
(2012) 09 CAL CK 0036
In the Calcutta High Court
Case No : C.R.A. No. 3 of 1999

Shyamal Mahanto and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Evidence Act, 1872 — Section 106, 113B, 114
Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

Citation : (2012) 4 CALLT 626 : (2013) 2 DMC 99

Hon'ble Judges : J.N. Patel, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Sandipan Ganguly and Mr. Subhasish Dasgupta, for the Appellant;
Debasis Roy, Learned Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, C.J.—The appellant Shyamal Mahanto, husband of the deceased Aloe and son of appellant nos. 3 and 5; appellant No. 2 Ram Krishna Mahanto, brother-in-law of the deceased Aloe and son of appellant nos. 3 and 5; appellant No. 3, father-in-law and appellant No. 4, mother-in-law of the deceased and appellant No. 5 Hemlata Mahanta, sister-in-law (ja), wife of Ram Krishna Mahanta were put on trial on a charge of having committed offence punishable under Sections 498A/304B read with Section 34 of the Indian Penal Code before the learned Additional Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur in Sessions Case No. 12 of 1998 (Sessions Trial No. 8 of 1998) and were found guilty of having committed offences punishable under Sections 498A/304B of the Indian Penal Code read with Section 34 of the Indian Penal Code, the male members were sentenced to suffer rigorous imprisonment for a term of one year each and also to undergo rigorous imprisonment for 10 years each for the offence punishable u/s 304B of the Indian Penal Code and appellant nos. 4 and 5, female members were sentenced to undergo rigorous imprisonment for a term of 1 year each for the offence punishable u/s 498A of the Indian Penal Code and to undergo rigorous imprisonment for a term of 7 years each for the offence u/s

304B of the Indian Penal Code. Their sentences were directed to run concurrently. Such conviction and sentence has been challenged in this appeal. The prosecution case is that the eldest daughter of Nanda Dulal Poddar, P.W.1 i.e. Aloe Poddar alias Mamani (hereinafter referred to as Aloe), was given in marriage to the appellant Shyamal Mahanta alias Naru (hereinafter referred to as Shyamal) which was solemnized in November, 1992. The entire marriage expenses were borne by the elder brother-in-laws i.e. Gopal Poddar, P.W.2 and Uttam Poddar, P.W.3. During the marriage cash, gold ornaments and other articles were given as wedding gifts. Within few months after the marriage Aloe started asking for money from her maternal uncles at the instance of her in-laws and the said Aloe was treated with cruelty by the appellants-accused who tortured her both mentally and physically and was also denied proper meals. In the morning of 24.9.1995, an unidentified person informed Nanda Dulal Poddar, P.W.1 and Gopal Poddar, P.W.2 about the death of Aloe in her matrimonial home. On receipt of the said information, the complainant Nanda Dulal Poddar sent Gopal Poddar and Uttam Poddar, at Badamile. Gopal Poddar and Uttam Poddar on reaching the matrimonial home found the deadbody of Aloe lying in the courtyard of the accused persons covered with a cloth and napkin tied around her throat. They were informed by the father-in-law of the deceased Aloe that she has committed suicide by hanging herself from the stand of the bedstead. The maternal uncles suspected that it was not a case of suicide but was killed by the appellants-accused. Therefore, a complaint came to be lodged at the behest of Nanda Dulal Poddar (P.W.1) with Balurghat Police Station registered as Balurghat P.S. Case No. 496/1995 dated 24.9.1995 against the appellants-accused under Sections 498A/304B read with Section 34 of the Indian Penal Code. The police visited the spot and an inquest (Ext. 4) was prepared by J.C. Roy, Deputy District Magistrate, P.W.9. Thereafter, the deadbody was sent for post-mortem to Balurghat Hospital Morgue. The Investigating Officer recorded the statements of the witnesses and on completion of the investigation, chargesheet came to be filed against appellants- accused for having committed offence under Sections 498A/304B of the Indian Penal Code read with Section 34 of the Indian Penal Code. The case of the appellants was committed to the Court of Sessions, Balurghat vide order No. 4 dated 4.1.1998 and it was assigned to the learned Additional Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur for trial.

2. On 5.6.1998, charges were framed against the appellants-accused under Sections 498A/304B of the Indian Penal Code and Section 34 of the Indian Penal Code. The appellants-accused pleaded not guilty to the charge and claimed to be tried. They have taken a plea that the victim Aloe committed suicide by hanging herself in the bed room out of frustration. On conclusion of the trial the appellants-accused were found guilty of the charges punishable under Sections 498A/304B read with Section 34 of the Indian Penal Code and were sentenced accordingly vide judgment and order dated 22.12.1998 passed by the learned Additional Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur.

3. During the pendency of the appeal the appellants-accused i.e. the husband

Shyamal, father-in-law, brother-in-law of the deceased Aloe underwent the sentence for 10 years, where as Hemlata Mahanta and Kabita Mahanta, female appellants who were sentenced to suffer rigorous imprisonment for 7 years each were on bail.

4. On going through the records and proceedings we find that time and again the appeal was listed for hearing since 19.4.2002 but could not be taken up on one pretext or the other mainly due to the absence of the counsel for the appellants-accused or at times of public prosecutor.

5. On 6.7.2011, when the appeal was taken up for hearing the Court was informed on behalf of the appellants that Mr. Sanjay Ranjan Pal, has left practice having joined judicial service which persuaded the Court to issue warrant of production of the appellants to be served through the Superintendent of Correctional Home where they are lodged and notice was issued to the appellants to appear before the Court on 18.7.2011.

6. On 9.8.2011, learned counsel for the appellants-accused Mr. Subhasish Dasgupta appearing on behalf of the appellants No. 1, 4, 5 seeking instruction from appellants 2 and 3.

7. On 14.9.2011 when this Court took over the appeal for hearing and having heard learned counsel for the parties and the public prosecutor appearing for the State Government passed the following :

Heard. In Session Case No. 12 of 1998 (Sessions Trial No. 8 of 1998) the appellants/accused were tried on a charge for having committed offences u/s 498A/304B of the Indian Penal Code and by judgment and order dated 22.12.1998 the learned Additional Sessions Judge, 2nd Court, Dakshin Dinajpur, Balurghat, found them guilty of having committed offence punishable under Sections 498A and 304B of the Indian Penal Code and, accordingly, sentenced them to suffer Rigorous Imprisonment for one year each for the offence punishable u/s 498A of the Indian Penal Code and the appellants/accused Shyamal Mahanta, Amulya Mahanta and Ram Krishna Mahanta, all the three male appellants/accused were convicted and sentenced to suffer Rigorous Imprisonment for 10 years each whereas, Hemlata Mahanta and Kabita Mahanta, the female appellants/accused were sentenced to suffer Rigorous Imprisonment for seven years each for having committed offence punishable u/s 304B of the Indian Penal Code. The deceased Aloe Poddar alias Mamani was given in marriage to the appellant/accused Shyamal Mahanta alias Naru Mahanta, son of appellant/accused Amulya Mahanta on 21.11.1992. She was subjected to cruelty by the appellants/accused with a view to coerce her to meet unlawful demand of money. She died an unnatural death at her matrimonial home on 24.9.1995 i.e. within seven years of marriage. On the basis of medical evidence on record the trial Court found that her death was homicidal.

We find that the sentence of Rigorous Imprisonment for ten years imposed upon male appellants/accused and that of Rigorous Imprisonment for seven years on

the female appellants/accused is grossly inadequate taking into consideration the fact that the death was homicidal.

P.W.7, Dr. Goutam Mukherjee who conducted the postmortem examination has, in his evidence, deposed before the Court that the death in his opinion was due to asphyxia caused by throttling which was ante mortem and homicidal in nature. As such a distinct offence u/s 302 of the Indian Penal Code is clearly made out.

In our opinion, in a case where accused are tried for having committed offence u/s 304B of the Indian Penal Code and the death is homicidal in nature in such a case ordinarily a charge u/s 302 of the Indian Penal Code should also be framed and in the event offences u/s 304B and 302 of the Indian Penal Code are established then the accused can be convicted under both the sections but no separate sentence need be awarded u/s 304B of the Indian Penal Code in view of substantive sentence of imprisonment of life or death is awarded for the major offence u/s 302 of the Indian Penal Code.

In the present case, we find that the prosecution did not seek for framing of a charge u/s 302 of the Indian Penal Code inspite of the fact that there was prima facie material available on record (in the chargesheet) in the form of post-mortem examination report nor the trial Court in the course of trial examined the case from the view point of framing additional charge u/s 302 of the Indian Penal Code which has resulted in miscarriage of justice. We do not think it proper to remand the case for retrial by directing the trial Court to frame additional charge u/s 302 of the Indian Penal Code considering the fact that the offence was committed on 24.9.1995 and the trial was concluded on 22.12.1998 as almost more than 10 years have passed and the appeal is pending since the year 1999, instead we direct that a Rule be issued calling upon the appellants to show cause as to why their sentence against their conviction u/s 304B of the Indian Penal Code should not be enhanced and such further order/orders shall not be passed, which this Court may deem fit and proper.

The Rule is made returnable on 26th September, 2011.

Office is directed to take all necessary steps to get the Rule served upon the appellants through the learned Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat at once and positively in course of one week.

8. Learned counsel appearing on behalf of the appellants-accused submitted that the prosecution case is based on circumstantial evidence and in order to prove the charge u/s 498A/304B of the Indian Penal Code the prosecution has examined the father of the deceased who is defacto complainant, her maternal uncles, maternal grand-mother and aunt (masi) of the deceased. According to him, their evidence are that of interested witnesses and their daughter having committed suicide they have tried to implicate the appellants-accused by making false allegations of physical and mental torture by her in-laws on the demand of more dowry and money. It is submitted that they have not specified the nature of the demand and all have come with a story that the victim disclosed to them

that her in-laws wanted more money and dowry. Demand for colour TV was mentioned by her father, P.W.1 for the first time in Court and such fact was not mentioned by him at the time of lodging the first information report. It is therefore submitted that on the basis of vague and baseless allegations an offence under Sections 498A/304B of the Indian Penal Code cannot be made out. It is submitted that none of the witnesses have stated that Aloe, the deceased informed them that the appellants-accused and her in-laws demanded specific quantum of money and how much they have paid on such occasion. This not only creates suspicion about the demand purportedly made by the appellants, through Aloe, upon PWs 1 to 3 but also casts grave suspicion upon the fact of payment made by P.W.s 1 to 3 against such demand.

9. The learned counsel for the appellants has also drawn our attention to the fact that the evidence given by the witness specifically maternal uncles i.e. P.W.2 and 3 was an improvement as in their statement recorded by the investigating officer, P.W.10. No such allegations were made by P.W.s 2 and 3 to P.W.10 at the earliest opportunity when their statement was recorded during the investigation conducted on 24.9.1995 i.e. the date of incident. In so far as P.W.s 4 and 5 are concerned it is submitted that they are brought up witnesses being relatives of the deceased and were examined after 1 ? months from the date of occurrence by the investigating officer for which no explanation has been offered and that these witnesses also had falsely implicated the appellants-accused by deposing for the first time in Court about the alleged demand of dowry and, therefore, casts serious doubts on their credibility. Therefore, according to learned counsel appearing for the appellants-accused the prosecution has miserably failed to prove the case that the deceased was coerced to bring money.

10. Learned counsel for the appellants" next important contention is absence of evidence on record to show that there was a demand for dowry soon before the death in question and in absence of proximate live-link between the effect of cruelty based on dowry demand and the death concern will not bring the case within 304B of the Indian Penal Code and has placed reliance on the case of Kaliyaperumal & anr. vs. State of Tamil Nadu [2004 SCC (Cri) 1417] and Kamesh Panjiyar vs. State of Bihar [2005 SCC (Cri) 511].

11. Learned counsel for the appellants also contended that no presumption can be drawn u/s 113B of the Indian Evidence Act in such case where the death of Aloe took place two years ten months from the date of her marriage and in the absence of evidence to show that there were immediate demand for dowry which resulted in the death of the victim. It is further submitted that just because the death having taken place within the matrimonial home does not absolve the prosecution of proving the case beyond reasonable doubt.

12. It is submitted that the prosecution has failed to examine the neighbours and so also scribe of the First Information Report. Therefore, in absence of independent evidence it would be most unsafe to hold that prosecution has proved the case against the appellants-accused.

13. Learned counsel for the appellants in response to the notice issued by the Court for enhancement of the sentence submitted that the appellants-accused have already undergone the sentence so far as appellants-accused 4 and 5 are concerned they were sentenced to suffer rigorous imprisonment for 7 years for the offence u/s 304B of the Indian Penal Code and considering the fact that they are all aged and have children to take care, no enhancement is called for and placed reliance in the case of Hemchand vs. State of Haryana [1995 SCC (Cri) 36]. Therefore, the appeal be allowed.

14. On the other hand, learned public prosecutor submitted that the prosecution has proved the case against the appellants-accused by examining the relatives of the victim who are natural witnesses their evidence go to prove that the victim was treated with cruelty in order to coerce her to get dowry and that the death of the victim was a dowry death.

15. Learned public prosecutor pointed out to this Court that this was a fit case where the appellants-accused ought to have been tried on a charge of having committed offence u/s 302 of the Indian Penal Code which provides for minimum sentence of imprisonment for life and in absence of such a charge where the death of the victim culpable homicide amounting to murder a sentence of imprisonment for life will meet the ends of justice. Learned public prosecutor submitted that the prosecution have proved all the ingredients of offence under Sections 498A/304B of the Indian Penal Code there is no reason as to why the appellants-accused should not be held guilty and sentenced to suffer imprisonment for life in the given facts and circumstances of the case.

16. It is submitted that the victim was murdered in the house of the appellants-accused and the appellants-accused have taken a false plea that the victim committed suicide in the bedroom by hanging herself on a bedstead. It is submitted that the presence of all the appellants-accused in the house at the time of the death of the victim is not disputed and, therefore, under Sections 106/113B of the Indian Evidence Act the prosecution having proved that the death of the victim was homicidal and not suicidal and the same having taken place within 7 years of marriage, the Court shall presume that it was a dowry death and the onus shifts on the appellants-accused to dislodge such presumption. It is submitted that the appellants-accused rather than explaining the facts and circumstances appearing against them have tried to raise a false plea and also made an attempt to place certain letters purportedly written by the victim in order to make the Court believe that she has committed suicide and that the Court can take this into consideration as additional link in the chain of circumstances which goes to establish the prosecution case against the appellants-accused.

17. Learned public prosecutor submitted that dowry deaths are on a rise in the society and unless the Court imposes deterrent punishment the very object and purpose of introducing Sections 498A/304B of the Indian Penal Code will be lost. It is submitted by the learned public prosecutor that the appellants-accused have

not been able to demolish the prosecution case that the victim's death was homicidal and she died in the matrimonial home in the earlier hours of the day where all the appellants-accused were residing together and therefore there is no merits in this appeal and same deserves to be dismissed.

18. The points which arise for our determination are whether the prosecution has proved the death of Aloe Mahanta alias Mamani (nee Poddar) was homicidal which occurred within 7 years of her marriage and that she was subjected to cruelty or harassment by her husband and by relatives of her husband in connection with demand of dowry.

19. On receipt of the First Information Report which was registered as Balurghat P.S. Case No. 496/95 dated 24.9.1995 and registered under Sections 498A/304B of the Indian Penal Code against the appellants-accused, Sujoy Banerjee, S.I. of Police, P.W.10 requested Sri J.C. Roy, Deputy Magistrate/Collector to prepare a Surothal (inquest) report at the place of occurrence and he along with I.C. of Balurghat P.S. went to the house of the appellants-accused and visited the place of occurrence. Therefore, J.C. Roy, P.W.9 Deputy Magistrate and Deputy Collector visited the place of occurrence on being deputed by S.D.O. Balurghat and conducted the inquest over the deadbody of Aloe, wife of Shyamal alias Naru. J.C. Roy, P.W.9 has been examined. According to him "On entering into the courtyard of the house of said Amulya I found the dead body of a female person by the name, Mamani alias Alo Mahanta, wife of Shyamal Mahanta alias Naru, lying under a coconut tree within the courtyard of the said house. The body was identified by Gopal and Uttam Poddar who were present at that time. The body was covered with a coloured and torn shari lying on a torn mat. I removed the cover, and I found her eyes half closed and reddish black spot (small) on the right eye-brow, reddish black spot on the entire right shoulder and another reddish spot on the left shoulder. The right side of the lower lip was found with cut injury, both sides of the teeth were visible. Blood stains found on the left eye and right ear also.

20. A small injury was found on the clutches of her hand. Injury was also found in the feet of the left leg, and the thumbs of the right leg near knees. I also found ligature mark in front of left neck about 4 ?" in length. Her face was curved on the east and old napkin tightened on her neck having a know on the back shoulder towards right.

21. I, therefore, made a preliminary investigation. I learnt that the deceased was married to Shyamal alias Naru about 3 years ago. And a son was born out of them who was then 2 years old. I also learnt that the deceased was subjected to physical and mental torture by her husband, mother-in-law, father-in-law, elder brother-in-law and his wife and other in-laws on demand of realization of more dowries.

22. He has also stated that he inspected the bedroom where according to the information received by him Aloe was hanging from the bed-stead and the facts

observed by him are mentioned in the inquest report. According to him, after the inquest report was prepared he was directed to send body to the Balurghat Post-mortem morgue which was conducted by an autopsy surgeon about the cause of death. In his cross-examination, he was questioned about the presence of Gopal and Uttam Poddar, P.Ws 2 and 3 and one Kamal Basak and Dinesh Mahanta which he has confirmed. He was also questioned on the facts ascertained by him leading to the incident.

23. In our view, the statements contained in the inquest report as they relate to what Mr. J.C. Roy, the Deputy Magistrate-Collector found are admissible evidence, but the statements made by him on the basis of what he heard from others can be considered inadmissible as hearsay evidence. However, fact remains that the appellants-accused were residing with the deceased in the same house and were very much present at the time of the incident and persons present at the place of occurrence did inform Sri J.C. Roy that the deceased was subjected to physical and mental torture by appellants-accused on demand of realisation of more dowry.

24. The deadbody of the victim was sent for post-mortem examination and on 25.9.1995 Dr. Goutam Mukherjee, P.W.7 performed the post-mortem of the victim Aloe. The post-mortem report (Ext. 8) is proved by Dr. Mukherjee. On examination, he opined as :

- 1) Two linear horizontal parallel ecchymosis mark in the anterior aspect of neck, left side of the mid line at the level of thyroid cartilage.
- 2) One horizontal linear ecchymosis mark in the right side of the neck anteriorly. All the marks were about 4 to 5 centimeter in length.
- 3) Cressentric abrasion marks were found on the left side about ? cm in length. All most vertical with concavity towards the mid line.
- 4) Fracture of hyoid bone around the middle- It suggests death by throttling.

During dissection, collection of blood at different fascial plane of neck was found. Those blood resisted with washing of waters. An impressional ligature mark seen high up on the anterior aspect of the neck with deficient area in between the sterno mastoid muscles posteriorly. To Court :- There was no mark of ligature on posterior side of the neck.

The size of ligature mark is 2" x 4" and without having any perchamentation, underneath. There was one gamcha having double reef knot with full length was present the body.

Other injuries which were present are as follows :-

- 1) Lacerated injury right side of the lower lip ? c.m. X ? c.m x muscle deep.
- 2) Small abrasion marks found over dorsum of the right hand adjacent to 3rd metacarpo phalangeal joint.

- 3) Abrasion mark over right side of forehead.
- 4) Multiple abrasions over the right foot and right leg near tuberosity of tibia.
- 5) Reddish blood spots over left and right shoulder S.(Inference-Probably post mortem strain).

One internal examination it reveals :-

- 1) Congested brain
- 2) Congested lungs
- 3) Both ventricle of heart were full.
- 4) Stomach was empty.
- 5) Urinary bladder empty.
- 6) Uterus was normal size.

During post mortem examination there was no sign of rigor mortis which probably passed off.

The death in my opinion was due to asphyxia caused by throttling which was ante mortem and homicidal in nature.

The ligature marks supposedly caused by "gamcha" on the throat of the deceased may be post mortem in nature.

The injuries namely injuries on lip, abrasion on right hand, abrasion mark on forehead and multiple abrasions over the right foot and right leg, as I have just told, and also the three ecchymosis marks already described suggest that those were ante mortem. These injuries may also have been caused by torture of the deceased before her death.

In my opinion the deceased was throttled to death before the napkin was tourniqueted.

In the case of homicidal throttling there will be capillary haemorrhage just above and below the constriction which resist washing with water and it suggests that it was a homicidal throttling.

The injury namely crescentic abrasion marks on the left side about 7 c.m. in length and almost vertical with concavity towards the mid line as I have said suggest use of claw of human hand in the method of throttling.

The non continuous ligature marks with broad gap at the posterior side of the neck suggest that it was not a case of suicide by hanging. In case of suicide the ligature knot is always at the either side of the neck and it cannot be on the posterior side.

In case of voluntary termination of life by hanging the ligature must have two

nooses, one around the neck and the other around the support from which one intends to hang oneself.

25. Dr. Mukherjee was cross-examined at length but his opinion that death was due to asphyxia caused by homicidal death could not be demolished. Therefore, considering the evidence of the Medical Officer who conducted the post-mortem examination we have no hesitation to come to the conclusion the death of the victim Aloe was homicidal.

26. The next important aspect of the case is as to whether Aloe had been subjected to cruelty or harassment by the appellants-accused in connection with demand of dowry and that such death was occurred within 7 years of her marriage. In order to establish the same the prosecution has examined Nanda Dulal Poddar, P.W.1, father of the deceased Aloe, P.W.2, P.W.3, maternal uncles, P.W.4 grandmother and Suchitra Dutta, P.W.5, Aunt (Masi) of the deceased.

27. It is not in dispute that the marriage of Aloe was performed on 21.11.1992 and that she died on 24.9.1995 i.e. well within 7 years of her marriage. Relatives of the victim Aloe have all stated in their evidence before the Court that as and when she visited them she made allegations against her father-in-law, her husband and in-laws of treating her with cruelty and pressurizing her to get money from her relatives on the matrimonial side. According to P.W.1, his daughter has made allegations against her father-in-law Amulya Mahanta for pressurizing her for bringing money and all the in-laws of the victim used to pressurize her and on several occasions he and his brother-in-laws also made payments to his daughter. This sort of things continued. He has also stated that in case when she failed to fulfil their demands she was denied food. This witness was confronted by the First Information Report (Ext. 4) lodged by him and he has accepted that in his First Information Report he did not mention about the occasional payment to his daughter and the names of the accused who pressurized his daughter to bring more money and other articles including a colour TV. In the cross-examination it was suggested that his daughter stopped visiting their place because Gopal and Uttam Poddar (brother-in-laws) used to misbehave with Shyamal (husband of the victim) during his visits to them and that his daughter protested to the misbehavior of Gopal and Uttam. The other suggestion was made that his daughter has evolved melancholy mind due to suicidal death of her aunt coupled with misbehaviour with his husband and for that reason his daughter committed suicide. In so far as the other witnesses are concerned namely Uttam Poddar, P.W.2 and Gopal Poddar, P.W.3 who are the maternal uncles of the deceased, according to them they had borne the marriage expenses including the wedding gifts. They have specifically deposed in their evidence to the effect that their visits to the matrimonial home of Aloe were reciprocated by Aloe and her husband. When Aloe used to visit paternal home she was found in sullen mood and on being asked she told them that she was subjected to physical and mental torture by her in-laws who wanted more dowry and money and that they made payments on several occasions to keep peace at

her matrimonial home. They also deposed about the fact that Aloe was murdered and did not commit suicide as on visiting place of occurrence they were satisfied that Aloe did not commit suicide by bolting the door from inside and that she was rescued by her in-laws by opening the door of the bedroom which was bolted by herself from inside as told to them by her in-laws. At the time of cross-examination defence lawyer produced certain letters alleged to be written by Aloe which was denied by the witnesses. It was also suggested that Aloe committed suicide which was specifically denied. They have also denied the fact that they used to insult Shyamal on several occasions taking advantage of spending money in the marriage. Suggestions were made in relation to the maternal relatives of the victims that she had a tendency to commit suicide which has been specifically denied by the witnesses. The other set of witnesses is Smt. Kalyani Poddar, P.W.4, maternal grand-mother of the victim and Smt. Suchitra Dutta, P.W.5, are consistent in their evidence as regard the marriage of the victim in which she was given cash, gold ornaments and gifts. These two witnesses also have stated that as and when the victim used to visit them she told them that she was subjected to torture including physical assault. In their cross-examination, they have admitted that the statements were recorded 1 ? month after the incident and that they did not tell the police about the accused persons having denied food to Aloe but denied the fact of having not told about the payment of money to Aloe. If we consider the evidence of these witnesses as a whole it is clear that there was a persistent demand of money for which, Aloe was the victim of cruelty and as and when she visited her maternal home she disclosed the cruel treatment meted out to her and demand for money, she was given money by her father and maternal uncles. This sufficiently establishes willful conduct of the appellants-accused in pestering her for bringing money from her relatives to satisfy their greed.

28. The contention of the learned counsel for the appellants-accused that the prosecution has failed to prove the essential ingredient of the offence that such cruelty or harassment must be shown to have been meted out to the women soon before her death and that witnesses have not spoken of any specific allegation of demand of money falsifies the case of prosecution that in such circumstances no presumption u/s 113B of the Indian Evidence Act can be drawn against the appellants does not appeal to us.

29. In *Kans Raj Vs. State of Punjab and Others*, the Supreme Court having examined the concept held has under :

15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to the cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the

expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become state enough.

16. No presumption u/s 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on *Sham Lal v. State of Haryana* is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up between the two sides for which a panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a panchayat was shown to have been held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home and her tragic end. Such is not the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved.

30. The authorities relied upon by learned counsel for the defence also do not set the principles otherwise and such cruelty shown soon before her death always depend on the facts and circumstances of the case and in a case like the present one when there is a persistent demand from the in-laws for money clearly goes to show that this was a willful conduct on their part in pestering the victim who had no alternative but to get money from her maternal relatives as and when she visited them. Therefore, it can be seen that this demand preceded by cruel treatment to the victim was spread over the period till the victim was done to death at the house of her in-laws.

31. We do not find that the credibility of the witnesses is shaken by their cross-examination and merely because there was an omission to specify the demand for colour TV or specific sum of money this would not falsify their evidence. We find the evidence of these witnesses to be cogent, consistent and reliable. It is well settled that close relatives who in the circumstances of the case are very natural witness and not an interested witness.

32. The other aspect of the case is that the victim having suffered homicidal death in the house of the appellants-accused and the appellants-accused do not come with plausible explanation as to the facts and circumstances because of which she died homicidal death. On the other hand, the appellants-accused have come up with a false plea that the victim committed suicide in her bedroom as she was unhappy due to the misbehaviour of her in-laws with her husband and the appellants-accused having not disputed their presence in the premises go against the innocence of the appellants-accused. We do not think that non-examination of the neighbours of the in-laws has adversely affected the prosecution case. From the inquest report scene of occurrence has been described in the bedroom and the body brought outside do not indicate that it was a case of suicide and speaks volume of the complicity of the accused as reasonable possibility of any other person being real culprit is excluded.

33. Having found that the prosecution has proved beyond reasonable doubt the appellants-accused are guilty of having committed offences punishable under Sections 498A/304B of the Indian Penal Code read with Section 34 of the Indian Penal Code we come to the sentence imposed by the trial Court. The very fact that we have issued a rule by enhancing the sentence for which we have given our own reasons. We find that the trial Court was not justified in showing mercy to the appellants-accused which according to us was misplaced in the facts and circumstances of the case. This is not a case that the nature of unnatural death was suicidal. The reliance placed by the learned counsel for the appellants-accused in case of Hem Chand (supra) is not proper in the given facts and circumstances of the present case.

34. In a subsequent decision in Rajesh Bhatnagar Vs. State of Uttarakhand, Supreme Court on considering the case of Hemchand (supra) and distinguished it on facts and the Court held as follows :

41. We see no mitigating circumstances in favour of the accused which will persuade us to take any view other than the view taken by the trial court on the question of quantum of sentence. Even in Hem Chand, relied upon by the appellant, this Court had said that it is only in rare cases that the Court should impose punishment of life imprisonment. When the offence of Section 304B is proved, the manner in which the offence has been committed is found to be brutal, it had been committed for satisfaction of dowry demands, particularly, for material goods like television or cooler and furthermore the accused takes up a false defence before the Court to claim that it was a case of an accidental death and not that of dowry death, then the Court normally would not exercise its

judicial discretion in favour of the accused by awarding lesser sentence than life imprisonment.

35. In the facts of the present case we find that the case having been proved against the appellants-accused to have committed offences under Sections 498A/304B of the Indian Penal Code read with Section 34 of the Indian Penal Code and the discretion used by the learned trial Court in sentencing the female members of the family for a period of 7 years does not call for any interference and so also in case of Amulya Mahanta and Ram Krishna Mahanta, father-in-law and brother-in-law of the victim for the reason that the victim has been strangled to death in the bedroom where she was residing with her husband Shyamal Mahanta and therefore taking into consideration that though they shared common intention there is no specific material on record to show that at what stage appellants-accused 2 to 5 actively assisted the appellant husband Shyamal in throttling the victim to death. Therefore, the notice of enhancement issued against them stands discharged. In so far as Shyamal, the husband is concerned we find that in all probabilities he is responsible for homicidal death of the victim by throttling her in their bedroom and deserves enhanced punishment.

36. We, therefore, dismiss the appeal and confirm the sentence of appellants-accused nos. 2 to 5 and enhance the sentence of Shyamal Mahanta from 10 years rigorous imprisonment to imprisonment for life. The appellants-accused Shyamal Mahanta shall surrender before the trial Court and the Court shall commit him to prison to undergo the remaining part of the sentence so also appellant Hemlata Mahanta and Kabita Mahanta shall surrender to the bail bonds and undergo remaining part of their sentence. Therefore, we do not find any merits in the appeal and same is dismissed.

Joymalya Bagchi, J.

I agree.