

**(2013) 07 BOM CK 0147**

**In the Bombay High Court**

**Case No :** Criminal Appeal No's. 311 of 1998 and 395 of 1998

Ramkishan Digambar Jadhav, Digambar Narba Jadhav and  
Venkat

**APPELLANT**

**Vs**

The State of Maharashtra <BR> The State of Maharashtra Vs  
Ramkishan Digambar Jadhav and Others

**RESPONDENT**

**Date of Decision :** 03-07-2013

**Acts Referred:**

Constitution of India, 1950 — Article 20  
Criminal Procedure Code, 1973 (CrPC) — Section 313  
Dowry Prohibition Act, 1961 — Section 2  
Evidence Act, 1872 — Section 106, 113B  
Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

**Citation :** (2013) 4 ABR 1047 : (2013) ALLMR(Cri) 3077 : (2013) 4 BomCR(Cri) 138

**Hon'ble Judges :** Naresh H. Patil, J;A.I.S. Cheema, J

**Bench :** Division Bench

**Advocate :** S.S. Bora in Criminal Appeal No. 311 of 1998, Smt. A.V. Gondhalekar, APP State of Maharashtra in Criminal Appeal No. 395 of 1998, for the Appellant; A.V. Gondhalekar, Additional Public Prosecutor State of Maharashtra in Criminal Appeal No. 395 of 1998 and Shri. S.S. Bora, Advocate in Criminal Appeal No. 311 of 1998, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Naresh H. Patil

1. The appellants were charged and tried for offence punishable under sections 498-A, 302 and 304-B read with section 34, Indian Penal Code, in Sessions Case No. 23 of 1996 before the Additional Sessions Judge, Biloli, District Nanded. By judgment and order dated 21st September 1998 the trial Court convicted appellants-accused No. 1 Ramkishan, accused No. 2 Digambar and accused No. 5 Venkat for offences punishable under sections 498-A and 304-B read with section 34 of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for a period of seven years for offence punishable u/s 304-B read

with section 34, Indian Penal Code and to suffer rigorous imprisonment for a period of one year and to a fine of Rs. 500/- each, in default, to suffer rigorous imprisonment for one month each, for offence punishable u/s 498-A read with section 34, Indian Penal Code. The substantive sentences were directed to run concurrently. The original accused Nos. 1 to 6 were acquitted of the offence punishable u/s 302 read with section 34, Indian Penal Code. The original accused Nos. 3, 4 and 6 were acquitted of the offences punishable under sections 498A, 304B read with section 34 Indian Penal Code. The prosecution case, in brief, is that:--

2. Accused No. 1 Ramkishan Digambar Jadhav is husband of deceased Vimalbai and original accused No. 2 and 3 are father and mother respectively of accused No. 1. Original accused Nos. 4 and 5 are sister and brother respectively of accused No. 1 and original accused No. 6 is wife of accused No. 5. The prosecution case is that in furtherance of their common intention the accused subjected deceased Vimalbai to cruelty in order to meet their unlawful demand of television, deck, one plot in MIDC area at village Ghungrala and cash of Rs. 50,000/-. The prosecution case further reveals that after the marriage the accused treated deceased Vimalbai properly for two months. Thereafter Vimalbai was sent to her parental home. At that time she disclosed to the complainant Narayan (her brother) that all the accused persons were demanding her to bring cash of Rs. 50,000/- and other articles. The deceased was weeping while disclosing this to her parents. The complainant had given her understanding that all the demands could not be fulfilled at one and the same time but one after another he would take care to fulfill the demands. After consoling the deceased she was taken to her matrimonial house by the complainant. The complainant Narayan had given understanding to the accused No. 1 and other persons residing in the house.

3. On 12th January 1996 the complainant Narayan brought Vimalbai on "Sankrant" festival to his house. Even at that time the deceased had disclosed to the complainant and her parents that the accused were repeatedly asking her to bring Rs. 50,000/- and other articles. The accused were beating her and were not providing food to her. She even disclosed that on one occasion she was tied with a rope by the accused and lunge in a well and she was threatened that if their demand is not fulfilled they will kill her. The complainant had called accused No. 1 Ramkishan at village Ghungrala in presence of one Sambhaji Turatwar, who was mediator in the settlement of marriage. The complainant informed that he would arrange for money and plot as demanded but the accused should not give ill treatment to deceased Vimalbai. Thereafter the deceased was sent to her matrimonial home.

4. On 1-2-1996 at about 01.00 a.m. the accused No. 1-Ramkishan came to the house of the complainant Narayan and informed him and other family members that Vimalbai was getting convulsions and she was taken for treatment to Naigaon. On hearing so, the complainant-Narayan, his father Ramrao, mother

Anjanabai, brother-Chandraprakash and other persons of village namely, Vajinath, Sambhaji and Mahajan proceeded towards Naigaon in a jeep. They saw near the field of one Udhav Sawarkar a bullock cart. They found Vimalbai lying dead in the bullock cart, blood was oozing through her nose, her throat was swollen and there were abrasions on her right fingers. These persons took Vimalbai to the Naigaon Hospital. The doctor examined and declared her dead. A report came to be lodged by the complainant Narayan against the accused on 1-2-1996 at 12.25 p.m. at Police Station Naigaon. The crime was accordingly registered.

The prosecution case further suggests that prior to lodging of the complaint by the complainant, accused No. 1 Ramkishan had given an application to the police station on 1-2-1996 at 8.00 a.m. stating therein that when he was having sexual intercourse with his wife Vimalbai, she felt giddiness and her jaws got locked and thereafter she died. Based on this application police had taken entry in the Accidental Death register. The police started investigation. Spot panchanama (Exhibit 33), Inquest panchanama (Exhibit 32) were prepared. The clothes and ornaments of the deceased were seized on the same date under panchanama (Exhibit 34). Two medical officers of Rural Hospital Naigaon conducted postmortem examination of the dead body from 11.30 a.m. till 12.55 p.m. on 1-2-1996. The cause of death was opined as "asphyxia due to throttling". After getting Chemical Analyzer's report and completion of investigation police filed charge-sheet against the accused persons. Charge was framed at Exhibit 23 against all the accused persons.

5. PW 2 is Narayan Ramrao Dhage, brother of deceased Vimalbai. He narrated the prosecution case before Court. He specifically stated that, deceased Vimalbai was ill-treated on account of demand of Rs. 50,000/-, television set, deck and a plot in MIDC area at Ghungrala to be transferred in the name of accused No. 1. The witness stated that deceased Vimalbai had come to his house for Diwali festival. At that time also she repeated that there was ill-treatment meted out to her by the accused on account of non fulfillment of the demand raised by the accused persons. On one occasion she complained that she was tied with a rope and dipped in the water of well. Thereafter the parents of the deceased had consoled the accused persons that their demand would be met gradually. The witness stated that, after getting information they proceeded to Naigaon and found that Vimalbai was lying dead in the bullock cart. She had injuries on her person. Blood was oozing out of her nostrils. Neck was swollen. Right hand fingers were injured from the back side. As it was night time they stayed in the primary health center and reported the matter to Naigaon Police Station on the next day morning.

6. In the cross-examination the witness stated that at the time of marriage it was decided to pay Rs. 75,000/- in presence of one Sambhaji to the accused persons. The amount was to be paid in cash or kind. The witness stated that he was temporarily serving and was earning Rs. 800/- per month. The witness

denied that amount of Rs. 75000/- was not given at all. The witness stated that he had disclosed to the mediator-Sambhaji that deceased was getting ill-treatment from the accused persons. The accused No. 1 did not visit parental house of Vimalbai during her stay. Vimalbai studied upto seventh Standard. The witness did not visit house of the accused during Nagpanchami and Diwali. He did not enquire with any persons from village Ransoyegaon in respect of ill-treatment meted out to Vimalbai. The witness further stated in the cross-examination that he is matriculate and he can read and write. He complained to the father-in-law of the deceased about the ill treatment given to her.

7. The witness further deposed that, accused No. 1 Ramkishan had come to the house of the witness in a frightened condition. Doctor examined Vimalbai and declared her dead. The witness denied that accused Ramkishan was classmate of Vimalbai in the school at Ghungrala.

8. The witness clearly denied that Vimalbai was suffering from fits prior to the incident. He denied that he was knowing this disease of Vimalbai and she was brought on 23rd January 1996 to Primary Health Centre, Naigaon for the treatment of such disease. He denied the suggestion put up by the defence in respect of Vimalbai suffering fits and being under treatment. The witness was put to detail cross-examination by the defence. He further stated in his cross-examination that there was no electric bulb in any of the four rooms but the accused had stolen the electricity from the electric pole directly. There was electric bulb in each room. The witness did not find any television or radio in the room. The witness further deposed that at the time of settlement of marriage it was not agreed to give television set, Rs. 50,000/- and plot. These extra demands were made after the marriage, according to the witness. The family of the witness owns three houses and agricultural land in village Ghungrala. It is a joint family and they possess 15 acres of land but do not possess any plot in the MIDC area. The witness categorically deposed that all the three original lady accused insisted for television, cash of Rs. 50,000/- and plot at Ghungrala. Accused Digambar personally demanded these things.

9. PW 3 Sambhaji Turatwad was mediator in the marriage of Vimalbai. He deposed that Ramrao gave Rs. 75,000/- to Ramkishan and performed the marriage. There was ill treatment meted out to the deceased on account of demand of money and articles. The deceased was harassed and ill-treated.

10. PW 4 is Ramrao Raghoba Dhage, father of deceased Vimalbai. He also supported the prosecution case and had given detail narration of the instances of ill treatment meted out to Vimalbai. In his cross-examination the witness had deposed that the accused had demanded money and articles from the deceased and she was harassed and ill treated by the accused persons.

11. PW 5 is Vaijnath Sambhaji Marpatwar. He had attended marriage of Vimalbai with Ramkishan. He has also supported the prosecution case in the similar manner as supported by other witnesses.

12. PW 6 is Mahajan Munjaji Yembalwad. He has supported the prosecution case. He had seen the dead body of the deceased. He noticed that nostrils were bleeding and neck was swollen.

13. PW 7 Anwar Khan Umardaraj Khan is Police Sub Inspector. He had given detail account of the investigation conducted by him.

14. The defence had examined DW 1-Maroti Mahajan Chavan, who deposed before Court that he was working as Manager in Nanded District Central Cooperative Bank, Branch Ghungrala. Raman @ Ramrao Raghoba Dhage had account in the branch. The witness deposed that on 30-6-1997 an amount of Rs. 61,893/- was credited in the account of Ramrao through cheque towards compensation in acquisition proceedings.

15. DW 2 is Govind Phulsing Jadhav. The witness deposed that he does not know accused Digambar present before the Court. The witness was working as Junior Clerk in Rural Hospital. The witness issued a certificate in respect of admission of the dead body in the hospital and the time when post mortem examination was carried out. The witness deposed that the Medical Superintendent asked him to give such certificate, accordingly he issued the certificate.

16. DW 3 is Hanmantrao Ramrao Gunturkar, Medical Officer, Rural Hospital Naigaon. This witness conducted post mortem on the dead body of Vimalbai. He issued certificate and opined that cause of death as "asphyxia due to throttling".

17. Defence Witness No. 4 is Dr. Suresh Baliram Indurkar. This witness was shown one letter head dated 23rd January 1996. The witness deposed that the deceased had come to him for taking treatment regarding disease of epilepsy. The deceased was under his treatment for 15 days of the issuance of the certificate dated 23rd January 1996. The witness identified the handwriting and the signature. According to this witness, he had not maintained any record about his providing treatment to Vimalbai for 15 days. He might have counted the period of 15 days treatment on the basis of the prescription chit given by him for that treatment. The said certificate given by this witness to Vimalbai is at Exhibit 136 which reads thus:--

Dr. Indurkar S.B. Class I Children Specialist, Rural Hospital, Naigaon (Bz) Dt. 23/1/96.

::CERTIFICATE::

It is to certify that Mrs. Vimalbai w/o Ramkishan Jadhav, aged about 20 years, R/o. Ran-Sugaon, Taluka Biloli is suffering from "epilepsy" and under treatment last fifteen (15) days.

Hence certificate.

Sd/- Class I Pediatrician Rural Hospital Naigaon Bz.

18. The learned counsel appearing for the appellants submitted that the

prosecution has failed to establish allegation against original accused No. 2 Digambar and accused No. 5 Venkat. Considering the facts and the evidence brought on record the prosecution has failed to establish offence punishable u/s 304-B of the Indian Penal Code. The medical evidence brought on record falsifies the case that deceased Vimalbai was throttled and killed by the accused persons. The allegations made by the prosecution in respect of demand of cash and articles do not have any nexus with the incident of death of deceased Vimalbai. The prosecution witnesses are interested one and, therefore, they have falsely involved the accused persons. There was no motive for the appellants to commit murder of deceased Vimalbai. The conduct of the appellants, more particularly husband of the deceased, demonstrates that he was innocent.

19. The learned Additional Public Prosecutor submitted that demand of Rs. 50,000/- and articles and other favours is clearly established in this case. It is a serious offence wherein a newly married woman was ill treated, tortured and throttled by the accused persons as their demands were not met. A married woman was killed of which primary responsibility is on the husband who has failed to explain the circumstances resulting in death of his wife. The death is unnatural one. It is homicidal death. Within a period of one year from the date of marriage the incident has taken place. The deceased had narrated repeatedly the instances of cruelty meted out to her by the accused persons. The defence raised by the appellants is improbable. The appellants have failed to explain circumstances properly in the statements made u/s 313 of the Code of Criminal Procedure. The defence that the deceased was suffering from epilepsy has been raised without any convincing material on record to cover up the misdeeds of the accused persons. The learned Additional Public Prosecutor submitted that the State has preferred an appeal against the impugned judgment and order of acquittal which deserves to be allowed.

20. In support of his submissions, the learned counsel for the appellants has placed reliance on the following reported judgments.

(1) Satvir Singh and Others Vs. State of Punjab and Another, . The Apex Court, in the facts of the case, observed that prosecution, in a case of offence u/s 304-B, Indian Penal Code cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death".

(2) Subramaniam Vs. State of Tamil Nadu and Another, . This judgment was cited in respect of medical evidence in case where death is caused due to asphyxia and the principles governing appeals against acquittal.

(3) On the issue of principles governing cruelty by harassment in connection with demand of dowry, the learned counsel has placed reliance on the judgment of the Apex Court in Narayanamurthy Vs. State of Karnataka and Another, .

(4) On the issue of consideration of principles governing evidence for consideration of offence punishable u/s 304-B, Indian Penal Code, the learned

counsel has placed reliance on the judgment of the Apex Court in Vipin Jaiswal (A-I) Vs. State of A.P. rep. by Pub. Prosecutor, and Appasaheb and Another Vs. State of Maharashtra, .

21. The learned Additional Public Prosecutor has referred to the Apex Court judgment in Kans Raj Vs. State of Punjab and Others, in support of the prosecution case.

22. We have perused the original record, the judgment and order delivered by the trial Court and the judgments cited by the parties. We have considered the submissions made on behalf of the defence.

23. It is a matter of fact that the deceased Vimalbai married appellant No. 1 Ramkishan on 12-5-1995. Vimalbai died on 31-1-1996. The incident in question took place just within about eight months of her getting married. The burden on the husband and the inmates of the house is very heavy in this case. The prosecution evidence revealed that the marriage was settled on certain terms. At the time of marriage it was settled that the girls' side would pay Rs. 75,000/- to the accused persons. There is evidence that the amount was paid but soon thereafter further demands of the accused started increasing. They demanded Rs. 50,000/-, television, deck and a plot situated in the MIDC area. Whenever the deceased visited her parental house she complained of ill treatment. The parents tried to pacify saying that the demands would be met one after another but still the ill-treatment never stopped. The deceased had reached a situation where it had become impossible for her to carry on the relationship. But still she was pulling on. There is sufficient evidence on record to demonstrate that the appellants had raised demand soon after marriage which was not satisfied and due to the same they started ill-treating the deceased.

24. The deceased Vimalbai being wife of appellant No. 1 Ramkishan was in the custody of the husband. The husband was responsible to take full care of his wife. The defence suggested that offence punishable u/s 304B Indian Penal Code is not established as the alleged demand was not made in connection with marriage. But considering the facts and the evidence brought on record we are of the view that demand was made in connection with marriage and as the demand was not fulfilled, the deceased was ill-treated and killed.

25. The evidence of PW 2 Narayan, brother of the deceased Vimalbai, throws sufficient light on the relationship between the deceased and the accused persons and the demand raised by the accused persons. The evidence of other prosecution witnesses does support the prosecution case in respect of demand raised by the appellant and the ill treatment meted out to Vimalbai.

26. PW 1 Dr. Shyam Nagapurkar conducted post mortem of the deceased who noticed following injuries:-

(1) Abrasion present over the medial fibre metacarpophalangeal joints or right side each 1/2 cm x 1/2 cm size.

(2) Abrasion present over the medial four internal phalangeal on right side each 1/2 cm x 1/2 cm in size.

(3) Abrasion positive over left forearm mid 1/3rd part, on lateral side measure 2.1/2 cm x 1 cm.

(4) Swelling over the chin under surface of the chin.

(5) Neck external minimum swelling present near the upper part of neck anterior side (middle part and over the lateral parts of uridine).

Circum fever of over and 37 ad. at mid neck.

1. subcutaneous haemorrhage, positive beneath the swelling area.

2. Bruises over the thyroid cartilages present.

3. Fracture of left cornea of cuboid bone.

4. Subcutaneous haemorrhage (+) over laryngeal.

The injuries were ante mortem. In the internal examination he found following injuries.

(1) Subcutaneous haemorrhage positive over the laryngeal area. Trachea was congested. Both lungs were congested on cut section.

(2) Mouth was slightly open, tongue inside, mouth teeth intact, tongue inside the mouth.

The cause of death, according to the doctor, was asphyxia due to throttling. In the cross examination of this doctor he deposed that it is true that asphyxia can be caused if a person suffering from epilepsy or fits came into contact of a bullock cart or an iron bar of the jeep. In the light of the evidence on record we discard such an opinion and explanation given by the doctor.

27. The defence had placed heavy reliance on the certificate issued by the doctor (Exhibit 136) to the effect that the deceased was suffering from epilepsy and was under treatment since last 15 days. Considering the evidence of defence witness Dr. Suresh Indurkar and overall facts and circumstances of the evidence brought on record we are convinced to observe that the cause of death proposed by the defence is not acceptable in the light of the medical evidence that the deceased died due to "asphyxia due to throttling". We have perused the evidence of defence witnesses who were examined by the accused persons minutely. We are of the opinion that their evidence does not provide reasons to disbelieve the prosecution case.

28. It has come in the evidence that deceased was taken in the bullock cart to the hospital and it was suggested that due to jerks suffered in the bullock cart the deceased received fits and might have died. We discard such explanation and inference.

29. Exhibit 145 is a letter submitted to the Taluka Magistrate, Biloli wherein it was stated that, during the intercourse with the husband deceased suffered epileptic fits and she died. The defence objected reading of this document on the plea that contents of this document are disputed and they are not proved though the document is exhibited.

30. In the statement recorded u/s 313 of the Criminal Procedure Code the appellant husband has failed to give proper explanation in respect of circumstances resulting in death of his wife, who was undisputedly with him at his home and thus in his custody.

31. The learned Additional Public Prosecutor appearing for the prosecution submitted that acquittal of the accused of offence punishable u/s 302, Indian Penal Code is required to be reversed as none of the accused is coming out with proper reasonable explanation in respect of the circumstances resulting in death of deceased Vimalbai.

32. In the case of Ashok Kumar Vs. State of Haryana, the Apex Court observed in paragraphs 19 to 23 thus:

19. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the Section is "soon before her death". In our view, the expressions "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.

20. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in the case of Tarsem Singh Vs. State of Punjab, , held that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry related cruelty or harassment inflicted on her.

21. Similar view was expressed by this Court in the case of Yashoda and Another Vs. State of Madhya Pradesh, , where this Court stated that determination of the period would depend on the facts and circumstances of a given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would attract the

provisions of this Section. However, there must be existence of proximate link between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.

22. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression "demand for dowry" will have to be construed ejusdem generis to the word immediately preceding this expression. Similarly, "in connection with the marriage" is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties. These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage.

23. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge u/s 304-B of the Code.

33. In the facts of the case we find that deceased was in the custody of husband Ramkishan and it was his responsibility to explain the circumstances resulting in death of the deceased. The explanation given regarding deceased getting epileptic fits and suffering injury while she was being carried in bullock cart is not acceptable and convincing one. The appellant-husband of the deceased has failed to discharge his burden as described under the provisions of Section 106 of the

Indian Evidence Act which reads as under:--

106. Burden of proving fact especially within knowledge.--When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

34. The trial Court had acquitted the accused persons including husband of the deceased of offence punishable u/s 302, Indian Penal Code. The trial Court in para 62 of the judgment observed that no inference could be drawn that as the accused gave false information about suffering of Vimalbai from "epilepsy", they committed offence of murder. It was held that the prosecution has failed to establish beyond reasonable doubt that accused No. 1 to 6 committed murder of Vimalbai, consequently they got the benefit and were acquitted of the offence punishable u/s 302, Indian Penal Code.

35. In the facts of the case and the evidence brought on record we find that the prosecution has established that deceased Vimalbai was in the custody of her husband. She died in circumstances which were not normal, while she was in the custody of the husband. The explanation given by him about unnatural death of the deceased was false. In the peculiar facts and circumstances of the case we are of the view that husband must be held responsible for committing murder of deceased Vimalbai.

36. In respect of applicability of provisions of section 304-B, Indian Penal Code to the facts of the case and the evidence on record we are of the view that, the demand was made in connection with marriage. Section 2 of Dowry Prohibition Act, 1961 defines "dowry" as under:-

Definition of "dowry".-In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

The provisions of Section 113-B of the Indian Evidence Act read thus:--

113-B. Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

When soon after marriage illegal demands for articles are made with the wife and she is being forced to meet it by asking her parents to fulfill the same, it must be

held that the husband is holding wife to threat. Thus, we hold that such demands are made in connection with marriage. There is sufficient and ample evidence on record to establish that as the demand was not satisfied the appellants had ill-treated the deceased and there was dowry death. The accused/appellant had committed offence punishable u/s 304-B, Indian Penal Code. Conviction of appellants-accused u/s 498-A of the Indian Penal Code also does not call for interference.

#### ORDER

37. Criminal Appeal No. 311 of 1998 is dismissed.

38. Criminal Appeal No. 395 of 1998 is partly allowed. The impugned judgment and order of acquittal of original accused No. 1-Ramkishan Digambar Jadhav for an offence punishable u/s 302, Indian Penal Code, is quashed and set aside. He is convicted for an offence punishable u/s 302 Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine of Rs. 5,000/- (five thousand only), in default, to suffer rigorous imprisonment for one month. The order of sentences awarded against original accused No. 1 Ramkishan Digambar Jadhav shall run concurrently. The appeal of the State as regards respondent Nos. 2 to 6 stands dismissed. The bail bonds of the accused stand cancelled.

39. After pronouncement of the judgment, the learned counsel Shri. Bora, for the appellants seeks six weeks" time to surrender. The learned Additional Public Prosecutor has opposed the request. We grant six weeks" time to the convicted persons to surrender.