

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 270/2001**

% Reserved on: 19<sup>th</sup> January, 2011

Decided on: 4<sup>th</sup> February, 2011

**YASWANT KUMAR**

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate with  
Mr. Surinder, Mr. Ashutosh Lohia and  
Mr. Nikhil Bahri, Advocates

versus

**STATE**

..... Respondents

Through: Mr. Manoj Ohri, APP

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

- |                                                                              |               |
|------------------------------------------------------------------------------|---------------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not?                                        | Yes           |
| 3. Whether the judgment should be reported in the Digest?                    | Yes           |

**MUKTA GUPTA, J.**

1. By the present appeal the Appellant lays a challenge to the judgment dated 20<sup>th</sup> February, 2001 in Sessions Case No. 32/2000 whereby the Appellant has been convicted for offences punishable under Section 304B IPC and 498A IPC and the order of sentence dated 17<sup>th</sup> March, 2001 directing him

to undergo Rigorous Imprisonment for a period of seven and a half years for offence punishable under Section 304B IPC and Rigorous Imprisonment for three years for offence punishable under Section 498A IPC and a fine of ₹5000/- and in default of payment of fine to further undergo simple imprisonment for six months. Vide the impugned judgment, the mother of the Appellant Smt. Kamla was also convicted for offence under Section 498A IPC and awarded the sentence of imprisonment for a period already undergone and thus no appeal has been filed on her behalf.

2. The prosecution case in nutshell is that the Appellant was married to the deceased Smt. Santosh on 6<sup>th</sup> February, 1999. The matrimonial home and the parental home of the deceased were in the same locality of Nangloi. On 10<sup>th</sup> September, 1999 at about 4:00 a.m. in the early morning, the parents of the deceased were informed by the younger brother of the Appellant that their daughter has died, on hearing which they went to the house of the Appellant. There they found the dead body of their daughter, who had the pregnancy of five months, lying near the bed on the floor in her room half wrapped in a saree. They found no hanging material at the spot. The mother-in-law of the deceased told that she died in the sleep. As the deceased had died within seven years of the marriage, the statements of the parents, brother, sister of the deceased, the tenant and neighbor of the Appellant were recorded by the

SDM. On the statement of PW1 Thakur Das, the father of the deceased, FIR No. 970/1999 under Section 498A/304B IPC was registered at PS Nangloi. In the statement of the father, recorded by the SDM, it was alleged that he performed the marriage of his daughter to the best of his financial and social capability, however, her in-laws stated that she had brought less dowry items. There was also a demand of an old car. After investigation, the charge-sheet was filed. After recording the statements of the prosecution witnesses and the accused persons under Section 313 Cr. P.C., the learned Additional Sessions Judge passed the impugned judgment.

3. Learned counsel for the Appellant contends that the prosecution has examined six relevant witnesses and even as per the testimony of PW1 Thakur Das the father of the deceased and PW6 Smt. Leelawati, the mother of the deceased, the only allegation is that after about four months of marriage, a second hand car or rupees one lakh ten thousand were demanded from the parents of the deceased for purchasing an old car. This statement is a material improvement as the same is not recorded in the statement made to the S.D.M. or to the police under Section 161 Cr. P.C. The statement of PW4 Jaspal, the brother of the deceased shows that his sister never made any complaint directly to him and thus his testimony is hearsay and cannot be admitted in evidence. As per the testimony of PW7 Ms. Geeta, the younger sister of the

deceased, the reason for the trouble in the house was the alleged affair of the Appellant with a girl named Sonia in the locality. Since the Appellant was living in the vicinity and the girl with whom an affair is alleged, is also stated to be living in the locality, they would have certainly known about it and PW7 would have identified the girl. PW12 Ram Gopal, the tenant and the neighbor PW13 Sh. Maichand Bansal have stated that they never saw any quarrel between the Appellant and the deceased.

4. Relying on *Satvir Singh & Ors. vs. State of Punjab & Anr, 2001 III Apex Decision (Crl.) SC 393; Appasaheb & Anr. vs. State of Maharashtra, 2007 (1) Apex Decision SC 414 and Hans Raj Sharma & Ors. vs. State 2010 (2) JCC 972* it is contended that the demand of an old car does not constitute a demand of dowry in connection with the marriage. Relying on *Badrudin Rukonddim Karpude & Ors. vs. State of Maharashtra 1981 Crl. L.J. 729, Dhanna vs. State of Madhya Pradesh, 1996 Crl. L.J. 3516, State of Haryana vs. Jai Parkash & Ors. 2000 Crl. L.J. 4995(2)*, it is contended that in view of the material improvements in the testimony of the prosecution witnesses, no reliance can be placed on the same. It is contended that that even assuming that there is a demand of dowry soon before the death, then also there is no evidence led by the prosecution to prove that the deceased was treated with cruelty in relation to demand of dowry soon before her death and thus the

Appellant is entitled to be acquitted of the charge for offence punishable under Section 304B IPC. In a case of suicide, it is the duty of the prosecution to prove beyond reasonable doubt that the accused instigated the deceased to commit suicide. Reference is made to *Manik Datta vs. State of Tripura, II (1999) DMC 627* to contend that the presumption under Section 113B Evidence Act does not take away the initial burden of the prosecution to prove that the cruelty was committed by the Appellant in relation to demand of dowry soon before the death. The injuries on the body of the deceased were simple bruises and no question under Section 313 Cr. P.C has been put to the Appellant to explain as to how the injuries were caused to the deceased and in the absence of any explanation sought from the Appellant, the same cannot be used as an incriminating material against him. Relying on *Gananath Pattnaik vs. State of Orissa, 2002 (2) SCC 619* it is contended that in case the Appellant is acquitted of the charge under Section 304B IPC, then the statements of the deceased to the relations have to be excluded from consideration for offence punishable under Section 498A IPC. The said statements are admissible only by virtue of Section 32(1) of the Evidence Act and as for the offence under Section 498A IPC the circumstances leading to the death are not required to be considered, the statement of the family

members are inadmissible being hearsay evidence. It is, thus, prayed that the appeal be allowed and the Appellant be acquitted of the charges framed.

5. Per contra, learned APP for the State contends that the testimony of PW1 and PW2 clearly makes out that the Appellant demanded dowry from the deceased to be got from her family and for non-fulfillment thereof, treated her with cruelty. There is no improvement in the statement of the prosecution witnesses and thus the decisions relied by the learned counsel for the Appellant have no applicability. There is clear evidence of not only continuous torture and harassment for non-fulfillment of dowry but the post-mortem report also shows injuries on the head of the deceased which are ante-mortem in nature which show that the deceased was subjected to physical cruelty before she died due to hanging. In the absence of the cross-examination of PW9 Dr. K.L. Sharma, his testimony has gone unchallenged. The Appellant and his family deliberately reported the death of the deceased belatedly to her family. As per the post-mortem report, the time of death could be between 10 p.m. to 11 p.m. on the 9<sup>th</sup> September, 1999. As per the testimony of PW12 who is a tenant living on the upper floor, he heard the noise on the ground floor at around 2:30 to 3:00 a.m. on the 10<sup>th</sup> September, 1999 and when he came down, he noticed the dead body lying on the bed. As per PW13, the neighbour, he heard the noise at 3:00 a.m. and when he came,

the body was kept on the floor. Parents were informed only at 4:00 a.m. though they were living in the same locality, whereas the deceased died sometime between 10:00 p.m. to 11:00 p.m. on the earlier night. When the parents reached the spot of the incident, no hanging material was recovered and the saree was wrapped around the body of the deceased and thus it could not have been used for hanging. The deceased could not have suffered injuries while hanging herself, as below the fan was the bed. Moreover, the conduct of the family to mislead the parents that she died while sleeping is also relevant under Section 8 of the Evidence Act. The statement of PW4, the brother also corroborates the fact that there was a continuous demand of dowry. Testimony of this witness cannot be excluded as hearsay in view of the decision of the Hon'ble Supreme Court in *Balram Prasad Aggarwal vs. State of Bihar & Ors.* 1997 (9) SCC 338.

6. As per the learned APP, the demand of a car or money in lieu thereof is a demand for dowry in relation to the marriage as held by the Hon'ble Supreme Court in *Pawan Kumar & Ors. vs. State of Haryana* 1998 (3) SCC 309, *Bansi Lal vs. State of Haryana*, MANU/SC/0051/2011. Reliance is placed on *Uday Chakarborty vs. State of West Bengal*, AIR 2010 SC 3506 to contend that the period of two years of marriage is also considered to be a short period and the entire period is relevant for determining the issue of cruelty meted out

to the deceased and also the fact that the family members can hardly be blamed for not lodging an elaborate complaint at the time of death of their dear daughter as at that time, they are suffering from pain and agony. Relying on *Devilal vs. State of Rajasthan, 2007 (14) SCC 176*, it is contended that the wordings used by the witnesses need not be in consonance with the section of a statute and it is required to be found out as to whether the evidence brought on record satisfies the ingredients of the offence. If the evidence proves continuous harassment or cruelty meted to the deceased on the ground of not getting sufficient dowry, then there is no necessity to prove a particular demand. Relying on *Devinder Singh vs. State of Punjab, 2005 (12) SCC 104* it is contended that as the deceased, who was the best person to speak about the demand, was no more so the only remaining evidence can be of the parents which are to be believed by the Court for proving the demand of dowry. In the present case, there was a demand one week prior to the death and in view of Section 113B of the Evidence Act, the Court is duty bound to raise the presumption that the Appellant caused the dowry death of the deceased. It is then for the accused to prove the fact that there was no demand of dowry and no cruelty in relation thereto was meted out. It is thus prayed that the appeal be dismissed being devoid of any merit.

7. I have heard learned counsel for the parties and perused the record. As per the testimony of PW6, the mother of the deceased, after three and a half months of the marriage, the Appellant and his family members started harassing her daughter and whenever the sister-in-law used to visit the matrimonial home, she used to harass her. When her daughter visited her house after about three and a half months of the marriage, she weepingly stated to her that the Appellant had asked her to bring ₹1,10,000/- for purchasing an old Maruti car. This demand was repeated when the deceased came with the Appellant to her house after a week and the deceased also stated that in case the demand was not met, the accused persons would continue to harass and maltreat her. Not only this, the Appellant even threatened her daughter that since he was employed in the court, her family could not cause any harm to him even if he did something with the deceased. The only improvement brought out as noted during confrontation of the witness by the counsel for the Appellant is that in her statement to the S.D.M. Ex. PW6/A and under Section 161 Cr. P.C. Ex. PW6/DX this witness has not stated that the Appellant was demanding ₹1,10,000 to purchase a car but has stated since the Appellant wanted to purchase an old car, the deceased should get the money for the car. Thus, non-mentioning the amount of ₹1,10,000/- is not a material improvement to discard the testimony of this witness. Similarly,

PW1, the father of the deceased has also stated that he had married his daughter to the Appellant and after 4-5 months of the marriage, when he purchased an adjoining house in the same locality where the Appellant along with the deceased was residing, his daughter Santosh started making complaints to him that the Appellant and her mother-in-law were making a demand for a car and whenever her sister-in-law came to the matrimonial house, there was a quarrel between her and the other members of the matrimonial family. His daughter had told him that the Appellant had seen an old white Maruti car worth ₹1,10,000/- and he wanted to purchase the same and asked his daughter to bring the said amount from him. As PW1 could not satisfy the said demand, she was taunted. About one week prior to the death, his daughter had telephoned him that he should immediately come to her house along with the money but before the talk could be completed, the telephone was disconnected. Thereafter, the Appellant rang him up and asked him if he was at his shop. On reaching the shop along with his brother-in-law, he stated that his daughter had telephoned him just out of fun and also asked to suggest some house in his vicinity which they wanted to purchase. PW1 gave addresses of one or two houses and on seeing those houses, the Appellant and his brother-in-law left. On 10<sup>th</sup> September, 1999 at about 4:00 a.m., he received the message of death of his daughter. Even in the statement

of this witness, there is no material improvement as during confrontation, it is found that he had stated about the demand of an old car in his statement to the S.D.M. also.

In *Uday Chakraborty & Ors.(supra)* the Hon'ble Supreme Court held that:

“The mere fact that “Chuktiparta” does not contain some items of dowry which have been referred by PW-2 in his statement given in the Court, would not give any advantage to the appellants, in the facts of the present case. The father of the girl who lodged the complaint, can hardly be blamed for not lodging an elaborate and specific complaint at that time, as it was a tragic moment for him being the period immediately after the death of his daughter. That time was of pain and agony for him and the accused cannot take any advantage of this submission or fact, as the subsequent statements of different witnesses have fairly established on record that she was tortured and harassed for satisfying the demand of dowry”.

8. The testimonies of PW1 and PW6 show that there is a consistent and persistent demand of car or money for purchasing the same. In *Pawan Kumar & Ors.(supra)* it was held:

“The offence alleged against the appellants is under Section 304-B IPC which makes “demand of dowry” itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to “demand of dowry”, it refers to the demand of property or valuable security as referred to in the definition of “dowry” under the 1961 Act. It was argued on behalf of the

appellants that mere demand of scooter or fridge would not be a demand for dowry. We find from the evidence on record that within a few days after the marriage, the deceased was tortured, maltreated and harassed for not bringing the aforesaid articles in marriage. Hence the demand is in connection with the marriage. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the 1961 Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word “agreement” referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that appellant seeks, that conviction can only be if there is agreement for dowry is misconceived. This would be contrary to the mandate and object of the Act. “Dowry” definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry.”

9. In *Bansi Lal (supra)* the Hon’ble Supreme Court held that :

“14. The demand of scooter had been consistent and persistent as Shyam Lal(PW4) and Gulshan (PW5) had specifically deposed that the demand was only in respect of scooter and nothing else. Had this allegation be false, the said witnesses could also mention other articles purported to have been demanded by the Appellant or his other family members. Therefore, the veracity of the evidence of these two witnesses on this issue cannot be doubted. Both the witnesses had been subject to long cross examination at the behest of the Appellant, however, nothing

could be elicited from them to the extent that the allegations made by the prosecution could be false.”

10. I find no merit in the contention of learned counsel for the Appellant that there is no evidence on record that the deceased was treated with cruelty in relation to demand of dowry. In this regard, the testimony of PW6 is relevant. Though the testimony of PW6 has been reproduced earlier, but to show that the deceased had been treated with cruelty in relation to dowry, the testimony of PW6 is required to be reproduced again. She has stated that after about three and a half months of the marriage of her daughter, she visited their house and told her that her husband had asked her to bring Rupees One Lakh Ten Thousand for purchasing an old car and she replied to her that it would not be possible for them to meet the demand of the accused persons as they had recently spent about Rupees four lakhs on the marriage. A week thereafter, again her daughter came to her house along with the Appellant and even on that visit she asked her mother to meet the demand of her husband and give her Rupees One Lakh Ten Thousand for purchasing an old Maruti car and she also said that if his demand would not be met, the accused persons would continue to harass and maltreat her. Not only this, four days prior to the death, her daughter was threatened by the Appellant that he was employed

in the Court and no harm can be caused to him even if something happens to the daughter.

11. Besides the statement of PW6, there is one more piece of incriminating evidence in the form of injuries noted by PW9 Dr. T.L. Sharma who observed “subdural haematoma over upper surface of both cerebral hemispheres” on the scalp of the deceased during post mortem. According to him, head injuries were caused by blunt force impact and were ante-mortem in nature. I find force in the contention of learned counsel for the State that these injuries on the head of the deceased over the upper surface of both cerebral hemispheres were caused due to blunt force impact as a result of torture committed on the deceased. The first witness outside the matrimonial family is PW12 who saw the body was lying on the bed at around 2:30-3:00 a.m. This injury could not have been caused to the deceased while hanging herself. Furthermore, from the spot no hanging material has been found. In this context, the time of death given by the post-mortem doctor that death was caused between 10 p.m. to 11 p.m. on 9<sup>th</sup> September, 1999, assumes importance. Section 106 of the Evidence Act lays a clear onus on the Appellant to explain this injury which was in his knowledge because the same was caused in the wee hours of the night in the bedroom of the Appellant when nobody else would be there. In

*Prabhudayal vs. State of Maharashtra 1993(3) SCC 573* which was also a case of dowry death, the Hon'ble Supreme Court held:

“26.Homicidal death occurred of Sangita while she was in their custody. The incident with its gravity and extent cannot in any manner go unnoticed. As such the accused persons were duty bound to offer plausible explanation. Their action was concerted, well thought out, well planned”.

Also in *Trimukh Maroti Kirkan vs. State of Maharashtra 2006 (10) SCC 681*, the Hon'ble Supreme Court held:

**“14.** If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. [See *Stirland v. Director of Public Prosecutions 1944 AC 315*, quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh, (2003) 11 SCC 271*] The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

**15.** Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the

crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

In the present case, the Appellant has not discharged this onus. Thus, an adverse inference has to be drawn against the Appellant qua this circumstance.

12. Learned counsel for the Appellant had strenuously argued that the factum of injury on the head of the deceased cannot be used against the Appellant as incriminating evidence, since in his examination under Section 313 Cr. P.C. it has not been specifically put to him as to how the injury was caused to the deceased. It would be relevant to re-produce question no. 14 put to the Appellant in his examination under Section 313 Cr. P.C. and the reply given by him: -

**“Q.14** It is further in evidence against you that the post-mortem on the dead body of the deceased was gone done at Subzi Mandi Mortuary around 11.15 p.m. on 11.09.1999 and as per post mortem report Ex. PW9/A the deceased Smt. Santosh was carrying a five months old pregnancy at the time of her death and time since death is stated to be 36 hours. Her death is opined to had taken place between 9-10 p.m. on 10.09.1999 and as per opinion of the doctor the cause of her death was asphyxia consequent ligature hanging. It is also mentioned in the post mortem report Ex.PW9/A that there were mark of injuries found present on her person at the time of post mortem and a haemotoma was also noticed on her scalp at that time. What you have to say?

Ans. It is correct that the deceased was carrying a five months old pregnancy at the time of her death and I am not aware about the rest of the facts mentioned in the post mortem report Ex. PW9/A.”

13. Under Section 313 Cr.P.C., only an incriminating circumstance has to be put to the witness to ask him to explain about the same which has been clearly put to the Appellant in this question. However, the Appellant has failed to give any answer to the same much less a plausible explanation. As held above, the burden was on the Appellant under Section 106 Evidence Act to explain the injury on the head of the deceased and it has also been specifically put to him under Section 313 Cr. P.C. The Appellant has not discharged his burden. A question under Section 313 Cr. P.C. has to be simple and straight and not like a cross-examination. In *State of Himachal Pradesh vs. Wazir Chand & Ors. 1978(1) SCC 130* their Lordships considered the value to be attached to the statement made by the accused u/s 342 Cr. P.C., 1898(now Section 313 Cr. P.C. 1973) and held:

“18. In the absence of any witness to the occurrence and the deceased died giving only that part of the occurrence which implicates the accused, we are left with the statements of Accused 1 made by him under Section 342 Cr. PC about the origin of the occurrence. This would raise the question as to what value should be attached to the statement made by the accused under Section 342 Cr. PC, 1898. It is obligatory on the Court to question the accused on the circumstances appearing against him in evidence so as to enable him to explain the same. Sub-section (3) provides that the answers given by the accused may be taken into consideration in such inquiry or trial, etc. In order to give an opportunity to the accused to explain the circumstances appearing

against him in evidence, the Court under Section 342 Cr. PC was required at the close of the trial to question the accused on such circumstances. The Court had to guard against cross-examination of the accused. The accused was to be questioned with regard to the circumstances appearing against him in evidence and not the inference that flows from the circumstances. The answers given by the accused have to be taken into consideration.”

14. Thus, from the evidence on record, the prosecution has proved that the deceased was treated with cruelty in relation to demand of dowry soon before her death. Section 113 B of the Evidence Act mandates the Court to raise the statutory presumption in a case where it is shown that soon before her death such woman has been subjected to cruelty or harassment for or in connection with any demand of dowry. Thus, once the initial burden of showing and not proving beyond reasonable doubt that the woman was subject to cruelty or harassment for or in connection with any demand of dowry soon before her death is discharged by the prosecution, the Court is duty bound to presume that such person has caused a dowry death. The Hon’ble Supreme Court in *Prem Kumar vs. State of Rajasthan 2009 (3) SCC 726* held: -

“Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 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.

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. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of '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. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the aforesaid presumption operates. Evidence in that regard has to be led by the prosecution. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no straitjacket 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 under Section 113-B of the Evidence Act."

15. In *Satvir Singh (supra)*, after 4-5 months of the marriage, the deceased was ill-treated on account of insufficient dowry, but besides this there was no other evidence regarding any other ill-treatment relating to dowry meted out to the deceased thereafter. A payment of ₹20,000/- was made however, it was not testified that the said amount was paid as a part of dowry or in connection with the marriage. The Hon'ble Supreme Court noted that two important events had happened in the family during the said long interregnum of three years i.e. birth of two sons and this demand of ₹20,000/- was made after five months after the birth of the second son. Thus, the Hon'ble Supreme Court held since there was no case that the deceased was subjected to any ill-treatment in connection with demand for dowry on any day after the demand

way-back in early 1993, all amounts paid by the in-law of the husband of a woman cannot become dowry. The Hon'ble Supreme Court held that the customary payments in connection with birth of child or further ceremony which are prevalent in different societies, cannot be enveloped within the ambit of dowry.

16. In *Appasaheb (supra)* the Hon'ble Supreme Court held that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. In the said decision, the death of the deceased took place after two and a half years of the marriage and as per the prosecution, the sum of ₹5,000/- and some gold ornaments were given at the time of marriage and the deceased was treated well for six months but, thereafter the accused started asking her to bring ₹1,000/- to ₹1,200/- from her to meet the household expenses and also for purchasing manure.

17. The reliance of the learned counsels on *Satvir Singh (Supra)* and *Appasaheb (Supra)* is misconceived. In the present case, there is one factor which clearly distinguishes it from the above-noted cases that there was no paucity of funds with the Appellant and this demand of ₹1,10,000/- was not because of financial constraint. PW1 in his testimony clearly testified that a

week prior to the death of her daughter, a phone call was made by the Appellant who stated that they would be coming to his shop and thereafter, he along with his brother-in-law came to the shop and asked PW1 to suggest some house in his vicinity which they wanted to purchase. After seeing one or two houses, they went away. The Appellant had even thought of purchasing a house and thus the demand of Rupees One Lakh Ten Thousand to purchase the old Maruti car was certainly not due to any financial constraint.

18. From the evidence adduced by the prosecution, it is proved beyond reasonable doubt that the Appellant has committed the offences punishable under Section 304B and 498A IPC. I find no infirmity in the impugned judgment of conviction and sentence.

19. The appeal is, accordingly, dismissed. The bail bond and the surety bond of the Appellant are cancelled. The Appellant be taken into custody to undergo the remaining sentence.

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 04, 2011**  
**dk**