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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.291/1995

The State of Maharashtra.

...Appellant..

(Org.complainant)

Versus

1] Appasaheb Balajee Parkhe,
age 22 yrs.,

2] Radhakrushna Balajee Parkhe,
age 27 yrs.,

3] Hausabai Balajee Parkhe,
age 65 yrs.,

4] Balajee Bhaurao Parkhe,
age 70 yrs.,

All r/o Pimpri-Nirmal,
Tq.Shrirampur Dist.Ahmednagar.

...Respondents...

(Org.accused)

.....

Shri S.G. Nandedkar, APP for appellant - State.

Shri N.N. Shinde, Advocate for respondent nos.1 to 4.

.....

**CORAM: S.S. SHINDE &
A.M. BADAR, JJ.**

JUDGMENT RESERVED ON: 08.01.2015

JUDGMENT PRONOUNCED ON: 15.01.2015

JUDGMENT (Per A.M. Badar, J.) :

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1] By this appeal under Section 378 (1)(iii) of the Code of Criminal Procedure, 1973, the appellant – State is challenging the judgment and order dated 29.4.1995 passed by the learned Additional Sessions Judge, Ahmednagar, in Sessions Case No.254/1994 thereby acquitting respondents / accused of the offences punishable u/ss.302, 498-A and 304-B r/w 34 of the Indian Penal Code.

2] Facts leading to the prosecution of respondents – accused can be summarized thus:

[a] Informant PW1 Bhagwat Waman Gaikwad is resident of village Ashvi in Taluka Sangamner of District Ahmednagar. His daughter Shakuntala married respondent / accused no.1 Appasaheb Balajee Parkhe on 20.5.1994 at village Ashvi. Respondent / accused no.2 – Radhakrushna is brother, respondent / accused no.3 Hausabai is mother whereas respondent / accused no.4 – Balajee is father of Appasaheb Parkhe. Marriage of Shakuntala with respondent / accused no.1

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was an arranged marriage settled with the help of Indubai Gaikwad and her husband Prabhakar Gaikwad, who is cousin of informant Bhagwat Gaikwad. It is the prosecution case that prior to marriage at the time of *Haldi* ceremony, Balajee, Nivrutti and Ratan Parkhe demanded dowry of Rs.10,000/-, but marriage was solemnized on assurance of informant Bhagwat Gaikwad that the dowry would be paid after the marriage. Then on 20.5.1994 itself, Shakuntala accompanied by her aunt Jamuna Mahadev Bhingardive (sister of informant Bhagwat) and two other girls, went to her matrimonial house at village Nirmal Pimpri. All accused were residing jointly at that place. Three days after marriage, informant Bhagwat, his nephew Bhaskar, son Ashok and brother Prabhakar went to the place of accused persons at village Nirmal Pimpri for fetching Shakuntala as per custom. However, they came to know that prior to their reaching Nirmal Pimpri, Jamuna Bhingardive had taken Shakuntala to her parental place at

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village Ashwi. Hence, informant Bhagwat and his relatives took a night halt at the house of accused persons at village Nirmal Pimpri. On the next day morning, they returned to their house at village Ashvi. During their stay at village Nirmal Pimpri, accused persons and their relatives demanded amount of Rs.10,000/- which was settled as dowry. Informant Bhagwat assured that the amount would be paid after arranging the same. On return to village Ashvi, Shakuntala told informant father Bhagwat told that if amount of dowry settled at Rs.10,000/- is not paid, accused persons would kill her. On 24.5.1994 at about 4-00 p.m., Nivrutti Parkhe-brother in-law of Shakuntala came to fetch her. At that time, he asked whether the amount of dowry is arranged or not. Informant Bhagwat again assured that after making arrangements for the same, money would be paid. Then Shakuntala accompanied her brother-in-law Nivrutti went to her matrimonial house at Nirmal Pimpri.

[b] According to the prosecution case,

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incident in question happened in the night intervening between 28.5.1994 and 29.5.1994 at the house of accused persons at Nirmal Pimpri. In the morning of 29.5.1994, Bhagwat Parakhe and Tarachand Padghalmal came to the place of informant Bhagwat and told him that Shakuntala is ill. Hence, Shantabai – mother of Shakuntala accompanied by Indubai rushed to the matrimonial house of Shakuntala. Informant Bhagwat and his relatives followed them. On reaching house of accused persons, parents of Shakuntala found her dead. They were told that Shakuntala died at about 10 p.m. on 28.5.1994. Informant Bhagwat suspected that as amount of dowry settled at Rs.10,000/- was not paid, accused persons committed her murder by administering poison to her.

[c] Death of Shakuntala Appasaheb Parkhe at her matrimonial house at village Nirmal Pimpri had resulted in registration of Accidental Death Case No.16/1994 u/s 174 of the Code of Criminal Procedure, 1973 on the basis of report (Exh.25)

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lodged by Changdeo Sadashiv Nirmal. During the course of inquiry of that accidental death case, PW4 Digambar Dhatonde, Head Constable, took inquest notes (Exh.12) on 29.5.1994 itself and dead body of Shakuntala was dispatched to Pravara Medical Hospital, Loni for conducting *post mortem* examination. Then PW4 Digambar Dhatonde, Police Head Constable, recorded spot panchanama (Exh.13) on 29.5.1994. He seized clothes of deceased Shakuntala *vide* seizure panchanama (Exh.14) on 29.5.1994 itself.

[d] On 29.5.1994 at about 10-30 p.m., informant Bhagwat Gaikwad lodged report (Exh.27) to Police Station, Loni, alleging that his daughter Shakuntala is done to death within few days of her marriage by accused persons. On the basis of this report, offence u/s 302 r/w 34 of the Indian Penal Code came to be registered at Police Station, Loni, and wheels of investigation were set in motion. During the course of investigation, PW6 Liladhar Narayan Nemade, PSI / Investigating Officer recorded

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statements of witnesses, obtained report of *post mortem* examination. He sent seized clothes and viscera of deceased Shakuntala Appasaheb Parkhe for chemical analysis and obtained the report thereof. Accused persons were arrested. On completion of investigation, charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class, Shrirampur.

3] As the offence punishable u/s 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Shrirampur, committed the case to Sessions Court, Ahmednagar.

4] Initially charge for the offence punishable u/ss. 302, 498-A r/w 34 of the Indian Penal Code came to be framed against accused persons. Subsequently, additional charge for the offence punishable u/s 304-B r/w 34 of the Indian Penal Code came to be framed against accused / respondents. Accused pleaded not guilty and claimed trial.

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5] In order to bring home the guilt to accused persons, the prosecution has examined in all six witnesses. Informant father Bhagwat Waman Gaikwad is examined as PW1 at Exhibit 15. Report lodged by him on 29.5.1994 is at Exhibit 27. Shantabai Bhagwat Gaikwad — mother of the deceased is examined as PW2 at Exhibit 28. Dr.Shrikant Subhash Asawa, Medical Officer, Pravara Medical College and Hospital, Loni, is examined as PW3 at Exhibit 31. Exhibit 32 is the report of *post mortem* examination of dead body of Shakuntala Appasaheb Parkhe. Digambar Damodar Dhatonde, Head Constable, who enquired the accidental death case is examined as PW4 at Exhibit 33. Balasaheb Namdeo Gaikwad — an alleged independent witness came to be examined as PW5 at Exhibit 34. He claims to be the Leader of Republican Party of India. Investigating Officer — Liladhar Narayan Nemade, Police Sub Inspector came to be examined as PW6 at Exhibit 35. Exhibits 36 and 37 are reports of chemical analysis of clothes and viscera of the deceased.

6] The learned trial Court on conclusion of

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evidence of the prosecution recorded statement of accused persons u/s 313 of the Code of Criminal Procedure and accorded opportunity of entering upon the defence to them. However, accused persons did not enter upon defence. Defence of accused / respondents was that of total denial. According to them, they are falsely implicated in the crime in question due to political rivalry. As their relative contested election against Amrutlal Gandhi, Sarpanch, Balasaheb Gaikwad and said Amrutlal instigated the informant to lodge the report.

7] After hearing the learned APP as well as the learned defence counsel, by the impugned judgment And order dated 29.4.1995, the learned trial Court came to the conclusion that there is no sufficient evidence to connect accused persons to the crime in question and, therefore, all of them were acquitted of the offences punishable u/ss.302, 498-A and 304-B r/w 34 of the Indian Penal Code. This judgment and order of acquittal is impugned in the present appeal.

7] Heard the learned APP appearing for the

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appellant - State. He vehemently argued that the prosecution has proved demand of dowry by accused persons for and in connection with marriage of respondent no.1 / accused Appasaheb with deceased Shakuntala. Within eight days of marriage with accused no.1 - Appasaheb, Shakuntala died at her matrimonial house and, therefore, by circumstantial evidence, the prosecution has proved an offence punishable u/s 302 of the Indian Penal Code. The learned APP further argued that evidence of PW1 Bhagwat Gaikwad and his wife PW2 Shantabai is sufficient to come to the conclusion that accused persons have subjected deceased Shakuntala to cruelty soon before her death, which was not in normal circumstances and as such in the alternative the prosecution is successful in proving the offence punishable u/s 304-B r/w 34 of the Indian Penal Code. The learned APP further argued that evidence of PW1 Bhagwat, PW2 Shantabai and PW5 Balasaheb Gaikwad is sufficient to come to the conclusion that the deceased was subjected to cruelty by accused persons.

8] Per contra, according to the learned defence counsel, this is a case where there is no evidence to

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connect accused persons with the crime in question. The marriage in question was an arranged marriage settled through Indubai who is near relative of the informant. The learned defence counsel further argued that the prosecution has not examined material witnesses such as Indubai, Jamunabai and Padma. Evidence of the prosecution is inconsistent and, therefore, the learned trial Court is justified in acquitting the accused persons of the charges leveled against them.

9] We have carefully gone through the record. As we have noted that the learned trial Court has not formed the relevant points which arise for determination in the present case, we propose to frame and answer those. Following points arise for our consideration and determination and we record our findings thereon for the reasons to follow :-

POINTS

FINDINGS

1] Whether the prosecution proves that in the night intervening between 28.5.1994 and 29.5.1994, Shakuntala Appasaheb Parkhe died homicidal death ?

No.

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2] Whether death of Shakuntala Appasaheb Parkhe occurred otherwise than under normal circumstances within seven years of her marriage to accused no.1 – Appasaheb Balajee Parkhe ?

Yes.

3] Whether it is proved by the prosecution that accused persons or any of them in furtherance to their common intention committed murder of Shakuntala w/o Appasaheb Parkhe in the night intervening between 28.5.1994 and 29.5.1994 at their house at village Nirmal Pimpri by administering poisonous substance to her ?

No.

4] Whether it is proved by the prosecution that accused persons or any of them in furtherance of their common intention harassed the deceased Shakuntala Appasaheb Parkhe with a view to coerce her or any person related to her to meet their unlawful demand of dowry of Rs.10,000/- ?

No.

10] It is not in dispute that respondent / accused no.1 Appasaheb married Shakuntala on 20.5.1994 and said Shakuntala Appasaheb Parkhe died at the residential house of accused persons at village Nirmal Pimpri in the night intervening between 28.5.1994 and 29.5.1994. Undisputedly, accused no.2 – Radhakrushna is brother, accused no.3 Hausabai is mother whereas accused no.4 –

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Balajee is father of accused no.1 — Appasaheb Parkhe. Inquest panchanama (Exh.12) dated 29.5.1994, spot panchanama at Exhibit 13, seizure panchanama at Exhibit 14 and report of accidental death case at Exhibit 25 recorded on 29.5.1994 are the documents which are not disputed by the defence. Perusal of inquest panchanama (Exh.12) shows that froth was oozing from the nose and pungent smell was coming from the dead body. Evidence of autopsy surgeon PW3 Dr.Shrikant Asawa shows that after conducting *post mortem* examination of dead body of Shakuntala Parkhe, he came to the conclusion that her death was due to insecticide poison. *Post mortem* report at Exhibit 32 is corroborating version of PW3 Dr.Shrikant Asawa that Shakuntala died due to insecticide poisoning and there was smell of kerosene in the stomach contents of the dead body. As seen from the evidence of PW 6 Liladhar Nemade, Investigating Officer, viscera as well as clothes worn by deceased Shakuntala at the time of her death seized *vide* seizure panchanama (Exh.14) were sent for chemical analysis. Chemical Analyser's report at Exhibits 36 and 37 shows that organochloro insecticide, Endosalfan (Thiodan) was detected in the viscera of the

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dead body and the level of organochloro insecticide detected in viscera was of the same order as found in fatal poisoning cases involving Endosalfan. Similarly, Endosalfan (Thiodan) came to be detected on clothes seized from the dead body of Shakuntala Parkhe. This overwhelming evidence is sufficient to come to the conclusion that death of Shakuntala Appasaheb Parkhe occurring in the night intervening between 28.5.1994 and 29.5.1994 was not natural and the same is occurring certainly otherwise than in normal circumstances. The death of Shakuntala is within eight days of her marriage. Now let us examine whether the prosecution has proved that the deceased Shakuntala died homicidal death caused by accused persons or any of them by administering poison to her.

11] So far as the charge for the offence punishable u/s 302 r/w 34 of the Indian Penal Code is concerned, case of the prosecution is totally based on circumstantial evidence. The law relating to appreciation of circumstantial evidence is crystallized by catena of decisions by the Hon'ble Supreme Court. In

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the matter of *Prithviraj V/s. State of Rajasthan* reported in **2004 Cri. L.J., 2190**, the Rajasthan High Court has held thus in paragraph Nos. 21 to 27 :-

21. "Circumstantial evidence may be defined as any fact (sometimes called an 'evidentiary fact'. 'factum probans' or 'fact relevant to the issue') from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a 'principal fact' or 'factum probandum'.)

22. Circumstantial evidence is that which relates to a service of other facts than the fact in issue; but which by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion. It is one of the established principles of law that a witness may lie but not the circumstances. However, the Court must adopt a cautious approach while basing its conviction purely on circumstantial evidence. As evidence there is no difference between direct and circumstantial evidence. The only difference is in that as proof, the former directly establishes the commission of the offence whereas the latter does so by placing circumstances which lead to irresistible inference of guilt.

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23. In reference to cases where there is no direct evidence and the decision has to rest on circumstantial evidence, the Hon'ble Supreme Court in a line of decisions has consistently held that such evidence must satisfy the following tests :-

1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused ;

3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

24. In this connection the decisions of the

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Hon'ble Supreme Court in *Ashok Kumar V. State of M.P* (AIR 1989 SC 1890): (1989 Cri.L.J.2124), *Padala Veera V. State of A.P* (AIR 1990 SC.79), (1990 Cri. L.J 605), *Josheph V. State of Kerala* (2000) 5 SCC 197, : (2000 Cri LJ 2467), and *Kuldeep V. State of Rajasthan*, (2000) 5 SCC 7, : (2001 Cri LJ 479) may be seen.

25. It is also well settled that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and are inconsistent with his innocence.

26. It may be stated here that while appreciating the circumstantial evidence in criminal cases, strict scrutiny of each of the facts placed by circumstantial evidence and their cumulative effect has to be taken into consideration and if they are of such nature as to be incompatible with the innocence of the accused then only conviction can follow."

12] Keeping in mind these principles, if the evidence adduced by the prosecution in the case in hand is considered, then at the outset, it needs to be put on record that the prosecution has utterly failed to

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establish chain of circumstances so complete that there is no room to any other hypothesis than guilt of respondents – accused for the offence punishable u/s 302 of the Indian Penal Code. In fact, the circumstantial evidence in the instant case is totally unsatisfactory for holding respondents / accused guilty of the serious offence of murder. The learned APP could not point out any circumstances to show that those were none else but accused persons who had caused death of Shakuntala by administering poison to her. We are alive to the provisions of Section 106 of the Indian Evidence Act, 1872, which prescribe that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Taking aid of this provision, one may argue that as Shakuntala was in custody of respondents / accused persons and as she died in their house because of poisoning, it is for respondents to establish that how she died. However, purport of Section 106 of the Indian Evidence Act, 1872 is not to cast any burden on accused persons to prove that no crime was committed by proving the facts within their knowledge. The onus to prove commission of offence by accused

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persons is certainly on the prosecution. Section 106 of the Indian Evidence Act, 1872, does not affect the onus of proving the guilt of accused persons. This Section applies where the prosecution has succeeded in proving facts from which reasonable inference can be drawn regarding existence of certain other facts. In such eventuality, accused persons by virtue of their special knowledge regarding such facts, have to offer explanation which may drive the Court to draw a different inference. Let us, therefore, examine whether the prosecution has proved some facts from which the reasonable inference of commission of murder of Shakuntala by respondents / accused can be drawn.

13] It is in evidence of PW1 Bhagwat Gaikwad that on 24.5.1994 accompanied by her brother-in-law, Shakuntala went to her matrimonial house at village Nirmal Pimpri. Congruous evidence of PW1 Bhagwat and PW2 Shantabai — parents of the deceased shows that in the morning hours of 29.5.1994, Bhagwat Parkhe and Tarachand came to their place to inform that Shakuntala is suffering from pain in stomach. When these witnesses rushed to her matrimonial

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house, they saw Shakuntala in dead condition. At this juncture, it is worthwhile to note that the distance between village Ashvi and village Nirmal Pimpri is just 20 Kms. In presence of PW 1 Bhagwat and PW2 Shantabai, PW4 Digambar Dhatonde, Head Constable took inquest notes. Exhibit 12 is the inquest memorandum. This inquest memorandum shows presence of both parents of deceased Shakuntala while recording the same. Scrutiny of inquest memorandum at Exhibit 12 shows that there were no injuries on the dead body. *Mangalsutra* worn by deceased Shakuntala was intact so also 13 bangles worn by her in each hand were intact. *Post mortem* report at Exhibit 32 shows that deceased Shakuntala was of 18 years of age. If really poison was administered to her forcefully, then her dead body ought to have reflected some signs of violence and injuries. It is expected of an adult person to resist in case of forceful administration of poison and in that process sustaining injuries is a normal phenomenon. In this backdrop, non-finding of any injury on dead body of Shakuntala is a circumstance which cast a shadow of doubt on the prosecution case. Similarly, if really poison was forcefully administered to deceased

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Shakuntala, then during the course of resistance by her, there was every possibility of breaking of glass bangles worn by her, which were numbering 13 in each hand as also *Mangalsutra* worn by her. The fact that her *Mangalsutra* and all her bangles were intact also cast a shadow of doubt on the prosecution case that deceased Shakuntala was murdered by respondents / accused persons by administering poison to her.

14] On 29.5.1994 itself after recording inquest memorandum, spot panchanama (Exh.13) came to be recorded by PW4 Digambar Dhatonde Head Constable. Perusal of this spot panchanama shows that all household articles in the house of respondents / accused persons were intact and kept in orderly manner. No sign of scuffle was found on the spot where the incident of alleged forceful administration of poison had happened. In the normal course, while commission of such offence against an adult lady, the spot would have shown some signs of violence because of ensuing scuffle due to resistance offered. However, nothing suspicious was found on the spot of the incident.

15] Apart from this, there is no iota of evidence to infer any circumstance which leads to a conclusion that deceased Shakuntala was done to death by respondents / accused persons or by any of them by poisoning her. As such in the instant case, respondents / accused are not expected to offer any explanation by virtue of their special knowledge. Therefore, we find no infirmity in the finding of the learned trial Court in acquitting respondents / accused of the charge for the offence punishable u/s 302 r/w 34 of the Indian Penal Code.

16] Now let us examine whether the prosecution is successful in bringing home the guilt of respondents / accused for the offences punishable u/s 304-B and 498-A r/w 34 of the Indian Penal Code. According to the prosecution case, deceased Shakuntala was subjected to cruelty on account of agreed dowry amounting to Rs.10,000/- by her parents. Explanation to Section 304-B of the Indian Penal Code provides that the term "dowry" used therein shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. Hence, it is

apposite to reproduce Section 2 of the said Act of 1961, which reads thus:

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

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or *mahr* in the case of persons to whom the Muslim Personal Law (Shariat) applies."

17] Perusal of this Section goes to show that the amount or thing demanded must have a nexus with marriage. The demand of dowry must bear connection with the marriage. Section 304-B of the Indian Penal Code postulates, in order to attract penal provisions thereof the deceased must be subjected to cruelty or harassment by her husband or relative of her husband. As such, definition of the term "cruelty" also assumes importance. Explanation to Section 498-A of the Indian Penal Code, 1860, defines "cruelty". It would be proper to reproduce

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Section 498-A of the Indian Penal Code as respondents / accused persons are also charged for the offence punishable under that Section. It reads thus:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty – 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 purpose of this section, "cruelty" means–

(a) any willful 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."

18] We have already come to the conclusion that death of Shakuntala Appasaheb Parkhe is within seven years of her marriage and the same occurred in the night

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intervening between 28.5.1994 and 29.5.1994 otherwise than under normal circumstances. Therefore, now let us examine whether the prosecution is successful in proving the offence u/s 304-B r/w 34 of the Indian Penal Code against accused persons or any of them. At this juncture, it needs to be noted that the expression "soon before her death" used in the substantive Sections 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act came to be considered by the Hon'ble Apex Court in *Hiralal V/s State, Government of NCT of Delhi* reported at (2003) 8 SCC 80. Paragraph 8 of the said ruling reads thus:

"8. Section 304-B IPC which deal with dowry death, reads as follows :

304-B. 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.

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Explanation.— For the purpose of this sub-section, "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."

The provision has application when 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. 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 should 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.

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Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B 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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation - For the purposes of this section, "Dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code.

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-08-1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment 'for or in connection with the demand of dowry'. Presumption under Section 113-B is a presumption

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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 the 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."

19] Let us now scrutinize evidence of the prosecution in order to ascertain whether the material on record shows that soon before her death, deceased Shakuntala was subjected to cruelty or harassment by accused persons for and in connection with demand of dowry. If such fact is established, then only a presumption can be drawn that respondents / accused have committed her dowry death. It is then upon respondents / accused to dispel the theory of presumption as envisaged by Section 113-B of the Indian Evidence Act.

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20] At the outset, we will consider whether the prosecution has proved that there was demand of dowry by respondents / accused persons for or in connection with marriage of respondent / accused no.1 Appasaheb with deceased Shakuntala. For this purpose, naturally evidence of her father PW1 Bhagwat and mother PW2 Shantabai assumes importance. It is in evidence of PW1 Bhagwat that in the morning of the day of marriage i.e. on 20.5.1994, there was function of *Haldi* and in that function, persons named Nivrutti, Bhagwat and Raghunath Parkhe demanded an amount of Rs.10,000/-. He further stated that he requested that the marriage be performed. Then on this aspect, PW1 Bhagwat stated that when he accompanied by Bhaskar and Ashok went to the house of respondents / accused on third day of marriage for taking Shakuntala to her parental house, respondents / accused said as to why amount of Rs.10,000/- is not paid. Thereafter, as per version of this witness, when on 24.5.1994, brother-in-law of deceased Shakuntala came to his house for taking Shakuntala back to her matrimonial house, he asked as to why Rs.10,000/- is not paid.

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Thereafter, according to PW1 Bhagwat, when deceased Shakuntala had been to his house on third day of her marriage, she told him to make arrangement for money and further informed him that else there is danger to her life. In a similar fashion, PW2 Shantabai has stated that at the time of *Haldi* function, Nivrutti Parkhe demanded an amount of Rs.10,000/- towards dowry. It is in her evidence that when her daughter Shakuntala came to her house after her marriage, she asked as to why an amount of Rs.10,000/- is not paid and further stated that if the same is not paid, then there will be danger to her life. PW2 Shantabai has further stated in her evidence that when brother-in-law of deceased Shakuntala came to her house for fetching Shakuntala, she asked her about Rs.10,000/-. PW2 Shantabai further stated that she informed her daughter Shakuntala that the amount will be paid lateron. This is what the evidence on record in respect of dowry coming from the mouth of parents of the deceased.

21] Now let us examine whether the evidence so adduced by parents of deceased Shakuntala so far as

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demand of dowry in connection with marriage of Shakuntala with respondent / accused no.1 Appasaheb is reliable, trustworthy and, therefore, deserving acceptance. Cross-examination of PW1 Bhagwat reveals that upon her return to her parental house after marriage, deceased Shakuntala did not tell anything to him. Cross-examination of PW1 Bhagwat reveals financial position of both parties to the marriage. Marriage of deceased Shakuntala with respondent / accused no.1 was an arranged marriage and the same was solemnized after parents and relatives of the deceased ascertained the financial condition of accused persons. Informant PW1 Bhagwat - father of deceased Shakuntala is a labourer by occupation. His cross-examination shows that accused persons are having 3 Acres irrigated and 9 Acres Jirayat land. Elder brothers of respondent / accused no.1 Appasaheb namely Nivrutti and Bhagwat are serving in Maharashtra State Electricity Board whereas his third brother Raghunath is serving as a teacher. As against this, PW1 Bhagwat has admitted in cross-examination that three walls of his house are in dilapidated condition and those are covered by gunny bags. His cross-examination further shows that accused

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persons gave *Mangalsutra*, *Jodwe*, ring and 5/6 valuable sarees to Shakuntala at the time of marriage. It is seen from his evidence that when he got message that his daughter Shakuntala is ill, he was not having fare of S.T. Bus for a journey of 20 Kms. to the house of respondents / accused persons. This financial and social status of both families is very relevant. More over, this marriage with Shakuntala was a second marriage of respondent / accused no.1 Appasaheb. Much substance is, therefore, found in the defence of respondents that as the marriage of respondent no.1 – Appasaheb was a second marriage, there was no demand of dowry. It is extremely improbable that respondents / accused in the teeth of the pitiful economic condition of informant PW1 Bhagwat and on the face of the fact that they were extending all hospitalities to the family of the deceased, would have demanded dowry from them.

22] So far as evidence of PW2 Shantabai – mother of the deceased relating to demand of dowry is concerned, the same is also not found to be trustworthy. Her cross-examination reveals that when there was demand of

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Rs.10,000/-, she was busy in Kumkum ceremony. This implies that the alleged demand was not made in her presence and as such her evidence on this aspect is also not free from doubt. She has stated in her evidence that it was her daughter Shakuntala who stated her about demand of Rs.10,000/- at the time of visit of her brother-in-law. However, on this aspect, PW1 Bhagwat is saying that it was brother-in-law of Shakuntala who asked about payment of Rs.10,000/-. Thus, evidence of the prosecution regarding demand of dowry is totally discrepant, inconsistent and insufficient.

23] On the aspect of demand of dowry, the prosecution has also examined PW5 Balasaheb Gaikwad, a leader of Republican Party of India. However, his entire evidence is coming on record by way of omission. This witness was unable to state as to how and when marriage of Shakuntala with respondent no.1 - Appasaheb was performed. Though he stated that one day prior to the marriage, PW1 Bhagwat came to him and told him that bride-groom party is demanding money and, therefore, he approached the bride-groom party and informed them about

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inability of PW1 Bhagwat to pay the amount, this part of his evidence as proved by PW6 Liladhar Nemade, Investigating Officer is coming on record by way of omission. This witness has not stated these facts initially when his statement was recorded by Police u/s 161 of the Code of Criminal Procedure, 1973. PW5 Balasaheb Gaikwad ventured to state that for this marriage, PW1 Bhagwat has sold his 10 Gunthas of land but again this part of his evidence is by way of omission. In cross-examination, PW5 Balasaheb Gaikwad has candidly admitted that he did not tell accused persons or their relatives that PW1 Bhagwat is unable to pay the amount. Though this witness is stating that when deceased Shakuntala came to her matrimonial house, her parents told him that her husband and his relatives are demanding money, such is not the version of parents of deceased Shakuntala. Neither PW1 Bhagwat nor PW2 Shantabai has stated in their evidence that they disclosed anything about demand of money by accused persons to PW5 Balasaheb Gaikwad. As such evidence of PW5 Balasaheb Gaikwad cannot be relied to infer demand of dowry by accused persons.

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24] It has come on record through evidence of PW1 Bhagwat that on 20.5.1994 after marriage, his daughter Shakuntala went to her matrimonial house accompanied by his sister Jamuna Mahadev Bhingardive as well as two other girls. This is perfectly in tune with the tradition that a bride is accompanied by her near female relatives when she goes to her matrimonial house for the first time. Let us see what happened thereafter. Evidence of PW1 Bhagwat reveals that on the third day of marriage, he accompanied by Bhaskar and Ashok went to matrimonial house of Shakuntala for fetching her. When he reached there, he came to know that his sister Jamunabai Bhingardive was not ready to stay at the house of accused persons and, therefore, she returned to village Ashvi along with Shakuntala. Evidence of PW1 Bhagwat reveals that on that day, they reached the matrimonial house of his daughter which was just 20 Kms. away from his own house; at about 5-00 p.m. As by then, his daughter Shakuntala accompanied by his sister Jamunabai had already left for his house at Ashvi, in normal circumstances, PW1 Bhagwat and his relative would have returned to village Ashvi. This did not happen. On

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the contrary, they enjoyed hospitality offered by accused persons at village Nirmal Pimpri. In that night of 22.5.1994, non-vegetarian food was prepared for PW1 Bhagwat and his relatives by accused persons. A sweet dish was also prepared for them. Chitchatting with accused persons, PW1 Bhagwat and his relatives stayed at the matrimonial house of his daughter and spent that night in the company of accused persons. On the next day i.e. on 23.5.1994 as seen from evidence of PW1 Bhagwat, they had break-fast at the house of accused persons. Then all of them were given a towel and a cap as gift by respondents / accused persons. After enjoying hospitality extended by accused persons, PW1 Bhagwat and his relatives returned to village Ashvi. Evidence of PW2 Shantabai reveals that accused persons had given clothes by way of gift to Jamunabai Bhingardive and two girls who accompanied Shakuntla to their home. This conduct of accused persons is totally incompatible to the guilt. Had they really demanded Rs.10,000/- as dowry from father of a bride-groom, laborer by occupation, they would not have extended such a hospitality to PW1 Bhagwat, his sister Jamunabai and other relatives particularly when

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their demand was allegedly not fulfilled. In this factual background, evidence of the prosecution that an amount of Rs.10,000/- was demanded by accused persons as dowry, does not appear to be reliable and trustworthy.

25] Hence, we are of the considered opinion that in the wake of this evidence, the prosecution has failed to prove that accused persons had demanded an amount of Rs.10,000/- as dowry in connection with marriage of deceased Shakuntala with respondent / accused no.1 Appasaheb.

26] However, let us consider the matter by assuming that there was demand of dowry of Rs.10,000/- for or in connection with marriage of respondent/accused No.1 Appasaheb with deceased Shakuntala. In order to attract penal provisions of Section 304-B of the IPC, the prosecution must prove that Shakuntala was subjected to cruelty or harassment for or in connection with this demand of dowry soon before her unnatural death. Proof of cruelty for or in connection with demand of dowry is *Sine-qua-non* for bringing home the guilt for the offence

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punishable under Section 304-B of the IPC, 1860. As such, let us scan the evidence of prosecution in order to establish whether, it is proved that the respondents/accused persons or any of them had subjected deceased Shakuntala to cruelty as defined by explanation to Section 498-A of the IPC, 1860. The term cruelty used in explanation to Section 498-A of the IPC implies harsh and harmful conduct of certain intensity and persistence. It covers acts causing, both, physical and mental agony and torture or tyranny and harm as well as unending accusation and recrimination putting the married woman/victim thereof, to intense miseries. The conduct of accused persons in such offences must be of such intensity that a married woman must feel that life is now not worth living and she should die, being the only option left. The provision of Section 498-A of the IPC envisages intention to drag or force the woman to commit suicide by un-abetted persistent and grave cruelty. In the case in hand, in order to establish the charge for the offence punishable under Section 304-B of the IPC, the prosecution is required to prove harassment by respondents to deceased Shakuntala with a view to coerce

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her or her relatives to meet their unlawful demand of dowry of Rs.10,000/- and failure on the part of her father-PW1 Bhagwat to meet such demand. Though the term, "harassment" is not defined in Section 498-A of the IPC, the dictionary defines it, so as to subject someone to unbearable, continuous or repeated or persistent unprovoked vexatious attacks, questions, demands, cruelty, tyranny or harm or pain. Viewing from this angle, we see that the prosecution evidence on this aspect is totally insufficient. It is seen from evidence of PW1 Bhagwat that deceased Shakuntala left for her matrimonial home accompanied by his sister Jamuna and two girls after marriage on 20.5.1994. It is seen from his evidence that up to 22.5.1994, deceased Shakuntala was in company of her aunt Jamunabai and two girls at her matrimonial house. Then she was taken back to her parental house by her aunt Jamunabai. Thereafter, in the evening hours of 24.5.1994, deceased Shakuntala was taken back to her matrimonial house by her brother in law. It thus becomes clear that up to 24.5.1994, deceased Shakuntala was under care of her parents and aunt Jamunabai Bhingardive.

27] What happened in her matrimonial life from 25.5.1994 till her death occurring in the night of 28.5.1994 is not brought on record by the prosecution. There is absolutely no iota of evidence to that effect on record. As discussed in the foregoing paras, PW1 Bhagwat, in his cross-examination, has candidly admitted that on her visit to her parental house deceased Shakuntala did not tell anything to him. As such, one can presume that as there was no harassment to deceased Shakuntala, she did not complain about the same to her father PW1 Bhagwat and rightly so, because till that time, she was accompanied by her aunt Jamunabai and two girls from her parental side.

28] PW2 Shantabai is only stating that after marriage, her daughter Shakuntala asked her as to why Rs.10,000/- is not paid. She has not claimed that her daughter Shakuntala further informed her that because of alleged non-payment of Rs.10,000/-, she is suffering harassment at the hands of accused persons or any of them. At this juncture, recitals in Inquest Memorandum that no injuries whatsoever were found on the dead body

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of Shakuntala becomes very relevant. Respondent/accused persons as well as deceased Shakuntala were hailing from rural area and considering their social background, the fact that no injuries were found on the dead body of Shakuntala assume great importance for inferring that she may not have been subjected to cruelty by respondents/accused person with whom, she stayed only for about 4 days till her death.

29] We have come to the conclusion that evidence on record is not sufficient for proof of the fact that respondents/accused demanded dowry from PW1 Bhagwat for marriage of his daughter with respondent/accused no.1- Appasaheb. Similarly, it is seen that available evidence led by prosecution is not sufficient to hold that respondents/accused subjected deceased Shakuntala to cruelty. Discrepant and laconic evidence of prosecution witnesses, made it essential for the prosecution to adduce evidence of Jamunabai Bhingardive as well as two girls, who accompanied deceased Shakuntala to her matrimonial house after marriage. Similarly, it was also necessary for the prosecution to examine Indubai Gaikwad

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and Prabhakar Gaikwad who were mediators in settling the marriage. These persons were certainly the material witnesses who could have given detailed account as to how and on what terms the marriage was settled as well as how and in which manner deceased Shakuntala was subjected to cruelty by her husband and his relatives during her stay with them up to 22.5.1994. Non examination of Jamunabai and two girls who accompanied deceased Shakuntala to her matrimonial house, makes the prosecution case about subjecting the deceased Shakuntala to cruelty suspicious. This inaction on the part of prosecution requires us to draw adverse inference against the prosecution. Similarly, non examination of Indubai and Prabhakar Gaikwad also makes prosecution case regarding demand of dowry doubtful.

30] There is one more aspect which makes the prosecution case doubtful. That is delay in lodging the report by PW1 Bhagwat—father of deceased Shakuntala. We are aware that delay in lodging F.I.R. alone cannot be used as formula for doubting the prosecution case. However, if prosecution fails to satisfactorily explain

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the delay and there is a possibility of embellishment in the prosecution version on account of such delay, then only such delay would be fatal to the prosecution case. Evidence of PW1 Bhagwat shows that, in the morning of 29.5.1994, he received information that his daughter is ill. Then, he rushed to village Nirmal Pimpri. Prior to that, PW2 Shantabai-mother of deceased accompanied by Indubai immediately left for matrimonial house of deceased Shakuntala alongwith person who gave this intimation. Inquest Memorandum, Exhibit 12, was recorded from 11.30 a.m. to 12.15 p.m. of 29.5.1994. This document reflects presence of PW-1 Bhagwat and PW2 Shantabai on the spot. Cross examination of PW1 Bhagwat shows that after 15 minutes of his reaching the matrimonial house of his deceased daughter, police came. Then, he was called by police for making enquiry. His cross-examination reveals that upon enquiry police asked his name and obtained his signature, meaning thereby, that his statement might have been recorded by the police authorities. However, it is clear that at this first opportunity, PW1 Bhagwat has not made any complaint to police despite finding his daughter Shakuntala dead at

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the house of accused persons. PW1 Bhagwat then accompanied the dead body to Pravara Rural Hospital, Loni. Evidence shows that police station was situated at town Loni itself. Though other from his village came at that place even till *post-mortem* examination of Shakuntala, he did not lodge report to police making grievance against respondents/accused persons.

31] As seen from his cross examination, after autopsy, police asked PW1 Bhagwat as to whom dead body of Shakuntala be given. This witness informed police that dead body of Shakuntala be given to respondents/accused persons. Then, funeral of deceased Shakuntala was arranged at the village of respondents/accused persons. As seen from cross-examination of PW1 Bhagwat, at the time of funeral of deceased Shakuntala, in two vehicles, people from his village including Amrutlal Gandhi-Sarpanch and PW5-Balasaheb Gaikwad-leader of RPI, came. It was at their instance, dead body of Shakuntala was taken to his village Ashvi. It was thereafter that the FIR came to be lodged against respondents/accused at about 10.30 a.m. of 29.5.1994. This evidence makes it clear that, if really deceased Shakuntala was subjected

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to cruelty and respondents/accused had committed her dowry death then PW1 Bhagwat-father of deceased Shakuntala had tons of opportunity to lodge report against them immediately on reaching her matrimonial house in morning hours of 29.5.1994. It is not the case of the prosecution that disturbed mental condition prevented PW1 Bhagwat, to lodge report against Respondents/accused persons. The sequence of events followed after death of Shakuntala as described by PW1 Bhagwat sounds quite unnatural. All the while even though he was accompanied by his relatives, he preferred not to make any complaint about alleged demand of dowry and cruelty to the deceased. The delay in lodging F.I.R. is not at all explained by the prosecution and it gives indication of false implication of respondents/accused persons in the crime in question at the instance of Amrutlal Gandhi-Sarpanch and PW5 Balasaheb Gaikwad-leader of a political party, at whose instance, dead body of Shakuntala was taken to Ashwi from due funeral pyre at Nirmal Pimpri.

32] In the result, we are of the considered opinion

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that the prosecution has failed to prove any of the charges leveled against respondents/accused persons and as such the instant appeal is devoid of substance and, therefore, liable to be dismissed. As such, by answering the points accordingly, we proceed to pass the following order :-

The appeal is dismissed.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)