A-2 and A-4 deserves to be set aside and accused Nos. A-1 & A-3 are to be sentenced to the maximum as available under the law.

14. Learned APP Mr. Rutvij Oza has taken us to incident reported on 24th May and 25th May 2010 and submitted that under no circumstances, the victim deceased would make any attempt to even touch the cable wire particularly when on the previous day, she was hospitalised upon receiving electric shock while managing with cotton cloth lying on the wooden cabin of the T.V. According to learned APP, various incidents narrated by the complainant, his wife and Kanuji Manuji Chavda would reveal and establish the case of demand of dowry coupled with harassment and cruelty.

14.1 Minor inconsistencies or even discrepancies and insignificant omission and contradictions which are not major would not make any inroad in the case of prosecution.

15. Learned APP has relied on the testimonies of two Doctors and submitted that the same support the case of prosecution.

15.1 While taking us to other evidence along with panchnama of scene of offence, it is submitted that the manner in which the incident had taken place on 25th May 2010 will rule out possibility of death other than that of 304-B IPC. Injury of palm and not on fingers.

16. According to learned APP, testimonies of defence witnesses so appear on the record do not help case pertaining to innocence of the accused. It is submitted that within a short span of marriage of one and half years, death has occurred for which sufficient material exist, not only to establish ingredients of offence under section 304 B, 498 A and recourse will have to be taken under Section 113 B of the Indian Evidence Act. It is submitted that the appeal preferred by the accused against the conviction be dismissed by at least upholding conviction under Section 304 B IPC and sentence of life imprisonment.

17. So far as decisions relied upon by the learned counsel for the defence, it is submitted that the marriage span of the deceased with A-1 is of less and one and half year and sufficient material exist when complaint is carefully perused in juxtaposition with testimonies of PW- 4, 5 and 6, a case is made out by the prosecution for mental as well as physical cruelty with regard to demand of dowry and there is a live link and continuous connection in respect of demand of dowry and no fix time limit can be prescribed to interpret "soon before the death".

18. Having heard learned advocates for the parties viz., defence and learned Addl. PP and having carefully gone through the evidence viz., oral as well as documentary, we find force in the submissions canvassed by the learned advocate for the defence that the prosecution has failed to establish its case beyond reasonable doubt so as to bring guilt of the accused on record, for the reasons stated hereunder.

18.1 It is to be noted that the accused herein are charged for offence punishable under Sections 302, 304-B, 306, 498(a) and 114 IPC read with Section 4 of the

Dowry Prohibition Act, 1961. So far charge under Section 302 of IPC is concerned, it is based on the decision of the Apex Court in case of Rajbir alias Raju v. State of Haryana AIR 2011 SC 568 (Supra) in which the Apex Court has given direction that in the matter involving offence punishable under Section 304-B of IPC, the accused are also to be tried under Section 302 IPC. But, later on, the above decision is reversed by the Apex Court in case Jasvinder Saini & Ors. v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256, and therefore, these Appeals are considered accordingly.

Following is the list of evidence; oral as well as documentary :-

Sr No

PW No.

Name

Exhibit

Paper book page No.1

1

1

Dr Vijay Parshottambhai Prajapati (Doctor who performed PM)

12

213

2

2

Kalubhai Udaisinh Zala (Panch witness of Place of Incident)

16

247

3

3

Dr. Dilipbhai Keshavlal Patel (Doctor who examined deceased on the previous day of the incident)

20

253

4

4

Chavda Kanuji Manuji (Brother-in-law of Complainant)

24

263

5

5

Mahendrasinh Magansinh Chavda(Complainant ? Father of Deceased)

26

273

6

6

Jayaba Mahendrasinh Zala (Mother of Deceased)

37

307

7

7

Hansaba, W/o. Ajitsinh Chavda PSO

39

317

8

8

Arjunsinh Juvansinh Chavda-IO

41

323

9

9

Dhanrajbhai Ramjibhai Patel Executive Magistrate, Inquest Panchnama

43

335

10

10

Nizammudin Gulamrasool Saiyed (CPI & Incharge of Dy. SP)

47

345

11

11

Parekh Sureshkumar Hargovinddas (Photographer)

53

367

12

DW -1

Pradeepsinh Nanubha Zala

61

393

13

DW -2

Zala Vajubhai Kanbha (Photographer)

67

419

14

DW -3

Bharatsinh Dhirubha Zala (Neighbour of the accused)

70

427

19. The learned trial Judge has acquitted the accused for the offence punishable under Section 304-B, 498 A of IPC and also for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961. In all these Appeals, we have considered the entire evidence on record and before we discuss such evidence, we would like to have reference to certain pronouncements of the Apex Court about essential ingredients of Section 304-B of IPC.

"304B : Dowry Death" (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was

subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused death.

Explanation - For the purpose of this subsection, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

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

Explanation ? For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security as is on account of failure by her or any person related to her to meet such demand."

"Dowry" as defined in Section 2 of the Dowry Prohibition Act, 1961 read thus -

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 marriage in connection with marriage of the said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

20. According to the decision in case of *Kashmir Kaur & Anr. v. State of Punjab*, AIR 2013 SC 1039, to attract the provisions of Section 304-B IPC, the main ingredient of the offence to be established is that (a) soon before the death, the deceased was subjected to cruelty and harassment in connection with demand of dowry; (b) the death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal; (c) such death occurs within seven years from the date of her marriage; (d) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (e) such cruelty or harassment should be for or in connection with

demand of dowry; and (f) it should be established that such cruelty and harassment is made soon before her death.

20.1 It is trite that the Court has to consider and analyse facts and circumstances of each case where death is caused is so proximate having connection with demand of dowry and act of cruelty or harassment, etc., and the main ingredient "soon before her death" is required to be established when the victim was subjected to cruelty and harassment "in connection with demand of dowry". Though "soon before her death" as such do not specify any particular period but the time gap between cruelty and death should not be of such a length which rules out possibility of any live link between the fact of cruelty based on dowry demand of the death concerned. If the incident alleged of cruelty is remote in time and has become ineffective so as not to disturb mental equilibrium of the victim concerned, it would be of no consequence. That, the above expression is used in substantive Section 304-B IPC and it is to be read with Section 113B of Evidence Act, and therefore, there must be existence of a proximate and live link between the fact of cruelty based on dowry demand and the concerned death and in such an event only, presumption has to be drawn about death, attracting ingredients of Section 304-B of IPC, since Section 113-B of the Evidence Act enacting a rule of presumption viz., occurrence of death within seven years" in suspicious circumstances.

20.2 Therefore, keeping in mind the role; as above and Section 498A IPC with definition of "dowry" under Section 2 of the Dowry Prohibition Act, 1961, we proceed to refer to the evidence on record in these Appeals.

21. In the backdrop of the case of the complainant, the testimonies of complainant-father of the deceased PW-5 at Exh. 26; Jaya Mahendrasinh (PW-6 Exh. 37)-mother of the deceased and a common relative of both the sides viz. Chavda Kanuji Manuji (PW-4 : Exh. 24) who was also instrumental in making relationship of marriage between victim and her husband, it appears that demand of Rs. 5 lakhs to be paid illegally for selection in the competitive examination of PSI by the husband of the victim appears to be a vague and uncertain allegation, not supported by the evidence. All the above three witnesses have their different versions about assurance given by one Ghanshyambhai, uncle of the victim to pay Rs. 1 lac for the above job. Further, demand for purchase of Television and Fridge and demand of Rs. 10,000/- in cash is again not supported by any evidence. No detailed examination is made about phone calls made on mobile by the victim on a previous day viz., 24th May 2010 around 21:00 hours, after she was brought back from a private hospital upon receiving treatment pursuant to minor electrocution. Likewise, early in the morning on the date of unfortunate incident i.e., 25th May 2010, again no details are available about disclosure of death of the deceased. None of the above prosecution witnesses made any complaint before any one; including incharge of Government hospital at Viramgam or Police authorities when they were present, while post mortem was performed in the afternoon on 25th May 2010. The above

prosecution witnesses also attended funeral at the matrimonial house of the victim and requested to return jewellery/ornaments of the deceased and without demur, the same were returned by the in-laws of the victim. Besides, time and again, victim was allowed to visit her parental home and that is also born out from the record. On previous day, the victim had attended marriage ceremony of close relative viz., nephew for which photographs are available and the same is deposed by DW-2 Zala Vajubhai Kanbhai. Thus, from the overall conduct of in-laws, no ill-treatment or harassment, much less any kind of cruelty, appears on the record. A plea taken by the defence about cause of death which is accidental gets due support from FSL report wherein no injury was noticed.

22. One of the important circumstance which goes against the prosecution is scene of offence panchnama drawn which reveals that Television and cable wire which was to be connected with Television was loosely hanging over adjoining electricity pole and it was receiving electric current intermittently and possibility of electrocution by touching such wire was not ruled out, even as per FSL report.

22.1 Further, the husband of the victim had passed out physical fitness test for the examination of PSI and the competitive examination was to commence on 5th & 6th June 2010, and therefore, demand of Rs. 5 lakhs before even he is declared successful is unbelievable.

23. Deposition of PW-1 Dr. Vijay Parshottambhai Prajapati at Exh. 12, who noticed injury of 1 cm of diameter on right palm of the deceased, opined possibility of such an injury in case of a suicide. Even in his cross examination, again he reiterates that if the channel wire connecting Television is loosely hanging and not connected with socket of Television, if any person touches or caught hold of such wire, injury on palm is possible.

24. Collectively, testimonies of close relatives; including father and mother of the victim, independent witness PW- 1 Dr. Vijay Parshottambhai Prajapati who performed post mortem and PW-3 Dr. Dilipbhai Keshavlal Patel, who examined deceased on the previous day along with scene of offence panchnama and FSL report establish that the prosecution has failed to prove its case beyond reasonable doubt qua the appellants-original accused herein which requires interference in exercise of powers under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973.

25. Resultantly, Criminal Appeal Nos. 513 of 2011 and 346 of 2011 preferred by the original accused no. 1 & 3 respectively stands allowed. To the extent, as above, judgment and order of conviction of A-1 & A-3 under challenge is quashed and set-aside. Whereas, Criminal Appeal No. 740 of 2011 challenging acquittal of the original A-2 & A-4 and Criminal Appeal No. 742 of 2011 for enhancement of the sentence for A-1 & A-3 ? both preferred by the State of Gujarat are hereby dismissed. Rule discharged.

25.1 Accused No. 1-Pradipsinh Nanubha Zala is hereby ordered to be released forthwith from the prisons, unless required under any other offence. Rule nisi

made absolute so far as Criminal Appeals Nos. 513 of 2011 and 346 of 2011 are concerned.