

(2002) 02 MAD CK 0138

In the Madras High Court

Case No : Criminal Appeal No. 282 of 1992 and Criminal Revision Case No. 621 of 1991

State

APPELLANT

Vs

Mittalal Nahar, Prakash Bai and Gowtham Chand

Lakpathraj Vs Mittalal Nahar, Prakash Bai,
Gowthamchand and Inspector of Police, Sivakanchi Police
Station

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357(3), 362, 369
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 120B, 203, 304B, 306, 417

Citation : (2003) 1 DMC 323

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : S. Jayakumar, Addl. P.P. and S. Shyamala, for the Appellant; A. Natarajan, for the Respondent

Judgement

M. Karpagavinayagam, J.—The State through the Public Prosecutor on behalf of the Inspector of Police, C.B., C.I.D., Chengleput Division, has filed this appeal challenging the judgment of acquittal in favour of the respondents 1 to 3 (A1 to A3) in respect of the charges framed for the offences under Sections 120B, 304B, 306 and 498A I.P.C. against all the three accused, under Sections 203 and 417 I.P.C. against the first accused and under Sections 3 and 4 of the Dowry Prohibition Act against the accused 1 and 2.

2. The case of the prosecution is this:

"On 21.3.1987, one Prabhat Kumari, the deceased, the wife of Gowtham Chand (A3) committed suicide by hanging from the rod of the ceiling fan in a room on the first floor of the house belonging to the respondents/accused 1 to 3. The bolt of the door of the said room which was locked from inside was broken by the

accused persons and others by applying the physical force and untied the rope and put the dead body on the cot. The reason of the death of the deceased was informed as the deceased died due to heart attack. On the complaint of the father of the deceased (P.W.1), the case was registered on 20.4.1987. On the orders of the High Court on the petition filed on behalf of the parents of the deceased, the investigation was taken over by C.B., C.I.D. After finishing the investigation, the charge sheet was filed against all the respondents(A1 to A3) for the offences referred to above.

3. During the course of trial, P.W.1 to P.W.26 were examined, Exs.P1 to P17 were marked. On the side of the defence, Exs.D1 to D3 were marked. Ultimately, the case ended in acquittal. Challenging the same, the State has filed this appeal. Besides this, P.W.1 also has separately filed a revision before this Court.

4. While challenging the said judgment, Mr. S. Jayakumar, the learned Additional Public Prosecutor, appearing for the State would contend that the trial Court has overlooked the material evidence available on record as well as ignored the basic principles in regard to appreciation of evidence and thereby acquitted the accused by giving importance to the insignificant aspects and consequently, the case ended in acquittal, which caused grave miscarriage of justice.

5. This contention is supported by the counsel for the petitioner in the revision against acquittal.

6. Mr. A. Natarajan, the learned counsel appearing for the respondents/accused would elaborately submit that the reasons for the acquittal are justified and the materials would not be sufficient to hold the respondents guilty of the charges and as such, this is not a case for interference, especially in view of the scope of the appellate powers in the matter dealing against the judgment of acquittal.

7. I have carefully considered the rival contentions.

8. It is settled law, as laid down by the Supreme Court in *Narinder Singh and Another Vs. State of Punjab*, that the High Court in an appeal against the judgment of acquittal should not interfere merely because it feels that it would as a trial Court have taken a different view. The High Court will certainly interfere if it finds that the judgment of acquittal is manifestly erroneous and that the trial Court has acted with material irregularity or its appreciation of evidence lacks coherence or it has made assumptions which are unwarranted or its evaluation of evidence is such as to shock the sense of justice and which has led to miscarriage of justice or its reasoning is unintelligible or defies logic or its conclusions are against the weight of the evidence.

9. In other words, ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the circumstance of the case.

10. Thus, it is clear that if the findings or reasonings given by the trial Court are palpably wrong and clearly perverse, then this Court would certainly set right the injustice committed by the trial Court by re-appreciating the evidence available on record.

11. In the light of the above principles, we have to see the reasonings given by the trial Court for acquitting the accused in order to find out whether they are correct or not.

12. Before dealing with the same, it would be worthwhile to refer to the various facts, which led to the acquittal. Let us refer to them at the outset:

(1) P.W.1 Lakpath Raj staying along with his wife P.W.8 and children is doing business at Hassan in Karnataka State. He has got three sons and three daughters. Prabhat Kumari, the deceased is the eldest daughter aged about 20 years. They originally hail from Rajasthan State. In January 1985, they went to Checkpettia in Rajasthan to attend the marriage function of one Yeesula, who is related to P.W.8, the wife of P.W.1. The accused 1 and 2 are the husband and wife residing in Kanchipuram. They also hail from Rajasthan. A3 is their son. A1 to A3 came to Checkpettia in order to attend the very same function. After the function was over, a proposal was mooted to give Prabhat Kumari, the deceased in marriage to A3. When the talks were going in the presence of elders in Checkpettia, the accused persons demanded 8 kilos of silver, 3/4 kilo of gold and a cash of Rs.75,000/- as Sridhana. P.W.1 was prepared to give 1/2 kilo gold, 6 kilos silver and a cash of Rs.55,000/-. This was agreed upon by the parties. The betrothal was held. On that day, the jewels as well as one portion of cash were given. On 14.12.1985, the marriage was held in a Kalyana Mandapam at Hassan attended by the relatives of both the families. On that day, the balance amount of cash was given to A1. Apart from that, several other jewels and household articles were given at the time of marriage. After the marriage was over, P.W.1 gave Rs.1,500/- towards the rent charges for the hotels where the relatives of the accused stayed. The accused demanded another Rs.1,500/- to be paid to the other hotels where some more relatives stayed. But, P.W.1 did not accept to give the said amount. The accused family having aggrieved over the same, however went back to Kanchipuram along with the bride.

(2) After a few days, i.e. on 20.12.1985, P.W.4 Sajanraj, son of P.W.1, P.W.17 Dineshkumar along with other relatives went to the house of the accused in order to take the deceased to their house at Hassan for celebrating other connected functions. At that juncture, the first accused wanted Rs.10,000/-. P.W.4 contacted P.W.1 through phone and informed this. As directed by him, P.W.4 obtained Rs.10,000/- as loan from P.W.21 Manikchand, brother of the first accused and handed over the same to the first accused. Only thereafter, the deceased was allowed to go to her parent's house accompanied by P.W.4.

(3) The deceased was staying for 10 days in P.w.1's house attending other functions. A3 also came to the house of P.W.1. Then, after finishing other

functions, P.W.1 sent both of them to the house at Kanchipuram. Three months later, i.e. on 26.3.1986, the deceased Prabhat Kumari phoned to P.W.1 and told him that she was ill-treated by the accused in their house and she was compelled to do all the household works treating her as a Servant-maid and that A1 sold her Ottiyanam weighing about 150 grams. Thereafter, the deceased sent a letter (Ex.P1) to P.W.1. Within a few days, both A3 and deceased came to attend a function at Bangalore and then came to Hassan. She told P.W.1 that the accused complained that the bangles that she was wearing are the old pattern and so, they should be remodelled. Accordingly, the four bangles worn by the deceased were handed over to the Goldsmith P.W.3 and the same was remodelled and then they were handed over to the deceased. In the month of September, the deceased got conceived. Therefore, P.W.1 sent P.W.4 to bring the deceased to Hassan. The accused persons sarcastically remarked that how could P.W.1 incur the delivery expenses when he was not even able to pay the rental charges for the hotels at the time of marriage. Ultimately, they refused to send the deceased with P.W.4. On Deepavali day, the deceased gave birth to a female child. Therefore, P.W.4 and P.W.8 went to Kanchipuram to see the child. At that point of time, the accused demanded Rs.50,000/-, since they had spent money towards the hospital charges for delivery. P.W.8, in turn, told them that they would not give any money as they were not allowed to take the deceased for delivery to Hassan. Though the wife and child were not allowed to accompany P.W.8 to Hassan on 28.1.1987, some time later, the wife and child were sent. On 14.2.1987, A3 came to Hassan and asked P.W.1 to send his daughter and granddaughter with him. He also demanded Rs.50,000/- towards the expenses for delivery. He also intimidated that unless the amount is given, they would not treat the deceased properly. The deceased also told the witnesses about the ill-treatment suffered at the hands of the accused. However, A3 was pacified and the wife and child were sent along with him. 15 days later, P.W.1 received the phone call from the deceased requesting him to send Rs.50,000/- as quickly as possible, since she was being cruelly treated by the accused persons. Then, P.W.1 said that he would try to mobilise the fund and send the same.

(4) P.W.10 Santhi was working as a Servant-maid in the house of the accused at the relevant period. P.W.14 Jagadeesan is a Tailor who used to come to the house of the accused and stitch the clothes in the house itself. On 21.3.1987 at about 2.30 P.M., P.W.14 was stitching in the sewing machine, P.W.10 servant-maid came to the house. At that point of time, one Kutty (P.W.22), the daughter of A1 cried saying "save, save" (.....) and rushing down from the upstairs. Then, P.W.10 and P.W.14 enquired P.W.22, who in turn said that her sister-in-law, viz., the deceased was found hanging in the upstairs. Then, all of them went to the upstairs and found the room locked from inside. They saw through the window that the deceased was found hanging from the fan. Then, A1 along with P.W.13 Baskaran, working in the Goldsmith shop in the opposite side came there and broke open the door and went inside and untied the rope and put the body on the cot.

(5) On 21.3.1987 P.W.1 received a phone call from P.W.11 Ukkamchand that the deceased died due to heart attack. He contacted P.W.21 and confirmed the death of the deceased. Then, after instructing that the dead body should not be removed till they come, P.W.1, his wife P.W.8, his son P.W.4, P.W.2 and P.W.15 came to Kanchipuram. When A1 was questioned regarding the cause of death, he said that she died due to heart attack. In the meantime, P.W.23, the Sub Inspector of Police, Sivakanchi Police Station, Kanchipuram received an intimation from the Inspector of Police stating that there is a suspicion over the death of Prabhat Kumari and asking him to take further action. Accordingly, he went to the house immediately and enquired the relations gathered there and they informed that the death was due to heart attack. Then, P.W.1 and P.W.11 were taken to the local Police Station. When he was asked whether the body could be removed for cremation, P.W.1 did not object to the same, since he was deeply worried over the death of the deceased. P.W.8, who went inside the room, was able to find some injuries on the body. Even though she objected to the removal of the body, the people gathered there pushed her aside and removed the body for cremation.

(6) On 23.3.1987, P.W.9 Dr. Subramaniam was approached by P.W.21, the brother of A1 for the issue of the medical certificate over the death of Prabhat Kumari stating that she died due to heart attack. Since P.W.9 earlier treated the deceased at the time of delivery, he gave Ex.P6 certificate to the effect that the death was due to heart attack without even examining the dead body. On the basis of Ex.P6 certificate, death was registered in Ex.P5 register and Ex.P7 death certificate was obtained from the Municipality.

(7) Unable to find out the real truth of the death of the deceased, as Kanchipuram is the new place for P.W.1's family and they are not well versed in Tamil, they came to Hassan on 25.3.1987 and sent telegrams to the Chief Minister of the State and the Home Minister of the Centre. On 28.3.1987, he sent complaints to various officials through registered post. He sent Ex.P2 to the Director General of Police, Chennai. On being forwarded, P.W.25 Karuppusami, the Deputy Superintendent of Police, Kanchipuram registered the case in Crime No.294/87 for the offences under Sections 498A and 306 I.P.C. against the accused on 20.4.1987. On 21.4.1987, P.W.25 D.S.P. came and visited the house of the accused and recovered the bent broken bolts M.Os.2 to 4 from the door under Ex.P4. The cot M.O.5 also was recovered. M.O.1 fan through which she hanged herself was recovered. On 12.7.1987, he recovered Exs.D1 and D2 and her diary M.O.11. Then, further investigation was taken up by P.W.26, the CB CID D.S.P. and the case was altered into Section 304B I.P.C. Again, P.W.26 came to the house and recovered the wooden portions (M.Os.6 to 10) from where the bolt was broken under mahazars Exs.P9 and P11. After finishing the investigation, P.W.26 filed the charge sheet for the offences referred to above.

(8) According to the accused in the statement u/s 313 Cr.P.C., they were not responsible for the death of the deceased and the body was taken to grave yard

only on the statement of P.W.1 saying "no objection" and they have registered the death of the deceased with the Municipality on the basis of Ex.P6, the Doctor's certificate stating that the deceased died due to heart attack.

(9) The trial Court having considered the materials placed by both parties, acquitted all the accused in respect of all the charges framed against A1 to A3, the respondents herein. Hence, these appeal by the State and revision by P.W.1.

13. Let us now come to the reasonings given by the trial Court for acquitting the respondents.

(1) Admittedly, the death was taken place on 21.3.1987. But, the complaint was given only on 28.3.1987. This delay has not been properly explained by the prosecution.

(2) In Ex.P2 complaint, there is no reference about the dowry demand or torture.

(3) Usually, the delivery of the child would be at the parents' house only. There is no explanation as to why the child was delivered at the husband's place.

(4) In Ex.P2, the complaint given by P.W.1, it is stated that A3 demanded the amount of Rs.50,000/-. But, P.W.8 would state that all the three demanded the amount. On the other hand, P.W.4 would state that A1 and A2 demanded the amount in the presence of A3. This is a vital contradiction.

(5) The marriage was finalised and fixed by one Lal. There is no reason as to why the said Lal was not examined.

(6) P.W.1 would admit that the accused gave a copy of the list of Sridhana articles containing the endorsement by the accused having received the same. That list was not produced.

(7) According to P.W.8, she saw injuries on the neck. But, the same was not informed to P.W.1's husband.

(8) P.Ws.10, 13 and 14 though would state that they went to upstairs and saw the dead body of the deceased found hanging from the fan, they did not give the statement to the police immediately and they gave the statement only after six months.

(9) Ex.P6 certificate issued by P.W.9 Doctor would show that the deceased died only due to heart attack. There is no post-mortem certificate giving the reason for death.

(10) The letter Ex.P1 and Exs.D1 and D2 written by the deceased did not contain the reference about the torture at the hands of the accused.

14. On going through the reasonings, it is obvious that the trial Court has misread the evidence and given importance to the very insignificant aspects for concluding that the prosecution has not established its case beyond reasonable doubt. On going through the records, it is noticed that the above reasonings are

not only perverse but also the important materials available on record have been totally ignored.

15. Let us now first go into each one of the reasonings given by the trial Court for acquittal.

16. The first reasoning is the delay in launching the complaint. According to P.W.1, he did not give a complaint to local police, since he was unable to converse with the local Police Officers in Tamil. It is his specific assertion that when he wanted to say something to police, they did not understand the same and on the other hand, they said that they could not do anything. So, according to him, he came to Hassan and sent telegrams to all the officials on 25.3.1987. Thereafter, he sent a detailed report on 28.3.1987 addressing to the Director General of Police, Tamil Nadu State and also to the Governor, Chief Minister and other high officials of the State Governments of Tamil Nadu and Karnataka and the Central Government, New Delhi. Merely because the complaint was sent after three or four days through telegram and registered post, it cannot be stated that P.W.1 gave a false complaint against the accused. In fact, from 25.3.1987 onwards, P.W.1 and his relative P.W.15 have been consistently pursuing for the action to be taken against the accused by sending telegrams and registered complaints to the various officials including the Head of the Police of Tamil Nadu. The very fact that he sent registered complaints not only to Tamil Nadu and Karnataka Governments but also to the Central Government itself would show that his attempt to pursue the action through the local police on the very same day did not fructify as the local police were reluctant to take action against the accused. Under those circumstances, the delay cannot be said to be an unexplained delay.

17. The second reasoning is that there is no reference about the dowry demand in Ex.P2 complaint. The reading of Ex.P2 in entirety would go to show that the deceased was tortured on several occasions by the accused and her husband used to beat her to get money from her house and that he used to threaten that he would do away her, if she does not bring Rs.50,000/-. It is also mentioned in the complaint that the parents of her husband never used to provide food and she used to starve for several days without sufficient food. These things would show that there was a demand of money and also there was a torture.

18. The third reasoning is that there is no explanation as to why child was delivered at the husband's place. This reasoning is without any basis. There are materials to show that the accused persons declined to send the deceased to the house of her parents for delivery despite the request made by the parents of the deceased through P.W.4, the brother of the deceased to send her to Hassan for delivery. Even in the complaint Ex.P2 give by P.W.1, it is specifically mentioned that as per the customs prevailed in their community, viz., Jain Community, the first delivery would take place at the parents' house of the bride, but the accused persons refused to send her to parent's house and she was retained in Kanchipuram itself. P.W.4, the brother of the deceased would also state in his

deposition that as instructed by P.Ws.1 and 8, parents of the deceased, he went to Kanchipuram and requested the accused persons to send her with him to Hassan for delivery and at that time, the accused persons abused his father P.W.1 stating that he did not even to pay the rental charges of the hotel rooms for the stay of their relatives at the time of marriage and how could he bear the expenses for delivery and so saying P.W.4 was sent back without allowing the deceased to go to Hassan for delivery. When this evidence is available, the trial Court is quite wrong to observe that there is no explanation and as such, this finding ignoring the relevant materials given by the trial Court is perverse.

19. The next reasoning is relating to the contradiction with regard to the demand of Rs.50,000/- made by the accused. But, on going through Ex.P2 complaint and the evidence of P.Ws.1, 4 and 8, there is no contradiction. As per Ex.P2, the deceased told P.W.1 that the accused demanded Rs.50,000/-. When P.W.4 and P.W.8 went to Kanchipuram to see the child, the accused persons demanded amount of Rs.50,000/-, since they had to incur expenses for delivery. Only in that context, P.W.8 would state that since the deceased was not allowed to go to Hassan for delivery, the delivery expenses need not be incurred by them. Thus, the demand of Rs.50,000/- towards the medical expenses for delivery is being spoken to by both P.W.8 and P.W.4. Furthermore, when A3 came to Hassan to take back the wife and child, he reiterated his demand of Rs.50,000/- towards the delivery expenses. This is spoken to by P.Ws.1 and 8. Therefore, there is no contradiction with regard to the demand of Rs.50,000/-.

20. One other reasoning is non-examination of one Lal, who has finalised the marriage. The fact of the marriage is not disputed. Moreover, the marriage was held at Hassan in the bride's place and both the families attended the same. This is not disputed by the accused. So, the non-examination of one Lal, who has finalised the marriage proposal, would not be relevant in this case.

21. The trial Court found fault with the prosecution that a list of Sridhana articles was not produced. This is yet another irrelevant reason. According to P.W.1, at the time of betrothal and marriage, though more Sridhana articles and cash were demanded, ultimately, the matter was settled among the parties to agree with the terms of the marriage proposal in regard to the Sridhana articles. Accordingly, jewels, cash and household articles were given to the bridegroom's family by the bride's family. The details of the household articles, jewels and cash which were handed over to A1 at the time of betrothal and marriage are spoken to by P.W.1, P.W.4, son of P.W.1, P.W.8, wife of P.W.1, P.W.11 Ukkamchand, resident of Kanchipuram, P.W.16 Annaraj Jain of Hassan. The evidence relating to this adduced by them have not been seriously disputed in the cross-examination of the accused. It is the specific case of P.W.1 that a list of Sridhana articles was prepared and the list is available. However, during the course of investigation, the list was not seized and therefore, the same was not produced. Under those circumstances, we cannot expect the prosecution to produce the list, which has not been seized. Moreover, the availability of the list

is not disputed by the accused.

22. The next reasoning is that P.W.8 did not tell P.W.1 about the injuries found on the body of the deceased. This reasoning also, in my view, would not be a valid one, since when the dead body was kept in the room, P.W.8 alone was allowed to go inside. In the meantime, the relatives of the accused family took P.W.1 to the Police Station. In the Police Station, P.W.1 could not do anything as he was not able to converse with the Police Officers in Tamil. At the time when the dead body was removed, P.W.8 cried and said that she could also be burnt along with the dead body and asked the crowd not to remove the dead body. However, she was pushed aside by the relatives of the accused and then, the body was removed. In such a situation, P.W.8 could not give any details about the injuries to P.W.1 since she was in the grief and shock. After cremation was over, when P.W.1, P.W.8 and others came back to Hassan, P.W.1 sent telegrams and complaints mentioning about all the details to the police. In Ex.P2, it is specifically mentioned that certain injuries were found on the body of the deceased and the body was burnt abruptly to destroy the evidence by the accused persons. So, in the light of this evidence, this reasoning also has to be held improper.

23. Next reasoning is that P.W.10, P.W.13 and P.W.14, who stated that they saw the deceased found hanging from the ceiling fan, did not make immediate statement. It is the specific case of P.W.1 that on the date when they came to Kanchipuram on hearing the news of death of the deceased, he met the police, but the police said that they could not do anything. P.W.23 Sub Inspector of Police also did not give the details as to whether they examined these persons. When the investigation was taken up by the C.B.,C.I.D. Inspector, a thorough probe was made and these people, who are residents of Kanchipuram gave statements giving the above details. Admittedly, they did not have any interest in the people who are residing in Hassan nor had any animosity against the accused persons. It is not that these witnesses gave contra statements initially and further statements were made by them contradicting the earlier statements. When they were interrogated, they gave a clear version stating that they saw that the deceased was found hanging from the fan. Therefore, this reasoning also, in my view, cannot be accepted.

24. The next reasoning is that Ex.P6 certificate used by P.W.9 Doctor would show that death was due to heart attack. Admittedly, P.W.9 would state that he did not see the dead body. He was only giving some treatment at the time of delivery of the child for chest pain and only on the request of A1, Ex.P6 certificate was issued thinking that death would have been due to heart attack. Therefore, the contents of Ex.P6 certificate has not been proved through P.W.9 and when P.W.9 himself would give out the circumstances under which Ex.P6 certificate was issued, it cannot be held that the deceased died only due to heart attack. It is true that the dead body was not available for post-mortem. But, in the light of the evidence of P.Ws.10, 13 and 14 and without allowing the police to conduct

post-mortem and hurried cremation done on the same day, would show that the death was not due to heart attack. It is true that the prosecution has to prove the reason for the death. In this case, we have no medical evidence to show that death was due to hanging. But, the fact remains that the accused persons tried to get a false certificate Ex.P6 from P.W.9 Doctor in order to show that the deceased died only due to heart attack. This act of the accused in obtaining false certificate from P.W.9 hurriedly and the evidence of P.Ws.10, 13 and 14 to the effect that they saw the dead body of the deceased found hanging would clearly show that the death could not have been due to heart attack but only due to hanging.

25. The trial Court would observe that there is no reference about the torture in Exs.P1, D1 and D2, the letters written by the deceased to P.W.1. It is true that Exs.D1 and D2 would not relate to the torture. Those letters would refer about mere enquiries. But, Ex.P1 letter would clearly indicate that she must have informed P.W.1 about the sale of Ottiyanam given to the deceased at the time of marriage and about the same P.W.1 should not write any letter. This shows that out of fear for A1 she must have written that letter. Besides that, the torture and other things have been informed to P.W.1, P.W.4 and P.W.8 and other witnesses by the deceased herself before her death, which is quite admissible under Sections 32 of the Evidence Act.

26. Thus, all the reasons, in my view, are not valid reasons and under those circumstances, the finding given by the trial Court for acquitting the accused is perverse causing flagrant miscarriage of justice.

27. Let us now go into the other evidence available on record.

28. The trouble started in this case even on the date of marriage. The marriage was held on 14.12.1985 at Hassan. After marriage was over, P.W.1 gave Rs.1,500/- towards the rent charges for the hotels where the relatives of the accused stayed. When the accused demanded another Rs.1,500/- for making payment to other hotels where some more relatives stayed, P.W.1 did not accept to give the same amount. This is the first grievance for the bridegroom's family.

29. Relating to the refusal to make payment towards the rental charges number of witnesses would speak. P.W.1, P.W.2, his relative, P.W.4, son of P.W.1, P.W.8, wife of P.W.1, P.W.11 Ukkamchand of Kanchipuram, P.W.15 Giwerchand, brother of P.W.8 and P.W.17 Dinesh Kumar of Bangalore, all would speak about the said aspect of the evidence. Some days later after the marriage, P.W.4 along with P.W.17 Dinesh Kumar of Bangalore went to the house of the accused to bring the deceased to their house at Hassan for celebrating other necessary functions. At that time, A1 wanted Rs.10,000/-. A1 stated that unless the amount of Rs.10,000/- is paid, he would not allow the deceased to go along with them to Hassan. This is purely due to the non-payment of the rental charges for his relatives stayed in some of the other hotels. When the first accused was very firm, P.W.4 informed this to P.W.1. Ultimately, P.W.4 obtained loan of Rs.10,000/-

from P.W.21 Manikchand, brother of the first accused and handed over the same to the first accused. Only after receipt of the payment, A1 allowed the deceased to go to her parents' house accompanied by P.W.4. This aspect of the evidence is being spoken to by P.W.4, son of P.W.1, P.W.15 Giwerchand, brother of P.W.8 and P.W.17 Dinesh Kumar of Bangalore. Though P.W.21 became hostile, the other witnesses, namely, P.W.4, P.W.15 and P.W.17 would state that they came to the house of the accused and the first accused demanded money of Rs.10,000/- and thereafter, the said money was obtained as loan from P.W.21 and the same was handed over to the accused. Apart from these witnesses, P.W.11 Ukkamchand of Kanchipuram would state that P.W.4 came to his shop and informed about the demand made by the accused and through the phone kept at the shop of P.W.11, P.W.4 contacted P.W.1 and obtained the instruction to get the loan from P.W.21 and gave it to the first accused. Both these incidents would show that the first accused wanted P.W.1 to pay more amount towards the rental charges and when the same was not accepted, A1 did not allow the deceased from the bridegroom's house to the bride's parents' house at Hassan till the amount of Rs.10,000/- was paid.

30. After finishing functions, the deceased and A3 were sent back to Kanchipuram. On 26.3.1986, i.e. three months later, the deceased for the first time phoned to P.W.1 and told that she was ill-treated by the accused persons in their house and that A1 sold her Ottiyanam weighing about 150 grams. Later, she also wrote a letter Ex.P1 stating that P.W.1 should not write any letter regarding the Ottiyanam, which was sold. After some months, the deceased and her husband (A3) came to attend a marriage. On the way to Kanchipuram, they came and visited P.W.1's house. At that time, the deceased complained to P.W.1 that the accused persons did not like the pattern of the bangles and they should be re-modelled. Accordingly, the bangles were given to Goldsmith P.W.3 and after re-modelling, they were given back to the deceased. At that time itself, she told P.W.1, P.W.4 and P.W.8 that she was treated badly by the accused persons.

31. In the month of September 1986, P.W.1 received information that the deceased got conceived. Therefore, P.W.4 was sent to Kanchipuram to bring the pregnant deceased to Hassan for delivery. At that juncture, the accused persons did not allow the deceased to go to her parents' house making a sarcastical remark that P.W.1 would not be able to bear the delivery expenses, since he was not able to pay the rental charges for the hotels at the time of marriage. Unable to take her to Hassan, P.W.4 came back and informed this to P.W.4.

32. After getting the news that child is born, P.W.4 and P.W.8 went to Kanchipuram to see the child. At that time, the accused demanded Rs.50,000/-, since they had paid hospital charges for delivery. P.W.8 replied that they would not bear any charges, since they were not allowed to take the deceased for delivery to Hassan. Though initially the daughter and the child were not sent, after two months, they were sent to Hassan. At that time also, she told P.Ws.1, 4 and 8 and others about the ill-treatment meted out to her by the accused

persons in regard to the demand of Rs.50,000/-.

33. On 14.2.1987, A3 came to take the wife and child back to Kanchipuram. At that time also, A3 reiterated the demand of Rs.50,000/-. According to the witnesses, A3 threatened P.W.1 and others that unless the amount is given, the deceased would be continued to be ill-treated. But however, A3 was pacified and the wife and child were sent along with him. 15 days later, P.W.1 received the phone call from the deceased requesting him to send Rs.50,000/- as quickly as possible, since she was being cruelly treated by the accused persons.

34. From these, it is revealed that the deceased was not allowed to go to Hassan for delivery and even after delivery, she was not allowed to P.W.8 and P.W.4 to Hassan. At that time, they demanded Rs.50,000/-, since they incurred hospital expenses. Even when A3 came to Hassan, he reiterated the said demand. At last, 15 days prior to her death, she insisted P.W.1 that he must send Rs.50,000/- immediately as she was being subjected to cruelty at the hands of the accused.

35. The evidence of P.W.4, P.W.8 and P.W.1 would give two aspects of the matter: (1) The demand made by the accused persons that P.W.1 should pay Rs.50,000/- which was incurred by them towards medical expenses, or otherwise the deceased would be continued to be ill-treated. (2) The deceased told P.W.4 and P.W.8 when they came to see the child that she was ill-treated by the accused persons. Similarly, she told the other witness P.W.15 also regarding the ill-treatment.

36. As noted above, just few days prior to her death, she phoned up to P.W.1 that she was being ill-treated and unless the amount is sent, the same would not be stopped. These things would make it obvious that she was continuously ill-treated by the accused persons from the beginning over the non-payment of the amount of Rs.50,000/-.

37. The second aspect of the evidence is that P.W.10 Santhi, the Servant-maid working under the accused and P.W.13 Baskaran working in a Goldsmith shop in the opposite side and P.W.14 Jagadeesan working as a Tailor saw the deceased found hanging in the room in the upstairs of the house. According to them, on hearing the cry of P.W.20, sister of A3, they rushed to the upstairs and saw through window the deceased found hanging from the ceiling fan. Then, A1 with the help of P.W.13 broke open the door and went inside and untied the rope and put the body on the cot. Though the statements of these witnesses have been recorded only when the C.B., C.I.D. took up the investigation, even the first investigation conducted by P.W.25, the D.S.P. would show that P.W.25 went to the spot and prepared observation mahazar and recovered the bent bolt bracket attached to the broken door. Then, again P.W.26, the D.S.P., CB CID on taking further investigation recovered the broken door under Ex.P11. These things would show that the deceased was found hanging inside the room and only after breaking open the door, which was locked inside, the accused and others went inside and took the body outside of the room. There is no reason to disbelieve

the evidence of P.Ws.10, 13 and 14. The fact that P.W.10 was working as a Servant-maid in the house of the accused during the relevant time was not challenged. Similarly, P.W.13 was working as a Goldsmith in the opposite side and P.W.14, a Tailor used to stitch clothes in the house of the accused. There is no reason as to why they speak falsehood with reference to the fact that the deceased was found hanging from the ceiling fan.

38. According to prosecution, the death was informed by P.W.11 Ukkamchand of Kanchipuram. No intimation was sent by the accused to P.W.1's family. When P.W.1 received a phone call from P.W.11, he contacted P.W.21 for verification and P.W.21 confirmed that the deceased died. Thereafter, P.W.1 and others came to Kanchipuram. It is true that P.W.1 did not raise any objection when the body was removed for cremation. But in this context, we have to see the real situation. P.W.1 hails from Hassan who is not well-versed in Tamil. According to P.W.23, he received the message about the suspicious death from the Inspector of Police. When such an information is obtained from the Inspector of Police, P.W.23 Sub Inspector of Police must have registered some case or at least, he must have received some petition regarding the suspicious death and he must have found out the real cause of death by observing the procedure contemplated under law. At least, after the arrival of the relatives of the deceased, he must have obtained the statement with regard to the real cause of death. If it is the case of the accused at that time, the deceased died due to heart attack, P.W.23 must have examined the Doctor who gave treatment or he must have entered in the General Diary with regard to the death of the deceased. As a matter of fact, P.W.23 would state that he put Police Constables near the body of the deceased. When such is the case, there is no reason as to why the Sub Inspector of Police did not choose to register the case for suspicious death. P.W.23 did not state that he has obtained any statement in writing either from P.W.1, P.W.8 and other relatives or from the neighbours to find out as to what really happened. The way in which the cremation was hurried would show that P.W.23 did not take interest in finding out the truth with regard to the cause of death. In such circumstances, the evidence of P.W.1 to the effect that he contacted the police at the Police Station for taking action, but they said that they could not do anything assumes importance. Under those circumstances, for the reasons best known to P.W.23, the body was not allowed to conduct post-mortem and the arrangements were made for early cremation in the presence of the Police Constables.

39. In the light of the said situation, the efforts were taken by P.W.1's family by sending complaints after complaints to the Officers concerned and ultimately, they obtained orders from this Court for investigation by the C.B., C.I.D.

40. Thus, from the evidence of the witnesses referred to above, both torture and the death of the deceased due to hanging have been clearly established.

41. However, it shall be stated that the charge u/s 304B I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act may not be made out, in view of the fact that the materials in respect of the demand of dowry is absent. Even according to

prosecution, A1 earlier demanded Rs.10,000/-, since the rent charges were not given for the stay of his relatives at Hassan at the time of marriage. Secondly, the deceased was not allowed to go to Hassan for delivery. Delivery of the child was arranged by the accused family at Kanchipuram. Towards the expenses of the delivery of the child, they demanded Rs.50,000/-. Since Rs.50,000/- was not paid, the accused ill-treated the deceased which resulted in the commission of suicide. Under those circumstances, it cannot be said that this is a case of dowry death. But, on the other hand, there are materials to show that there is a cruelty, which resulted in the suicide, which would attract Sections 306 and 498A I.P.C.

42. The other charges like Sections 203 and 417 I.P.C. against may not be made out for the following reasons.

43. A1 was charged for the offence u/s 203 I.P.C. for having given wrong information with regard to the death of the deceased to the Sub Inspector of Police. In regard to offence u/s 417, it is alleged that A1 obtained Ex.P6 certificate from P.W.9 Doctor by giving the false information. In respect of these accusations, there are no sufficient materials as against A1. There is no record to show that P.W.23, the Sub Inspector of Police did not say that A1 gave the false information. Similarly, P.W.9 Doctor stated that P.W.21, brother of A1 gave the information that the deceased died due to heart attack and obtained the certificate from him.

44. Let us now refer to the present legal position with regard to the offence u/s 306 I.P.C., which is earlier merely an offence of abetment of suicide. The section remained in the statute-book without any practical use till 1983. But, by the introduction of Section 113-A in the Evidence Act the said offence u/s 306 I.P.C. has acquired wider dimensions and has become a serious marriage-related offence. Section 113A of the Evidence Act says that under certain conditions, the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband and his relatives.

45. Section 113A of the Evidence Act reads as follows:

"113-A. Presumption as to abetment of suicide by a married woman.--When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.--For the purposes of this section, "cruelty" shall have the same meaning as in Section 498A of the Indian Penal Code."

46. Incorporation of Section 113A of the Evidence Act in the statute-book depicts a legal presumption though however the time period of within seven years of

marriage is the prerequisite for such a presumption. The circumstances and the materials on record shall substantiate the requirements of Section 113A.

47. Let us now see Section 498A I.P.C.:

"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 purposes 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 or is on account of failure by her or any person related to her to meet such demand.

48. Having regard to the language used in Section 498-A I.P.C. there cannot be any hesitation in coming to the conclusion that cruelty is writ large as regards the conduct of the accused towards the deceased. As noted above, Section 113A of the Evidence Act itself by way of an explanation provides that "cruelty" shall have the same meaning as is attributed u/s 498A I.P.C.

49. In the present facts of the case, we are more concerned with Section 498-A, which relates to the wilful conduct of the accused, which would drive the woman to commit suicide.

50. As indicated above, when the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can persuade the court against drawing a presumption adverse to him.

51. The above principles have been laid down in *Shamnsaheb M. Multtani v. State of Karnataka*, (2001) 2 SCC 577 .

52. Therefore, in regard to the abetment of the commission of suicide u/s 306 I.P.C., there are materials to show that there is a cruelty meted out to the deceased by the accused persons till her end through so many witnesses to whom the deceased complained of. When such is the factual position, there is no difficulty for the Court to raise the presumption as contemplated u/s 113A of the evidence Act against the accused in regard to abetment.

53. Furthermore, u/s 106 of the evidence Act, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. As per the section, where the incident of death had taken place inside the house of the accused at a time when the deceased was staying with the accused persons, they

alone knew what exactly had happened. It is true that Section 106 cannot be used to shift the onus of proving the offence from the prosecution to the accused, but where there is satisfactory evidence which fixes the liability for the death on the inmates of the house living there at the relevant time, in the absence of any other explanation the only possible inference would be that the accused inmates participated in the crime. If any one of them claims contrary u/s 106, the burden of proving that fact would be upon him since that is within his special knowledge.

54. As laid down by the Division Bench of this Court in *Shunmugasundaram Vs. State* by Deputy Superintendent of Police, Erode Town, , if some occurrence happens inside the residential portion of the accused, wherein he was also available, at or about the time of incident, he is bound to offer his version as to how the occurrence had taken place. The only other person who can speak about the occurrence will be the deceased and now that she is dead, if at all, the accused and the accused alone can offer an explanation.

55. In the light of the above legal position, if we look at the facts of the present case, it is clear that the accused persons did not even make an attempt to persuade the court against drawing a presumption adverse to them in regard to the offence u/s 306 I.P.C. On the other hand, the evidence of P.W.9 Doctor and obtaining the death certificate Ex.P7 from the Municipal Office on the strength of the doctor certificate obtained from P.W.9 on the basis of false information would clearly prove that the accused wanted to cause disappearance of the evidence that may be collected against them.

56. Furthermore, the evidence of P.W.23, the Sub Inspector of Police, as discussed above, would clearly indicate that he did not choose to take immediate action, despite that he received information from the Inspector of Police that there is a suspicious death. In fact, P.W.23 admitted in his examination that he did not personally interrogate the relatives of the deceased.

57. It is the specific evidence of P.W.1 that he contacted the police to take action, but the police said that they could not do anything at their stage. It is also the case of P.W.8 that despite her objection, the body was removed by the relatives of the accused by pushing her aside, that too when the Police Constables were standing there. These things would show that the accused persons tried to hush up the matter and hurriedly removed the body for cremation with the help of the local police to avoid the post-mortem in order to escape from the penal action. Expecting some action that might be taken by P.W.1's family, P.W.9 was approached and he was given false information and on that basis, certificate was obtained and on the strength of the said certificate, they were also be able to get Ex.P7 death certificate. All these things have been done so hurriedly.

58. Noticing the biased attitude of the police, P.W.1 had to come back to Hassan and sent telegrams and complaints to various officials of the State Governments and Central Government.

59. In the light of these suspicious conducts of the accused, the evidence of P.W.10 who is the Servant-maid of the accused persons and P.W.14 Tailor working in the house of the accused, who saw the body found hanging from the ceiling fan would assume importance. Besides their evidence, there is deposition of P.W.13 Goldsmith who is working in the opposite shop to the house of the accused that he along with others including A1 broke the bolt of the door which was locked inside and went into the room and brought out the body. The fact that the body was removed from the room after breaking open the door has been corroborated by the opinion of the Scientific Expert as mentioned in Ex.P14 on M.Os.2 to 4, 7 and 10 would clearly show that the external force must have been used from outside to break open the door.

60. In the light of this situation, the failure of the accused to persuade the court against drawing a presumption in regard to suicide would go to show that the accused never placed real truth, which is within their knowledge as contemplated u/s 106 of the Evidence Act.

61. Though P.W.1, the father, P.W.4, the brother and P.W.8, the mother of the deceased have been cross-examined at length, the accused never put suggestions to these witnesses that the deceased was having already heart disease and she died due to heart attack. That apart, the accused did not produce any document nor adduced any oral and documentary evidence to show that the deceased was treated for heart ailment. On the other hand, P.W.9 Doctor would specifically state that after delivery of the child, A2 came to P.W.9 and informed him that her daughter-in-law was feeling chest pain and therefore, the Doctor gave some medicines for chest pain. P.W.9 would also state that he advised for taking ECG, but no ECG was taken and subsequently, he was not approached for giving any treatment to the deceased. This would only go to show that the story of the defence that the deceased died due to heart attack has been introduced by the accused to hide the real truth from the Court.

62. Under those circumstances, it can be held that the deceased was subjected to cruelty from the beginning for some reason or the other and ultimately, she was driven to commit suicide and as such, there are materials to prove that the accused persons have committed the offence under Sections 306 and 498A I.P.C.

63. The learned counsel on the strength of the decisions in Sharad Birdhichand Sarda Vs. State of Maharashtra, would submit that the evidence let in by the prosecution, would not make out the offences alleged.

64. As pointed out earlier, these decisions would help only in regard to the other charges, namely Section 304B I.P.C. and Sections 4 and 5 of the Dowry Prohibition Act, etc. But, these would not apply to the present facts of the case in regard to the offences under Sections 306 and 498A I.P.C.

65. In some of these decisions, the acquittal order passed by the High Court was confirmed by the Supreme Court on the reason that the letters written by the deceased would not refer about the torture and in the dying declaration given by

the deceased, the deceased did not implicate the accused.

66. This reasoning would not apply to the case on hand, since in the instant case, though there is no reference about the torture in Exs.D1 and D2, the reading of Ex.P1 letter would indicate that Ottiyanam jewel which was given to the deceased at the time of marriage was sold by the accused and with regard to that, P.W.1 should not write any letter. This would show that the deceased was afraid of the consequences from the hands of the accused, if the same was exposed. Besides this, there is evidence relating to the details of the torture meted out to the deceased by the accused persons and the same was informed by the deceased to P.W.1, P.W.4, P.W.8 and others prior to her death. This is clearly admissible u/s 32 of the Evidence Act.

67. Sections 498A and 306 I.P.C. are independent and constitute different offences. Though, depending on the facts and circumstances of the case, subjecting a woman to cruelty may amount to an offence u/s 498A and may also, if a course of conduct, amounting to cruelty is established leaving no other option for the woman expecting to commit suicide, amount to abetment to commit suicide.

68. In this case, the marriage was held on 14.2.1985. The child was born in November 1986 and the death of the deceased took place on 21.3.1987 when she was living with the other accused. These things would show that even though the child was born in November 1986, within four months, the deceased was driven to commit suicide.

69. From the perusal of the deposition of the witnesses, it is seen that from the beginning the deceased was ill-treated either by A1 or by A3. The deceased told P.W.1, P.W.4, P.W.8 and P.W.15 that she was ill-treated by A1 and A3. Though there is a general statement in regard to the involvement of A2 along with others, there is no specific evidence as against A2. Therefore, the acquittal in respect of A2 can be sustained, but A1 and A3, in view of the above reasonings, can be found guilty of the offences under Sections 306 and 498A I.P.C.

70. Accordingly, the appeal as against the acquittal in respect of A1 and A3 is allowed and A1 and A3 are convicted for the offences under Sections 306 and 498A I.P.C. The appeal as against A2 is dismissed.

71. In view of the disposal of the appeal, no separate order is necessary in the revision filed by P.W.1.

72. The accused 1 and 3 are directed to be present before this Court to hear them in regard to the question of sentence. Post on 18.2.2002.

JUDGMENT

M. Karpagavinayagam, J.—This Court is facing an embarrassing situation.

2. After pronouncement of judgment of conviction, this Court adjourned the matter to enable the accused convicted for pleading on question of sentence. But

unfortunately, on the adjourned date, the accused through their counsel newly engaged, would venture to question the judgment of conviction itself.

3. This Court by the judgment dated 4.2.2002 allowed the appeal against acquittal filed by the State through Public Prosecutor, Madras convicted the respondents 1 and 3 (A1 and A3) for the offences under Sections 306 and 498A I.P.C. and sustained the acquittal in favour of the 2nd respondent (A2). The matter was directed to be posted on 18.2.2002 directing A1 and A3 to be present before this Court to hear them in regard to the question of sentence.

4. Accordingly, on 18.2.2002, A1 and A3 were present. It was informed before this Court that Mr. A. Natarajan, the learned counsel who argued the matter earlier on behalf of the accused, gave a change of vakalat on the instruction of A1 and A3 for Mr. Karuppan, the learned counsel who has entered appearance on their behalf.

5. Mr. Karuppan, who appeared before this Court on behalf of A1 and A3, the convicted accused, requested two days' time to file their statement with regard to the question of sentence. Accordingly, the matter was directed to be posted on 21.2.2002 and A1 and A3 were directed to be present on that day.

6. Strangely, on 21.2.2002, instead of filing the statement with reference to the question of sentence, Mr. Karuppan, who has entered appearance on behalf of the accused, filed an affidavit sworn to by the accused and requested this Court to re-hear the case by adjourning the case by a month with a direction to furnish a copy of the judgment on the ground that the judgment of conviction was pronounced with a delay of 5 months even though the judgment was reserved on 29.8.2001.

7. He would further submit that the accused would also file an affidavit requesting to show leniency in the sentence without prejudice to his submissions in support of the plea for re-hearing the case. Accordingly, the accused were permitted to file affidavit giving the statement in regard to the question of sentence. The matter was directed to be posted on 22.2.2002.

8. On 22.2.2002, as permitted by this Court, an affidavit sworn to by A3 on behalf of both the accused was filed giving various circumstances for showing leniency while imposing sentence upon both the accused. Mr. Karuppan, the learned counsel appearing for the accused would request some more time to file another affidavit giving his grounds of arguments for re-hearing the case. The matter was adjourned to 27.2.2002.

9. Accordingly, on 27.2.2002, the affidavit was filed on behalf of the accused making various grounds and requesting this Court to dismiss the appeal filed by the State and acquit the accused or direct re-hearing preferably by another Bench. Mr. Karuppan after filing this affidavit wanted to argue the matter on merits before this Court. Accordingly, he was permitted to argue.

10. Elaborating the various contentions contained in the affidavit filed by the

party dated 27.2.2002, Mr.Karuppan would strenuously submit that this Court has not considered various infirmities in the prosecution case and Mr. A. Natarajan, erstwhile counsel has failed to bring to the notice of this Court those infirmities and consequently, this Court fell into error by rendering a judgment of conviction after setting aside the order of acquittal and in any event, the judgment was pronounced after a delay of 5 months and as such, the appeal which was allowed earlier has to be dismissed by this Court by reviewing its own judgment.

11. The arguments of Mr.Karuppan in brief are as follows:

"(I) There is no bar for this Court to recall and review its own judgment as laid down by a Division Bench of Punjab and Haryana High Court in Lal Singh and Others Vs. State and Others, .

(II) The benefit of doubt granted to A2 must go to A1 and A3 also. There is no evidence for demand of dowry. The finding of suicide by hanging is without medical evidence. The finding that there is a hurried cremation is wrong, as there is no evidence to that effect. The letters Exs.D1 and D2 written by the deceased were in Hindi. The copy of the Hindi version was not served to the accused. This vitiates the trial as per the decision in GOVERNMENT OF N.C.T.DELHI v. NAGESH TYAGI (II (2001) CCR 297 (SC). P.W.23 Sub Inspector of Police stated that he interrogated the relatives before closing the case. Therefore, the finding that P.W.23 did not personally interrogate the relatives of the deceased is contrary to the facts.

(III) The decisions cited by the erstwhile counsel for the accused have not been dealt with separately. This Court ought to have dealt with each and every judgment by referring to the facts of each and every case and then, the finding has to be given as to how it was not applicable to the facts of the present case.

(IV) The orders were reserved on 29.8.2001 and the orders were pronounced only on 18.2.2002. The delay of 5 months and 18 days has not been explained in the judgment. This would show that this Court has not properly considered various contentions urged on behalf of the accused."

12. I have carefully considered the submissions made by Mr.Karuppan, who is the present counsel for the accused.

13. Though in the affidavit filed by the accused dated 27.2.2002 an attack is made on the judgment of this Court by criticising the form of the judgment of this Court, Mr.Karuppan, the learned counsel, while arguing the matter was careful enough not to make any such criticism against the judgment except to point out various aspects of the case of the defence as projected by them through cross-examination of the prosecution witnesses and the defence documents.

14. However, he made an attack on Mr. A. Natarajan, the erstwhile counsel who appeared for the accused by commenting that he did not perform his duty

perfectly as he has failed to point out various lacunae found available in the case of prosecution.

15. In short, his submission is that the accused were ultimately convicted by this Court, while allowing the appeal against acquittal filed by the State only due to the failure in discharging the duty by the erstwhile counsel Mr. A. Natarajan. Incidentally, he also made a comment about this Court in regard to the delivery of judgment after a considerable delay.

16. During the course of arguments, Mr.Karuppan, the learned counsel on several occasions would highly appreciate the promptness and method of handling the cases and rendering judgments on important aspects on various questions of law. However, he would submit that he had to mention about the delay not for criticising this Court, but for the sake of his clients, who instructed him to argue on that aspect.

17. Let us now first consider the aspect of the delay.

18. It is stated by the counsel for the accused that the case was reserved for judgment on 29.8.2001 and the judgment was rendered on 18.2.2002. This is factually incorrect. While referring to this aspect, it is to be stated that this case has got a chequered history, which is as follows:

"(a) The State filed an appeal challenging the acquittal dated 31.7.1991 and the same was admitted on 10.7.1992. On behalf of the accused/respondents, Mr.K.A.Panchapagesan entered appearance on 14.6.1995. On 25.11.1999, on a change of vakalat, Mr. A. Natarajan entered appearance. The matter was posted for final disposal before Bakthavatasalu, J. It was adjourned several times. Then, the matter came up before R.Balasubramanian, J. After some hearings, the matter was posted before Natarajan, J (as he then was). Ultimately, the case was posted before this Court on 19.7.2001.

(b) The matter was heard on 30.7.2001, 7.8.2001, 13.8.2001 and 14.8.2001. The counsel for the parties argued at length. Then, Mr. A. Natarajan was directed to file his written submissions on 27.8.2001. On 27.8.2001 and 29.8.2001, the matter was argued by both the Public Prosecutor and Mr. A. Natarajan, the counsel for the respondents. Ultimately, the case was reserved for orders on 29.8.2001.

(c) This matter was posted for orders, while this Court was sitting in the Appeal disposal. Subsequently, this Court had to sit in the admission of revisions and the final disposal of notice of motion in the revision cases. Therefore, this Court took some time to go through the papers and ultimately, passed an order of conviction on 4.2.2002."

19. Having known that the appeals against acquittal are not normally interfered with, this Court was constrained to go through the deposition copies, original records by taking into consideration the various principles laid down by this Court as well as the Supreme Court while dealing with the appeal against acquittal.

That was the reason that this Court took some time to render a lengthy judgment covering about 53 pages.

20. Though the number of pages in judgment would not be a relevant factor to explain the delay, it has to be stated that the discussion and appreciation made by this Court while rendering the judgment would reflect the efforts and pains taken by this Court for giving reasons to hold that the findings of the trial Court are perverse and the evidence available on record which is trustworthy would prima facie make out the offence under Sections 306 and 498A I.P.C. as against A1 and A3.

21. Mr.Karuppan brought to the notice of this Court the decision rendered by the Supreme Court in III (2001) CCR 145 (ANIL RAI v. STATE OF BIHAR) giving five guidelines to the Judges of the High Courts for rendering judgments speedily. The last guideline is as follows:

"If the judgment, for any reason, is not pronounced within a period of six months any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances."

22. The above guideline would show that the parties are entitled to move before the Chief Justice requesting to withdraw their case from particular Bench and to make over to any other Bench after a period of six months. This shows that the maximum limit which is mentioned in the guideline is six months.

23. In this case, the judgment was reserved on 29.8.2001. It shows that this Court has pronounced this judgment in five months within the maximum limit prescribed by the Supreme Court. This observation of mine should not be mistaken that this Court can take six months time to render judgment in each and every matter.

24. As pointed out by the Supreme Court , it is the duty of the Judges of this Court to grant the relief to the parties as quickly as possible. In this case, the relief was sought for by the State. Since this Court wanted to be very careful in dealing with the appeal against acquittal, that too when this Court felt that this is a case for conviction, naturally some time has to be spent for perusal of the records to make sure that this is a case for conviction. Moreover, the delay in rendering the judgment by this Court cannot be a ground to sustain the order of acquittal passed by the trial Court on the basis of the perverse findings.

25. Let us now come to the criticism made on the erstwhile counsel Mr. A. Natarajan by Mr.Karuppan, the present counsel. At the outset, it has to be emphatically stated that it is quite improper on the part of Mr.Karuppan to have made such a criticism against the erstwhile counsel who is an experienced lawyer.

26. As a matter of fact, Mr. A. Natarajan came to the Court with thorough

preparation and argued at length. He was given full opportunity by giving number of adjournments. Ultimately, he was also permitted to file his written submissions. While this judgment rendered by this Court, this Court took into consideration the written submissions also which were in consonance with his oral submissions.

27. In fact, only because of Mr. A. Natarajan's persuasive arguments and effective submissions, this Court was able to confirm the acquittal of all the accused in respect of the offences under Sections 304B and Sections 4 and 5 of the Dowry Prohibition Act. Only on the basis of the submissions and various judgments rendered by this Court as well as the Supreme Court cited by him which have been referred and quoted in this judgment, A2 has been acquitted in respect of the offences under Sections 306 and 498A I.P.C. holding that there is no material to show that there was a dowry demand. But, as pointed out by this Court in various paragraphs of the judgment, there are materials to show that the respondents and 3 (A1 and A3) had committed the offences under Sections 306 and 498A I.P.C.

28. Under those circumstances, it is highly improper on the part of Mr.Karuppan to make a baseless accusation against his own colleague to the effect that he did not perform his duty properly. So to say, this Court would certainly certify that Mr. A. Natarajan, the erstwhile counsel on behalf of the accused did his job well by arguing the matter on each and every aspect.

29. Mr.Karuppan, the learned counsel for the accused would venture to argue on merits stating that this is not a case for conviction. Strangely, he makes a submission that the Hindi version of the letters Exs.D1 and D2 has not been given to the accused.

30. Exs.D1 and D2 have not been produced by the prosecution before the Court. These documents were marked only on the side of the accused. Under those circumstances, it is not understandable as to how this sort of argument can be put forth before this Court.

31. It is submitted that the finding has been given by this Court even without medical evidence, that this Court has wrongly observed that P.W.23, the Sub Inspector of Police did not investigate properly, that the benefit of doubt given to A2 shall be given to A1 and A3 also and that the judgments cited by the erstwhile counsel have not been dealt with separately. These arguments, in my view, are not tenable in view of the fact that these aspects were dealt with in detail in my judgment.

32. By these arguments, Mr.Karuppan, the learned counsel appearing for the respondents 1 and 3 requests this Court to set aside my judgment convicting A1 and A3 and to dismiss the appeal. Virtually, he requests for recalling and review of my judgment. He would cite the decision in Lal Singh and Others Vs. State and Others, in support of his plea.

33. This contention, in my view, is against the existing law. Lal Singh and Others Vs. State and Others, while ignoring the decisions of this Court in S. Rangaswami and Another Vs. R. Narayanan, , C.LAKSHMANA IYER v. PUBBI SETTI SETHAMMA 1964 I M.L.J.362 and IN RE ANTHONY DOSS 1963(2) Cri.L.J.224, would state that u/s 561-A, the High Court has got powers to re-hear the matter since the earlier order was passed without hearing the parties, by interpreting Section 369 Cr.P.C.

34. This law is no more a good law, in view of the amended provision contained in Section 362 Cr.P.C. The Supreme Court, while interpreting Section State of Kerala Vs. M.M. Manikantan Nair, , would categorically hold that once the judgment is pronounced, the High Court cannot review its judgment either in exercise of its appellate or revisional or original criminal jurisdiction.

35. The observation in 2001(1) S.C.C.169 is as follows:

"Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error."

36. The observation in State of Kerala Vs. M.M. Manikantan Nair, is this:

"The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the court after it has signed its judgment or final order disposing of a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed."

37. In view of the provisions u/s 362 Cr.P.C. prohibiting the review, recall or re-hearing, this Court would not enter into the merits of the case which has been decided earlier. Therefore, this argument also would fail.

38. While concluding my discussion made with reference to the various submissions of Mr.Karuppan, the learned counsel for the accused, I cannot but refer to the two disturbing features found in the conduct of Mr.Karuppan, the learned counsel, while arguing the matter.

39. The first disturbing feature is that Mr.Karuppan, instead of arguing the case, made a comment on the erstwhile counsel stating that he did not perform his duty well which resulted in the conviction of the accused.

40. Mr.Karuppan who has got sufficient experience in standing should not have indulged in such an attack against his own colleague.

41. It is true that a lawyer is bound to use reasonable care and skill and diligence in conducting his client's case. But, an Advocate who has been engaged on change of vakalat should not decry, directly or indirectly, the work of his colleague who was earlier in charge.

42. In other words, an advocate who has been newly engaged should concentrate on the work entrusted to him and he should not discover a lacuna in almost everything that has gone before. If he tries to find out some lacuna on the part of the erstwhile counsel in performance of his duty and builds up his arguments on that basis, the same cannot be considered to be ethical.

43. Even if there is some lacuna on the part of the erstwhile counsel, the new counsel should not decry his own colleague in order to get some orders in favour of his clients.

44. In this case, as I indicated above, Mr. A. Natarajan did his best by placing oral and written arguments and in all the adjourned dates, he was heard by this Court patiently and every aspect of the case was dealt with by him during the course of arguments. Therefore, it has to be stated that Mr. A. Natarajan performed his duty not only with perfection but also with thorough preparation.

45. The second disturbing feature is that Mr.Karuppan ventured to request this Court to set aside its own judgment of conviction without knowing the existence of the present law.

46. As noted above, he asked for adjournment on the first day only in order to file statement with regard to question of sentence. But on the adjourned date, to the shock and surprise of this Court, he filed a petition along with an affidavit requesting this Court to re-hear the matter on the ground that my judgment is wrong.

47. This submission is purely against law as per the existing provision contained in Section 362 of the amended Code. The Supreme Court also, as referred to above, would specifically state that the judgment cannot be reviewed, recalled and re-heard.

48. Mr.Karuppan before arguing the matter requesting this Court to review the judgment must have looked into the provisions of Section 362 Cr.P.C. in the amended Code and the interpretation of the same found in the recent judgment of the Supreme Court. Accordingly, his clients A1 and A3 must have been advised.

49. It is submitted by the counsel for the accused Mr.Karuppan that only for the sake of his clients and only on their advice he sought to argue the matter on merits.

50. In this context, it shall be stated that advocate is a person who is to advise his client and not to act blindly on the advice of his client. Advocate is not a

mouthpiece of his client.

51. A lawyer is not the servant of his client who engages him and the true position is that the lawyer is the servant of the justice itself. Even if the client would give improper advice to the lawyer without understanding the legal position, it is the lawyer who is to give proper advice to the client to proceed on the right direction in accordance with law.

52. In other words, it is not the duty of an advocate to follow blindly every instruction his client gives him. That is an entire misapprehension of the duty of an advocate. He has not only got a duty towards his client but he has got a duty towards the Court and it is his duty to see that the case is fairly and honestly conducted.

53. In this case, this Court sincerely feels, instead of concentrating in the matter of leniency to be shown to the accused persons while imposing sentence, Mr.Karuppan has acted on the improper advice of his clients to file this petition requesting for the review of the judgment. As stated above, this is, in my view, quite improper.

54. These observations in the above paragraphs relating to the conduct of Mr.Karuppan, the learned counsel appearing for the accused, are made in this order only with a view to correct his attitude and purely in his interest.

55. Mr.Karuppan has been practising in this Court for a long number of years and is known for eloquence. This Court sincerely feels that his erudition and energy should be properly channelised to make him fit as an effective lawyer. If his intelligence and industry have been properly used, this Court would hope that Mr.Karuppan will become a role model for the young advocates.

56. Let us now come to the plea of the accused for showing leniency in the matter of imposition of sentence as contained in the affidavit filed on behalf of the accused.

57. It is stated that the first accused Mittalal Nahar is aged about 58 years and suffering from diseases like diabetes, blood pressure and heart ailment and he is currently hospitalised at Nichani Nursing Home. It is further stated that the third accused is aged about 38 years and after death of the victim wife, he married second time and through second wife he has got three daughters aged about 13 years, 12 years and 4 years respectively.

58. On these reasonings, it is contended that this Court can pass an award giving the minimum sentence taking a lenient view of the matter by levying a fine.

59. Both the accused, namely A1 and A3 have been convicted under Sections 306 and 498A I.P.C. The punishment provided u/s 306 is the imprisonment for a term which may extend to ten years and shall also be liable to fine. Section 498A provides for the punishment of imprisonment for a term which may extend to three years and shall also be liable to fine.

60. While considering the various facts situation mentioned in the affidavit requesting for leniency in the sentence, this Court is conscious of the fact that the trial Court acquitted the accused in 1991 and this Court set aside the acquittal and convicted A1 and A3 in 2002.

61. As far as the third accused is concerned, though he can be sentenced to imprisonment for the offences referred to above, I am not inclined to send him to jail in view of the special feature that the girl of 15 years born through the victim and the second wife along with three children are living him. Under those circumstances, it would be appropriate to impose some other punishment rather than imprisonment upon A3.

62. There is no limit with regard to the quantum of fine amount for this Court. Having regard to the facts and circumstances of the case, I am of the view that the third accused can be directed to pay compensation of Rs.1,00,000/- (Rupees one lakh) to P.W.1's family instead of undergoing imprisonment by invoking Section 357(3) Cr.P.C. and accordingly directed.

63. It is submitted that P.W.1 recently died. Therefore, P.W.1's legal representatives are entitled to the said compensation. The said compensation of Rs.one lakh shall be deposited by A3 in the trial Court within eight weeks from today. In default, he has to undergo R.I. for two years. The trial Court is directed to allow P.W.1's legal representatives to withdraw the said amount.

64. In so far as A1 is concerned, though it is stated that he is aged 58 years and having disease and all, I am of the opinion that he is liable to be punished with some imprisonment. Though 10 years is the maximum limit for the offence u/s 306 I.P.C. and 3 years for the offence u/s 498A I.P.C., taking into consideration the age and other things, it would be appropriate to impose upon him R.I. for two years on each count and both the sentences are directed to run concurrently and he is also liable to pay a fine of Rs.1,000/- each, totally Rs.2,000/-, in default to undergo R.I. for six months.

65. With the above observations, the matter is disposed of.

JUDGMENT

M. Karpagavinayagam, J.—After pronouncement of the order, Mr.Karuppan, the learned counsel for the first accused/first respondent would request some time to surrender to undergo the period of sentence of two years imposed by this Court, as the first accused is not well and he has to take treatment in the hospital. Accordingly, the first respondent (A1) was permitted to file an affidavit giving undertaking that he would surrender before the Court after specified time.

2. When the matter is taken up at 2.15 P.M., Mr.Karuppan has filed the affidavit sworn to by the first accused Mittalal requesting this Court to grant four weeks time to surrender before the Court to undergo the period of sentence of two years.

3. In view of the reason mentioned in the affidavit and in view of the request made by Mr.Karuppan, it would be appropriate to give four weeks time to the first accused to surrender. Accordingly, the first respondent/first accused is permitted to surrender before the trial Court on or before 15.4.2002. On his surrender, the trial Court is directed to remand him to custody to undergo the period of sentence imposed by this Court. In the event of non-surrender by the first accused, the trial Court is directed to issue non-bailable warrant to secure the custody of the first accused/first respondent to undergo the period of sentence.