

**(2009) 01 BOM CK 0016**

**In the Bombay High Court**

**Case No : Criminal Appeal No. 985 of 2005**

Sushma Suresh Nigudkar and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision : 28-01-2009**

**Acts Referred:**

Dowry Prohibition Act, 1961 — Section 2  
Evidence Act, 1872 — Section 113B, 114  
Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

**Citation :** (2009) CriLJ 4267 : (2010) 7 RCR(Criminal) 216

**Hon'ble Judges :** V.M. Kanade, J

**Bench :** Single Bench

**Advocate :** J. Shekhar, instructed by J. Shekhar and Co, for the Appellant;  
Rajesh More, APP, for the Respondent

## **Judgement**

V.M. Kanade, J.—The appellants are challenging the Judgment and Order dated 14-9-2005 passed by the Sessions Court for Greater Bombay in Sessions Case No. 403 of 1996. By the said Judgment and Order, the Trial Court was pleased to acquit accused No. 3 - Uday Manohar Dalvi for the offence punishable under Sections 304-B and 498-A read with Section 34 of the Indian Penal Code. The Trial Court, however, convicted accused No. 2 - Ankush Rajaram More, the appellant No. 2 herein, for the offences punishable under Sections 498-A read with Section 34 of the Indian Penal Code and also u/s 304-B of the Indian Penal Code and accused No. 1 - Smt. Sushma Suresh Nigudkar, appellant No. 1 herein, for the offence punishable u/s 498-A read with Section 34 of the Indian Penal Code and u/s 306 of the Indian Penal Code. The Sessions Court, however, acquitted accused No. 1 - Sushma Suresh Nigudkar for the offence punishable u/s 304-B. The Sessions Court was pleased to sentence accused No. 1 to suffer rigorous imprisonment for one year and to pay fine of Rs. 3000/- and in default of payment of fine to suffer further imprisonment of 15 days for the offence punishable u/s 498-A of the Indian Penal Code. Accused No. 2 - Ankush Rajaram More was sentenced to suffer rigorous imprisonment for 7 years and to pay fine

of Rs. 5000/- and in default of payment of fine to suffer further imprisonment for 30 days for the offence punishable u/s 304-B of the Indian Penal Code. Accused No. 1 was also sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 4000/- and in default to suffer further imprisonment of 15 days for the offence punishable u/s 306 of the Indian Penal Code.

2. The prosecution case, in brief is as under:

3. The appellant No. 2 - Ankush Rajaram More and Akshata Ankush More got married on 17-5-1995 and the marriage was solemnized at Mumbai. It is the prosecution case that during marriage ceremony, accused No. 2 demanded scooter and, subsequently, when he was promised that the scooter would be given to him, he performed the religious ceremony.

4. On 27-9-1995, there was a quarrel between Akshata and accused Nos. 1 and 2 and, on the next date, i.e. on 28-9-1995, Akshata poured kerosene on herself and set herself ablaze. Prosecution witnesses alleged that it was, in fact, not a suicide but accused had gagged her and had set her ablaze after pouring kerosene on her. The first dying declaration of Akshata was recorded by the Police Officer and the second dying declaration was recorded by Special Metropolitan Magistrate. The first dying declaration was treated as FIR and the offence was registered against the accused.

5. The family members of the deceased were not satisfied with the investigation which was carried out by the Police attached to Goregaon Police Station. Thereafter, the matter was transferred to CID. Akshata succumbed to the injuries and died on 28-09-1995. The supplementary charge-sheet was filed and accused No. 3 - Uday Manohar Dalvi was also arraigned as accused. Prosecution examined 15 witnesses. The Trial Court, after going through the said evidence, was pleased to acquit accused No. 3 - Uday Manohar Dalvi. The Trial Court, however, convicted accused Nos. 1 and 2 who have preferred this appeal being aggrieved by the said Judgment and order of the Sessions Court.

6. Counsel appearing on behalf of the appellants has submitted that the Trial Court has ignored the fact that, in the first dying declaration, the deceased had not stated that the appellants had poured kerosene on her and set her on fire. On the contrary, she had stated that she herself had committed suicide on account of quarrel which had taken place on the earlier day. It is submitted that since there is discrepancy in two dying declarations, no reliance could be placed on either of the dying declarations and the said evidence has to be discarded. It was then submitted that the prosecution witnesses had improved, their case and that it had come on record that a meeting was organized by the members of the community and it was decided in the said meeting to pursue the matter further and it was pursuant to the said decision, the applicants were implicated in the said offence and, therefore, the matter came to be transferred to CID and, later on, several improvements have been made by the witnesses. It was submitted, therefore, that the Trial Court ought to have discarded their testimony. Thirdly, it

was submitted that the death had occurred not due to any demand for dowry. It was submitted that, initially, it was alleged that a demand for scooter was made at the time of marriage ceremony and that it was a custom among the community that, before worshipping deity, the bride-groom was entitled to make demands. It was submitted, therefore, that the said demand of scooter which was allegedly made, was on account of custom in the community and could not be treated as demand for dowry. It was submitted that the presumption u/s 113-B of the Evidence Act ought not to have been drawn in the present case, since, from the facts of the case, demand of dowry has not been established and the presumption under the said section could be drawn only after it was established that the provisions of Section 304-B have been attracted. It was submitted that the Trial Court has ignored the said aspect. The learned Counsel for the appellants has relied upon number of Judgments of this Court as also of the Apex Court in support of his submissions.

7. The learned APP appearing on behalf of the State, on the other hand, submitted that the Trial Court had considered the evidence in its proper perspective and, therefore, the said judgment and order was liable to be confirmed.

8. The learned APP submitted that it could not be said that other witnesses have made improvements in their evidence. It was further submitted that in the second dying declaration, the deceased had categorically stated that the appellants were responsible for her death and there was no reason to discard the said dying declaration.

9. I have heard both, the learned Counsel appearing on behalf of the appellants and the learned APP appearing on behalf of the State at length.

10. Before appreciating the rival contentions, in my view, it will be appropriate to take into consideration the relevant provisions pertaining to dowry death and presumption which is raised in case of dowry death. Section 304-B of the Indian Penal Code reads as under:

304B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

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

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

11. It has been held by the Apex Court in several judgments that in order to attract application of Section 304-B IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death must have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Similarly, Section 113-B of the Evidence Act is also relevant. Both the aforesaid provisions were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to curtail, reduce and successfully prosecute the accused who are involved in the increasing menace of dowry deaths. Section 113-B of the Evidence Act reads as follows:

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

12. It has been held by the Apex Court in catena of cases that the presumption which is raised u/s 113-B is a presumption of law and it is raised only in cases where there is a dowry death and it is raised only on proof of following essentials:

(1) The question before the Court must be whether the accused has committed the dowry death of a woman (i.e. only where the accused is being tried for the offence u/s 304-B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

13. The Apex Court in the case of Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar, has observed in para 11 as under:

11. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. Prosecution has to rule out the

possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

14. The Apex Court in the said judgment, after analysing Section 2 of the Dowry Prohibition Act, 1961 observed in para 14 of the said judgment as under:

14. The word "dowry" in Section 304-B, IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression "dowry" See *Satvir Singh and Others Vs. State of Punjab and Another*, . As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused....or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC.

15. The Apex Court, therefore, has observed that other payments which are

customary payments are not covered by the expression "Dowry". The Supreme Court in catena of cases has reiterated the said view. This Court also in various judgments has followed the view of the Supreme Court.

16. Keeping in view the ratio laid down by the Apex Court in respect of the offence punishable u/s 304-B, 498-A of the Indian Penal Code and Section 113-B of the Evidence Act, the evidence in the present case has to be taken into consideration.

17. Appellant No. 2 got married to the victim Akshata Ankush More on 17-05-1995 according to Hindu Vedic Rites and, on the same day, the deceased started residing with appellant No. 2. On 28-09-1995 Akshata More was admitted in Cooper Hospital by the appellants when she was in burnt condition. Her statement was recorded on the same day i.e. on 28-09-1995. In the first statement which was recorded by the police, she stated that on the date of the incident on account of quarrel which had taken place between her and her sister-in-law i.e. appellant No. 1, she was angry and, on the next morning, at about 5.30 a.m. in a fit of rage, she poured kerosene on herself and set herself on fire and, thereafter, appellants herein had taken her to the hospital. An allegation was made against appellant No. 1 that she used to harass her mentally and physically and, therefore, on account of that she had taken drastic step. The panchanama was prepared on the same day.

18. In the light of the first dying declaration, the FIR discloses that, initially, complaint u/s 498-A was registered against the appellants in view of dying declaration of the deceased which is recorded at Exhibit- 45. Thereafter, the second dying declaration has been recorded at Exhibit-37A which is taken in question and answer form. In the said dying declaration recorded by the Special Metropolitan Magistrate, she stated that she poured kerosene on herself and set her on fire on account of quarrel which had taken place between her husband and her sister-in-law in the night at about 8.00 p.m. to 8.30 p.m. Doctor has made an endorsement that the patient was conscious oriented and was in a position to give a statement at that point of time and he has further endorsed that the statement she had given was valid.

19. In the light of the submissions made by the Counsel for the appellants and the learned APP appearing on behalf of the State, the evidence on record will have to be appreciated and, for that purpose, it is necessary to examine the evidence given by the prosecution witnesses. In all 15 witnesses have been examined. Though statements of some witnesses particularly the neighbours of the appellants were recorded, they have not been examined by the prosecution.

20. Prosecution has examined P.W. 1 -Sudhakar Maruti Sawant at Exhibit-13, who is the father of the deceased, P.W.2 - Baliram Maruti Sawant at Exhibit 14. who is the brother of P.W. 1 and uncle of the deceased, P.W. 3 - Janardhan Bhujbal Sawant at Exhibit- 15, and he was acquaintance of the uncle of the deceased, P.W. 4 - Sanjay Madhavrao Sawant at Exhibit 17, who is a distant

relative of the deceased, P.W. 5 -Mukund Maruti Sawant at Exhibit 18, who is also an uncle of the deceased and brother of P.W. 1 Sudhakar, P.W. 6 - Dr. Vasant Nayaku Vanmore at Exhibit-20, who performed the post-mortem on the dead body of Akshata, P.W. 7 - Sunita Madhukar Sawant at Exhibit 22, who is the wife of the uncle of the deceased, P.W. 8 - Pandurang Babu Sawant at Exhibit 23, who is the cousin of P.W. 1 - Sudhakar, P.W. 9 - Krishna Raghunath Ghosalkar at Exhibit 24, who is a friend of P.W. 1 - Sudhakar, P.W. 10 - Gangappa Shankarappa Dhadd at Exhibit 35, who is a Special Metropolitan Magistrate, Borivali who recorded the dying declaration of Akshata in the hospital at Exhibit-37 and it was put in a sealed packet and, later on, was addressed to the Chief Metropolitan Magistrate in his handwriting, P.W. 11 - Dr. Parimanl Suresh Kulkarni at Exhibit- 38, who was attached to Nanavati Hospital, P.W. 12 - Dr. Prachi Ramakant Padmawar at Exhibit 42, who was attached to Dr. Balabhai Nanavati Hospital, P.W. 13 - Netaji Shivappa Thabe at Exhibit- 44, who was PSI attached to Malad Police Station who had recorded first dying declaration at Exhibit- 45 which was treated as FIR P.W. 14 - Dr. Lakshyajit Dhansukhlal Dhami at Exhibit 48, who was attached to Nanavati Hospital and, lastly, P.W. 15 - ACP Suhas Raghunath Patil at Exhibit 49, who was attached to Goregaon Police Station.

21. In the present case, in the two dying declarations which were recorded; one by the police and the other by Special Metropolitan Magistrate, the deceased has categorically stated that she poured kerosene on herself and set herself ablaze. She, however, has not stated that there was any demand for dowry. She has stated that there was a quarrel between the sister-in-law i.e. appellant No. 1 and herself and she was angry because of the said quarrel and, therefore, she had poured kerosene on herself and set herself ablaze. The Special Metropolitan Magistrate who recorded the second dying declaration has stated that though the victim had given replies in Marathi, he had taken down the same in English as he was not conversant in writing Marathi though he understood the language very well. In my view, the statement made by the deceased in the dying declaration does not support the prosecution case of the accused having poured kerosene on her and set her on fire. There is, therefore, serious discrepancy between the version given by the deceased in the dying declaration which was recorded by the Police Officer and by the said Metropolitan Magistrate in the presence of the doctor and the version given by the relative of the deceased who have stated that the deceased had informed her that the accused had poured kerosene on her and set her on fire. The Apex Court in catena of cases has observed that sufficient weightage has to be given to the dying declaration because that is the last statement made by the deceased before his death. The Sessions Court has erred in discarding these two dying declarations. The Sessions Court, in my view, has erred in not relying on dying declaration recorded by the Special Metropolitan Magistrate merely because he has recorded in English the answers which were given by the deceased in Marathi. It is a common knowledge that many persons understand Marathi though they cannot write in Marathi. The person who recorded the dying declaration is a Special Metropolitan Magistrate and not a

Police Officer and, therefore, in my view, the Sessions Court clearly erred in discarding his testimony or in finding fault in his procedure of recording answers in English though they were replied in Marathi. From the two dying declarations, therefore, it can be seen that the only reason which has been given for taking the drastic step by the deceased is the quarrel which had taken place between the deceased and the appellant No. 1 who is sister-in-law of the deceased. If these dying declarations are accepted then it is evident that the prosecution is not in a position to prove the demand of dowry or cruelty or harassment in connection with any demand for dowry. The quarrel which had taken place also was not related to demand of dowry.

22. From the perusal of the evidence of the prosecution, one thing which is evident is this that the statements of number of witnesses have been recorded after considerable lapse of time i.e. almost after one and half year from the date of incident. There was also a discrepancy in respect of the manner in which the marriage expenses were shared between the parties. P.W. 1 -Sudhakar M. Sawant father of the bride has stated that the expenses were shared equally by the husband's side and wife's side. The other witnesses have stated that the expenses were shared in the ratio of 25% from the husband's side and 75% from the wife's side. Further, it is a matter of record and the prosecution witnesses have admitted that soon after the death of the deceased Akshata, they had called for the meeting of all the members of the community and had decided to pursue the matter. This creates doubt about the testimony of all these witnesses and it appears that, thereafter, a decision was taken to implicate the accused in this case out of revenge for the death of Akshata. As a result of the efforts of the relatives of the deceased, the case was transferred to CID and statements of number of witnesses were recorded after a lapse of one and half year. There is, therefore, considerable improvement in the evidence of witnesses whose statements are recorded subsequently. This creates doubt regarding veracity of the said statements. Several omissions and contradictions have been brought on record by the defence.

23. The Sessions Court has discarded these omissions and contradictions by holding that the said omissions and contradictions are normal when statements are recorded after some time. In my view, the Sessions Court has clearly overlooked the fact that each witness has tried to improve the case of the prosecution and most of the statements are hit by the principle of hearsay evidence.

24. The story which has been reiterated by the witnesses is that the accused No. 2 -husband of the deceased, had demanded scooter from P.W. 1 - Sudhakar M. Sawant and had told him that if the scooter is not given, he would harass his daughter and that, thereafter, accused No. 2 continued to harass the deceased since the scooter was not given. This theory which is sought to be developed by the prosecution does not appear to be true because, firstly, Akshata, in both her dying declarations, has not uttered a word about the demand of scooter or

demand of dowry. Had it been the case that the accused had harassed her on account of dowry, she would have definitely said so in her dying declarations. The demand of dowry or demand of scooter is conspicuously absent from her dying declarations. The witnesses, possibly, in order to get over this lacuna, have narrated in their statements that the deceased, before her death, has disclosed this fact to the said witnesses. This version appears to be false because the Investigating Officer has stated that none of the witnesses was present when he recorded the dying declaration of the deceased and at no point of time the deceased was alone with any of these witnesses. Similarly, the version given by some of the witnesses is that Doctor Kulkarni had scolded accused No. 2 and told him that from the burn injuries which were found on the deceased, it was more likely not on account of attempted suicide by the victim and that it was a homicidal death and not a suicidal death and it was more possible that she was burnt by some one else. This witness Doctor Kulkarni, however, has not stated any such thing in his examination-in-chief or in his cross-examination. Some of the witnesses have given contradictory version about the marriage ceremony to the version given by P.W. 1 - Sudhakar M. Sawant, father of the deceased. An attempt, obviously, therefore, has been made to incorporate the ingredients of the offence u/s 304-B. On the contrary, from the evidence of P.W. 1, it appears that the relations between the accused and the deceased were quite cordial and she had visited her parents on number of occasions and also had visited her relatives in Mumbai. Therefore, in my considered view, the prosecution has not established that the accused had committed an offence punishable u/s 304-B or Section 498-A and, therefore, presumption u/s 113-A and 113-B cannot be drawn against the appellants. Appellants are, therefore, entitled to be acquitted by giving them a benefit of doubt.

25. In the present case, initially, a complaint was lodged for the offence punishable u/s 489-A against the present appellants. Later on, the matter was referred to the State CID and accused No. 3 - Uday Dalvi, cousin of appellant No. 2 was also arraigned as an accused. It is pertinent to note that the deceased in her dying declaration had not even named the accused No. 3 in any way. In fact, in the said statement before police, she had stated that no members of her family were in any way responsible for her death. She has categorically stated in her first dying declaration that the other members of her family viz. her husband, mother- in- law. father- in-law, brother- in-law had not given any trouble to her and she had no complaint against them. The Sessions Court, therefore, in the absence of any evidence even against this accused, was pleased to acquit him. The fact that even accused No. 3 was arraigned as an accused indicates that though the deceased had no complaint against her husband, father- in-law and brother-in-law, he was deliberately roped in by the relatives of the deceased. In fact, P.W. 1 in his statement does not even name accused No. 3. The other witnesses, however, whose statements have been recorded after one and half year, implicate accused No. 3. This, therefore, creates doubt about the veracity of their statements and the credibility of their statements. The entire testimony,

therefore, becomes doubtful and if part of their testimony has been discarded by the Sessions Court by acquitting accused No. 3 then, for the same analogy, it will be difficult to accept their statements even qua the present appellants. The Apex Court and this Court on number of occasions have noticed the tendency of the relatives of the deceased to rope in as many persons as possible from the family of the accused and even married sisters- in-law and other distant relatives are named in the FIR.

26. Even P.W.I - Sudhakar Maruti Sawant in his statement which was recorded by the police had expressed his suspicion that the appellants had committed murder of the deceased.

P.W.2 - Baliram Sawant who is the real uncle of the deceased has stated that the expenses for the marriage which were incurred were shared as 75% by them and 25% by the accused. This is contrary to what is stated by P.W. 1 - Sudhakar M. Sawant that the expenses were borne equally. He has further stated that one gold chain and a ring was to be given and, accordingly, these items were given, whereas P.W. 1 is totally silent on this aspect and contradicts this witness. This witness has stated that accused Nos. 1, 2 and 3 had threatened that if demand of scooter is not complied with, Nutan would fetch ill treatment at her matrimonial house. However, P.W.I had not stated about accused Nos. 1 and 3. This, therefore, creates doubt about the veracity of this witness. P.W.2 also has stated that when he met Nutan in the hospital, accused No. 1 had warned her not to disclose anything to anybody. However, this version is directly contrary to what P.W. 13 PSI Thabe has stated in his deposition wherein he has mentioned that nobody was present at the time of recording her statement. The version of P.W.2 is, therefore, clearly contrary to what has been stated by P.W. 13. This version, therefore, cannot be accepted. P.W. 13, on the contrary, had stated that the statement of this witness was recorded on 2-10-1995 i.e. almost after four days from the date of incident though this witness was very much present on 28-09-1995. It cannot be overlooked that this witness is the real uncle of the deceased and, therefore, an interested witness and, therefore, much emphasis has to be given to the omissions, contradictions and improvements made by this witness for the purpose of assessing the evidence.

P.W. 3 - Janardhan Bhujbal Sawant is a relative of P.W. 1 - Sudhakar M. Sawant and was a mediator. He also in his evidence has stated that 75% expenses were incurred from the bridal side and 25% from the groom side which is again contrary to what has been stated by P.W.I. Even otherwise, the fact that both parties had shared the marital expenses equally shows that if at all the groom side was interested in demand of dowry, they would not have spent any money in the marriage and would have put entire burden on the bridal side. This also creates some doubt about the theory of demand of scooter as alleged by the prosecution witnesses and this appears to have been raised as an afterthought, particularly because no reference is made by the deceased about the demand of scooter and harassment on account of non-fulfillment of their demand of scooter.

P.W. 3 has also made number of omissions and contradictions in his statement which have been brought on record by the defence. There is also delay of about 7 days in recording his statement. This witness in his cross-examination has admitted that there is custom in the community that the husband should make demand before religious ceremony is about to begin and that it is not necessary to comply with the said demand. He has also stated that the marriage ceremony was completed. It is a well settled position in law that other customary payments or other ceremonies as are prevalent in different societies are not covered by the expression "Dowry". From the evidence of this witness, therefore, it does appear that there was a custom in the community that before offering respect to the Gods, bridegroom is supposed to express his wish to his father-in-law and that it is not necessary that every such wish is to be fulfilled. Such a wish, therefore, if expressed, cannot amount to dowry and, therefore, even assuming without admitting that such a demand for scooter was made by bride-groom, it would not fall within the definition of the word "Dowry".

P.W.4 - Sanjay Sawant has also reiterated the incident of demand of scooter in his examination-in-chief and stated that the protest meeting was held and that he, along with others had protested in their community since it was a dowry death and pamphlet was also published. In his cross-examination, P.W.4 has further admitted that in the protest meeting, it was convened and suggested that police should be asked to take action against the accused. The evidence of this witness, therefore, clearly indicates the action plan of the relatives of the deceased to implicate the accused. He has admitted that he had gone to the extent of publication and distribution of pamphlet against the accused. This itself creates a doubt about the credibility of the statements of these witnesses since the statements of most of the witnesses have been recorded after this meeting which was held within one month from the date of death of the wife of accused No. 2.

P.W.5 - Mukund Maruti Sawant is the real uncle of the deceased. He is the first witness who has named accused No. 3 - Uday Dalvi. He has stated that in the meeting which was held for settlement of marriage, accused No. 3 suggested that instead of gold ring, a gold chain of the same weight be given. He has initially stated that bridal side should bear 100% marriage expenses. However, it was settled that 70% expenses would be borne from bridal side and 30% expenses would be borne from the groom side. His evidence, accordingly, is contrary to the evidence given by P.W. 1 - Sudhakar M. Sawant, father of the bride who has stated that the expenses were shared 50:50 by each side. He has not said anything about the exchange of gold ring and gold chain. This, therefore, creates doubt about his version on settlement talks and as to what actually Happened at the time of marriage. He has stated that the accused No. 2 demanded scooter and accused No. 3 supported the demand of accused No. 2 and accused No. 3 informed him that father of the girl had 10 buffaloes, 100 plants and, therefore, there was no reason why he should not comply with the demand of scooter. He has further stated that, on hearing this, Nutan suffered

giddiness and fell down. He has further stated that on the date of the incident, he had gone to meet Nutan in the hospital and that she had told him that accused No. 2 had caught her from behind, tied her both hands and accused No. 1 put swap in her mouth, sprinkled one liquid like acid at her face and back side and, at that time, Police Officer and SEM approached Nutan and, therefore, they all went out. P.W. 13 - PSI Thabe, on the contrary, has stated that no one was present when the statement of victim was recorded. This witness has, therefore, contradicted the statement of PSI who recorded the dying declaration. P.W. 13 - PSI Netaji Thabe has stated that when he was recording the statement, nobody was present in the room. The version given by this witness (P.W. 5), therefore, does not appear to be correct and appears to be an afterthought. P.W.5 has further stated that when he had come out side the Ward, he met Dr. Kulkarni who asked accused No. 2 as to how the incident had taken place and, at that time, accused No. 2 supposed to have told Dr. Kulkarni that his wife had poured kerosene on herself. However, Dr. Kulkarni was of the opinion that it was not a case of burns caused by kerosene. The statement of this witness is not supported by Dr. Kulkarni - P.W. 11 who does not talk about happening of the incident. He has, in fact, stated that he did not remember whether P.W.5 was present or not. He also did not remember whether accused No. 2 - husband of the deceased was present or not. He has stated that he did not interact with the patient, though he had examined her. The statement made by this witness i.e. P.W.11- Dr Kulkarni, therefore, clearly contradicts the statement made by P.W.5. It is, therefore, obvious that P.W.5 has tried to bring in several statements and make several improvements in his evidence. His evidence, therefore, is not reliable and no reliance, therefore, can be placed on his statement.

P.W.6 - Dr. Vasant Nayaku Vanmore, who has performed the post-mortem of the dead body of Akshata More, has admitted that the said injuries could be caused by pouring kerosene on the body and setting it on fire.

P.W. 7 - Sunita Madhukar Sawant is the wife of the uncle of the deceased, This witness has stated that Nutan had informed her that the accused Nos. 1 and 2 had set her on fire. She has also stated that Dr. Kulkarni had confronted accused No. 2 and had stated that such type of burns were not possible by explosion of stove. She has also stated that she had noticed spots of having given burn marks and that on her wrist there were marks which showed that she was tide. She has further stated that the deceased had told her that that the appellants had told her and had warned her that as long as scooter demand was not complied, she would not enjoy happy married life. She has stated that she had told her that she was given stale food and that her make-up box was removed from her suitcase. She has further stated that the deceased informed her that accused No. 1 had pulled her hair and had assaulted her. Several other instances have been mentioned by her in her statement. The evidence of this witness also does not inspire confidence. Again, this witness has been contradicted by the Police Officer who has stated that no one from the maternal side of deceased was present in the room. Most of the statements which she had given in evidence had not been

recorded by the Police and, therefore, there was improvement in her statements on many counts. Her statement was recorded in September 1996. Her statement, therefore, has been recorded after a lapse of almost one year from the date of incident. Her statement also has been contradicted by the doctors who have not stated that there were burn marks on the back of the deceased or that her hands were tied. No reliance, therefore, can be placed on the said statement.

P.W. 8 - Pandurang Babu Sawant is a cousin of P.W. 1 - Sudhakar Sawant. He has also again stated that it was agreed that the husband's side should spend 25% and wife's side should spend 75% towards marriage expenses. He has stated that there was no additional discussion or talk about their compliances. This, again, is contrary to what has been stated by P.W. 2 - Baliram Sawant and P.W. 5 - Mukund Maruti Sawant and other witnesses who have stated about the exchange of gold ring and golden necklace. This witness has also tried to implicate accused No. 3.

P.W. 9 - Krishna Raghunath Ghosalkar is an acquaintance of P.W. 1. This witness also has stated that the accused No. 2 had demanded scooter at the time of her marriage and that accused Nos. 1 and 3 had instigated accused No. 2 not to pay respect to the deity till the demand of scooter was not accepted.

P.W. 10 - Gangappa Shankarappa Dhad is the Special Metropolitan Magistrate who recorded the second dying declaration of the deceased.

P.W. 11 - Dr. Parimal Suresh Kulkarni was attached to Nanavati Hospital where deceased was taken after she was initially admitted in other hospital.

P.W. 12- Dr. Prachi Ramakant Padmawar was also attached to Dr. Balabhai Nanavati Hospital as Assistant Medical Officer. She has admitted the report in her handwriting at Exhibit-43.

P.W. 13 - Netaji Shivappa Thabe was the Investigating Officer.

P.W. 14 - Dr. Lakshyajit Dhansukhlal Dhami was Medical Officer attached to Nanavati Hospital and P.W. 15 was ACP Suhas Patil.

27. From the evidence of all these witnesses, in my view, prosecution has failed to establish the offence punishable under Sections 304-B and 498-A of the Indian Penal Code. There is no reason to discard the dying declarations of the deceased Akshata More. In these dying declarations she has stated the cause of her death. The reason for committing suicide is the quarrel which took place earlier between her and accused No. 1. The cause of quarrel also was not dowry but some internal dispute between the two. The Apex Court held that every quarrel between husband and wife and relatives cannot be treated as a cause of dowry death or harassment or cruelty u/s 498-A of the Indian Penal Code and, therefore, it cannot be said that the appellants had instigated or abetted the deceased Akshata More to commit suicide. Under these circumstances, appellants are entitled to get benefit of doubt, resulting in their acquittal.

28. Accordingly, the following order is passed

ORDER

Appellants are acquitted of the offence punishable under Sections 498-A, 304-B and 306 read with Section 34 of the Indian Penal Code, registered by Goregaon Police Station vide C.R No. 550 of 1995.

Appellants be released forthwith unless they are required in any other case.

Appeal is allowed in the aforesaid terms and disposed of.