

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CRIMINAL APPEAL No. 931 OF 2010

JUDGMENT: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The accused 1 to 3 in S.C.No. 130 of 2008 on the file of the Court of Additional District and Sessions Judge, Gudivada, Krishna District ('the trial Court' for short), preferred this appeal challenging their conviction for the offence punishable under Sections 498-A and 302 read with 34 of the Indian Penal Code, 1860 ('I.P.C.' for short), by calendar and judgment dated 15-07-2010, whereunder the accused were found guilty and were sentenced to undergo life imprisonment and shall pay fine of Rs.500/- each, in default, simple imprisonment for 6 months for the offence punishable under Section 302 r/w 34 I.P.C. and rigorous imprisonment for one year each for the offence punishable under Section 498-A r/w 34 I.P.C. directing to run both the substantive sentences concurrently.

It is a ghastly murder of wife by name Madhiri Param Jyothi @ Jyothi, while she was carrying third month pregnancy, allegedly committed by accused 1 to 3. A1 is husband of Jyothi and A2 and A3 are parents of A1. On 28-08-2006 at about 7 a.m., in furtherance of common intention, the accused squeezed the neck of Jyothi with a half saree till her death. P.W.1 Dammu Anandabai, on receipt of telephonic message about the serious condition of Jyothi, came to the village of the accused, found the dead body of Jyothi lying on a cot in the house of the accused and, at that time, both A2 and A3 were sitting at the entrance of the house. Immediately, P.W.1 reported the matter to police under Ex.P1. In turn, the police registered the same as a case in Crime No. 68 of 2006 for the offence punishable under Sections 498-A and 302 r/w 34 I.P.C. and issued Ex.P30 F.I.R. During investigation, the police examined P.Ws.1 to 13, recorded their statements under Section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), observed the scene of offence in the presence of mediators and prepared Ex.P21 observation report of scene of offence on 29-08-2006. The police conducted inquest over the dead body on the same day in the presence of mediators. Ex.P22 dated 29-08-2006 is inquest report. Later, the police sent the dead body

for *post mortem* examination. Ex.P25 dated 29-08-2006 is post mortem report received from Government Hospital. On 30-08-2006, the police arrested the accused in the presence of mediators. During interrogation, A1 made a confessional statement leading to discovery. Ex.P23 dated 30-08-2006 is admissible portion of confessional statement of A1 leading to discovery. In pursuance of the confession made by A1, A1 led the police and mediators to the place where the half saree was concealed, picked up the half saree from the eaves of the house of Daveedu and produced the same before the police in the presence of mediators. Ex.P24 dated 30-08-2006 is seizure report. After conducting *post mortem* examination, *post mortem* doctor preserved certain parts of the body and sent to Forensic Science Laboratory and Medical College for opinion. Ex.P26 is letter addressed to the Professor, Department of Forensic Medicine, Siddhartha Medical College, Vijayawada. Ex.P27 is report of Siddhartha Medical College, Vijayawada. Ex.P28 is report of F.S.L. On the strength of Ex.P28, the *post mortem* doctor issued Ex.P29 final opinion opining that the death of Jyothi was due to asphyxia on account of strangulation.

On completion of investigation, the Inspector of Police, Pamarru Circle, Krishna District, filed charge sheet against A1 for the offence punishable under Section 302 I.P.C. and against A1 to A3 for the offence punishable under Section 498-A r/w 34 I.P.C. before the Additional Judicial I Class Magistrate, Gudivada, and the same was registered as P.R.C.No. 28 of 2007. Having come to the conclusion that the offence punishable under Sections 498-A and 302 r/w 34 I.P.C. is exclusively triable by Court of Sessions, committed the same to Sessions Division, Krishna District at Machilipatnam, by following necessary procedure under Section 209 Cr.P.C. In turn, the District Court took the case on file and made over to the Court of Additional District Judge, Gudivada.

After securing the presence of the accused, charges for the offence punishable under Sections 498-A r/w 34 I.P.C. and 302 r/w 34 I.P.C. were framed against the accused, read over the same and explained to them in Telugu but they pleaded not guilty.

During the course of trial, on behalf of the prosecution, P.Ws.1 to 20 were examined and Exs.P1 to P34 and M.O.1 were marked.

After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against each of them but they denied the same.

Upon hearing argument of both counsel, the trial Court, having found the accused guilty for the offence punishable under Sections 498-A r/w 34 I.P.C. and 302 r/w 34 I.P.C., convicted them for the above charges and sentenced them as stated supra.

Aggrieved by the calendar and judgment of the trial Court in S.C.No. 130 of 2008, the accused preferred the present appeal raising various contentions in the grounds of appeal mainly contending that the case of the prosecution is based on circumstantial evidence; when the case of the prosecution rests on circumstantial evidence, it is for the prosecution to prove each and every link in the chain of circumstances but the prosecution failed to connect the links in the chain of circumstances; and the trial Court did not consider the material contradictions in the evidence of P.Ws.1 and 2 and, when P.Ws.3 to 12 did not support the case of the prosecution, basing on the evidence of P.Ws.1 and 2, the accused cannot be convicted for the grave offence punishable under Section 302 I.P.C. It is specifically contended that; on the date of the alleged incident, all the accused attended agricultural coolie work *i.e.* weeding work; in their absence, Jyothi committed suicide; only when A1 returned to house, the dead body of Jyothi was found; and, therefore, the death of Jyothi was only suicidal hanging but not homicidal hanging or strangulation. The trial Court failed to consider the medical evidence in proper perspective. The seizure of M.O.1 is doubtful in view of discrepancy in the evidence of P.W.1 and Ex.P23 but the trial Court did not consider the discrepancy in the evidence of P.W.1 in right perspective and, thereby, committed an error in believing the evidence of prosecution witnesses totally. Finally, it is contended that Jyothi allegedly gave a complaint to Mandavalli Police on 14-08-2006, when she was left at the house of P.W.1, complaining that she was subjected to harassment for her failure to meet the illegal demand of payment of additional dowry, which was not produced and marked as exhibit before the trial Court, but still the trial Court accepted the evidence of P.W.1 to convict the accused for the offence punishable under Section

498-A r/w 34 I.P.C. Yet, the contention of learned counsel for the accused is that the alleged incident was not due to failure of Jyothi to meet the illegal demand but only due to suspicion on fidelity of Jyothi and, thereby, the trial Court failed to appreciate oral and documentary evidence with reference to law declared by this Court and the Apex Court and erroneously found the accused guilty for the offence punishable under Section 498-A r/w 34 I.P.C. so also for the offence punishable under Section 302 r/w 34 I.P.C. even without recording any finding regarding joint liability or sharing common intention against A2 and A3. Therefore, the conviction of A2 and A3 for both the charges is erroneous.

During the course of argument, Smt. A.Gayatri Reddy, learned counsel for the accused, mainly contended that Ex.P25 *post mortem* report disclosed that the hyoid bone was not fractured and that the evidence on record established that the death of Jyothi was only due to suicidal hanging but it was not due to homicidal strangulation. If Ex.P25 *post mortem* report and Ex.P28 F.S.L. Report are considered in right perspective, the trial Court would have concluded that the death of Jyothi was due to suicidal hanging but committed an error. That apart, failure to mark the complaint dated 14-08-2006 is fatal to the prosecution's case but the trial Court did not consider the same in proper perspective and, even without insisting for production of the said complaint, found the accused guilty for the offence punishable under Section 498-A r/w 34 I.P.C.

The case of the prosecution is totally based on circumstantial evidence. In such case, the prosecution has to prove the guilt of the accused by proving each and every link in the chain of circumstances to come to the conclusion that the accused alone caused the death of Jyothi but none of the circumstances were proved like motive, intention *etc.*, to complete the chain of circumstances. Finally, it is contended that there is absolutely no material against A2 and A3 connect them with the offence punishable under Sections 498-A and 302 I.P.C. either directly or indirectly; even without recording any finding about their joint liability or sharing of common intention, recorded a finding of conviction against all the accused which is erroneous on the face of the record; and, therefore, requested this court to reappraise the entire evidence afresh and acquit the accused for both the charges.

Learned counsel for the accused further contended that; confession of A1 leading to discovery, marked as Ex.P23, exculpates A2 and A3 as they attended to weeding work on the date of the alleged incident; the same can be taken advantage by A2 and A3; and placed reliance on ***Kandi Venkata Suneel Kumar Reddy Vs. State of Andhra Pradesh***^[1].

Per contra, Learned Public Prosecutor, representing the State, would contend that, when the death of Jyothi is unnatural and the prosecution is able to establish all the links in the chain of circumstances, the accused cannot be let off from their criminal liability for the grave and serious charges for the offence punishable under Sections 302 r/w 34 and 498-A r/w 34 I.P.C. Added to that, when the accused set up plea of alibi, it is for them to establish their absence from the scene of offence at the time of occurrence. The burden heavily lies on them and failure to prove the plea of alibi is a strong circumstance to accept the case of the prosecution. Even otherwise, in the examination under Section 313 Cr.P.C., the accused did not state anything about their absence at the place and time of occurrence and did not explain the cause of death though the incriminating material, that appeared against them, was put to them in their examination under Section 313 Cr.P.C. In the absence of any explanation and setting up of false defence, it is an additional link to complete the chain of circumstances; therefore, the trial Court rightly found the accused guilty for the offence punishable under Sections 302 r/w 34 and 498-A r/w 34 I.P.C., convicted and sentenced them; there are no grounds to interfere with the finding of the trial Court; in support of his contention, placed reliance on ***G.Parshwanath Vs. State of Karnataka***^[2]; ***Swapan Patra and others Vs. State of West Bengal***^[3]; ***Trimukh Maroti Kirkan Vs. State of Maharashtra***^[4]; and ***State of Punjab Vs. Karnail Singh***^[5]; and prayed to dismiss the appeal confirming the conviction and sentence imposed by the trial court.

In view of the rival contentions and perusing the calendar and judgment under challenge, the points that arise for consideration are as follows:

- "(1) Whether the accused subjected the deceased Param Jyothi @ Jyothi to cruelty for her failure to meet the illegal demand for

payment of additional dowry, if so, whether A1 to A3 are liable for punishment for the offence punishable under Section 498-A I.P.C. or A1 subjected the deceased Param Jyothi @ Jyothi to cruelty for her failure to meet the illegal demand for payment of additional dowry sharing common intention with A2 and A3, if so, whether A1 to A3 are liable for punishment for the offence punishable under Section 498-A r/w 34 I.P.C.?

- (2) Whether A1, sharing common intention with A2 and A3, perpetrated the murder of his wife Param Jyothi @ Jyothi knowing that his act is sufficient to cause death in ordinary course of events with an intention to kill her, if so, whether A1 to A3 are liable for punishment for the offence punishable under Section 302 r/w 34 I.P.C.?"

In Re. Point No. 2:

Before advertng to the facts of the case and decide the liability of the accused for the commission of offence, it is appropriate to reiterate the duty of the Appellate court, its powers and the scope of appellate jurisdiction. Judge of the trial Court and the Appellate Court not merely ensured that an innocent person is not punished but equally not to become a mute spectator to the spectacle of the convict circumventing his conviction; if the Court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere; concept of "justice" encompasses not just the rights of the convict but also of the victims of crime as well as of the law abiding section of society who look towards the Courts as vital instruments for preservation of peace and the curtailment or containment of crime by punishing those who transgress the law; and, if the convicts can circumvent the consequence of their conviction, peace, tranquility and harmony in society will be reduced to a chimera as held by the Apex Court in ***Surya Baksh Singh Vs. State of Uttar Pradesh***^[6]. Keeping in mind the scope of appellate jurisdiction, we would like to decide the issue before us.

As seen from the material on record, the undisputed facts are that Param Jyothi @ Jyothi was the wife of A1 and daughter-in-law of A2 and A3. The marriage of A1 with Jyothi was performed on 27-05-1999. At the time of marriage, Dammu Anandabai-P.W.1 paid Rs.25,000/- and presented a gold ring towards

dowry to the accused. A1 and Jyothi lived happily for three years.

It is alleged that A1, suspecting fidelity of his wife Jyothi, started harassing and humiliating her at the instigation of A2 and A3. A1 used to harass, taunt and demand additional dowry from her but the efforts made by P.W.1 to settle the dispute through elders proved futile though the elders reprimanded the accused. While Jyothi was pregnant of fourth month, A1 beat Jyothi indiscriminately on the ground that she did not conceive through him, brought her to the house of P.W.1 and left her there while demanding to bring additional dowry from P.W.1. Being enraged by the incident, Jyothi reported the matter to Mandavalli Police on 14-08-2006. Due to intervention of elders, the accused took back Jyothi to Chandrala Village and Jyothi withdrew her complaint from Mandavalli Police. Even during stay at Hyderabad, A1 harassed and humiliated his wife Jyothi. While they were living together with A2 and A3 in one house at Chandrala Village, on 28-08-2006 at about 7 a.m., A1, sharing common intention with A2 and A3 to do away with the life of his wife Jyothi, squeezed her neck with half saree till her death. Thus, A1 murdered his wife Jyothi sharing intention with A2 and A3.

The defence set up by the accused is twofold; first one is that they were present elsewhere *i.e.* other than the scene of offence at the time of the alleged occurrence that means they set up plea of alibi and the second defence is that the death of Jyothi was only on account of suicidal hanging. The trial Court, discussing about the cause of death, concluded that death of Jyothi was due to homicidal strangulation. The said finding is now assailed before us by the accused while contending that the trial Court did not look into the serious *lacunae* in the medical evidence adduced by the prosecution *i.e.* failure to find any fracture to hyoid bone itself indicates that Jyothi committed suicide by hanging. As such, the death of Jyothi was only due to suicidal hanging but not due to homicidal strangulation.

To decide the nature of death, medical evidence and inquest report assume importance. Undisputedly, the death of Jyothi was unnatural at her 23rd year of age, that too while she was carrying 4th month pregnancy. There is a lot of difference between homicidal strangulation or hanging and suicidal hanging or

strangulation and that will be discussed at an appropriate stage while appreciating the evidence on record.

On receipt of Ex.P1 report, Gudlavalleru Police registered a case against the accused, issued Ex.P30 F.I.R. dated 29-08-2006 and took up investigation. During investigation, the police secured the presence of P.W.16 B.Suri Babu, the then in-charge Panchayat Secretary of Chandrala Village during 2005-06. In his presence and in the presence of one P.Nageswara Rao, another mediator, the Inspector of Police observed the scene of offence and prepared Ex.P21 scene of offence observation report and also conducted inquest over the dead body of Jyothi at the scene of itself in the presence of Kamala Devi, Sarpanch of Chandrala Village, and others.

According to P.W.16; in his presence, the Inspector of Police inspected the scene of offence and prepared Ex.P21 scene of offence observation report; P.Nageswara Rao also accompanied him and present throughout the observation of scene of offence; and they both signed as panchayatdars on the observation report of scene of offence. P.W.16 also testified that, in his presence and in the presence of Kamala Devi, Sarpanch of Chandrala Village, an inquest was held at the scene of offence and found a ligature mark on the throat of Jyothi besides scratches on her shoulders and minor injuries on both the knees of Jyothi. On the basis of injuries found on the body of Jyothi, P.W.16 and Kamala Devi opined that Jyothi was killed by throttling. Ex.P22 is inquest report scribed by him. Thus, the oral evidence of P.W.16 is consistent about his presence and finding injuries on the body referred in Ex.P22. As per Ex.P21, the scene of offence is inside the house of the accused which consists of two portions with open portion of building (vasara) covered by Palmyrah and Coconut leaves. They found a cot in the room and the said cot was covered by a blanket and pillow. They also found the dead body of Jyothi on the cot, her both legs were stretched, tongue was pressed between upper and lower teeth, eyes were found closed and also found oozing both from her mouth and nose.

Similarly, in Ex.P22, P.W.6-scribe noted injuries found on the body of Jyothi which we referred in the earlier para. In column No. 7 of Ex.P22, injuries found on the corpse of Jyothi were noted. Finally, the inquest panchayatdars opined that

the death of Jyothi was due to homicidal strangulation by her husband and in-laws by pressing her neck with M.O.1. Thus, the cause of death as per the opinion of P.W.16, one of the inquest panchayatdars, was homicidal strangulation. In the cross-examination of P.W.16, learned counsel for the accused could elicit nothing, with regard to the injuries found on the dead body of Jyothi and their opinion in column No. 10 of Ex.P22, except suggesting that; at the instance of police, P.W.16 was deposing false; observation report and inquest report were drafted at police station; and his opinion as one of the panchayatdars was false but got denial of it.

On consideration of Ex.P22 coupled with the evidence of P.W.16, who is an independent witness, it is clear that injuries were found on the shoulders of Jyothi besides finding ligature mark around her neck, injuries on knees, stretching both hands and legs, protruded tongue between upper and lower teeth and oozing from both her mouth and nose. The inquest was held on 29-08-2006 between 10 a.m. and 1.30 p.m. and the death of Jyothi allegedly took place at 7 a.m. on 28-08-2006. Therefore, by the time of inquest, more than 24 hours was completed after the alleged homicidal death of Jyothi.

Coming to the medical evidence, P.W.17-Dr. V.Vijaya Nirmala, Gudivada Area Hospital, who conducted autopsy over the dead body of Jyothi, deposed that, on receipt of requisition from Mandal Revenue Officer – cum – Mandal Executive Magistrate, Gudlavalleru, through Police Constable No. 1282, she conducted autopsy over the dead body of Jyothi on 29-08-2006 from 2.30 p.m. to 4.30 p.m. According to P.W.17, eyes of the deceased Jyothi kept open; eyeballs were protruding out; mouth was found opened; lips were swollen; tongue was protruding out; bloodstained fluid came out of mouth and nostrils; bluish discolouration of conjuncture of lips, tongue, finger and toe nails was found; upper limbs were by the side of trunk; lower limbs were below the trunk; rigor mortis passed off; and putrefaction was in advanced stage. P.W.17 also found the following *ante mortem* injuries:

- (1) An abrasion of 1 x 1 c.m. on the left cheek below the left eye which could have been caused by rough surface;

- (2) Ligature mark of 44 x 2 c.m. encircling the neck about middle of neck, which was well defined with red base, and it could have been caused due to soft material;
- (3) An abrasion of 2 x 1 c.m. on left knee; and
- (4) An abrasion of 1 x 1 c.m. on right knee and injuries 3 and 4 could have been caused due to rough surface.

On the basis of injuries found on the dead body and condition of the dead body of Jyothi, P.W.17 opined that the time of death was more than 36 hours prior to her commencement of *post mortem* examination. P.W.17 preserved (1) stomach and its contents; (2) small intestine and its contents; (3) sample of liver and one kidney; (4) skin around ligature mark over front of neck for determination of underlying subcutaneous hemorrhage; (5) hyoid bone for evidence of fracture; and (6) uterus with foetus for confirmation of *intra* uterus pregnancy and gentalion; and sent item Nos. 1 to 3 to Forensic Science Laboratory and item Nos. 4 to 6 to Siddhartha Medical College, Vijayawada, for opinion. After receipt of Ex.P27 opinion from Siddhartha Medical College, Vijayawada, and Ex.P28 opinion from Andhra Pradesh Forensic Science Laboratory, Hyderabad, P.W.17 issued Ex.P29 final opinion opining that "***the cause of death of Jyothi could be due to asphyxia due to strangulation***". In the cross-examination of P.W.17, learned counsel for the accused suggested P.W.17 that the death of Jyothi was possible due to commission of suicide but P.W.17 denied the said suggestion. It is further suggested that injury Nos. 1, 3 and 4 could be possible due to other incident and the witness accepted the same as the same was mentioned in Ex.P25. Finally, a suggestion was put to P.W.17 that there must be bloodstains on M.O.1 if Jyothi was strangled with half saree but the witness denied the same. Thus, the consistent medical evidence of P.W.17 is that the death of Jyothi was due to homicidal strangulation.

At this stage, it is relevant to advert to the 23rd edition of Modi's Medical Jurisprudence and Toxicology as the death occurred due to asphyxia on account of strangulation as per the opinion of P.W.17. According to it, in most cases, asphyxia is the most common cause of death. The ligature is usually situated

above the thyroid cartilage, and the effect of its pressing the neck in that situation is to force up the epiglottis and the root of the tongue against the posterior wall of the pharynx. Hence, the floor of the mouth is jammed against its roof, and occludes the air passage, also the uvula and soft palate are pushed upwards and the laryngeal opening is blocked by the depressed epiglottis. Thus, asphyxia is nothing but obstructing the passage of oxygen to human body due to pressure on neck. Even according to the 7th edition of HWV Cox's Medical Jurisprudence and Toxicology, the term 'asphyxia' is rather indefinite and literally means 'absence of pulsation'. However, in common usage, asphyxia is a condition in which there is reduced or absent oxygen access to the body tissues, though the proper term for this should be 'anoxia' or 'hypoxia'. In fact, the word 'asphyxia' is used too loosely and it is often incorrectly used in medico-legal work to include states in which there is not necessarily any obstruction to the airways – for example, during pressure on the neck. However, the term is too well established to be displaced and it is employed in a number of conditions, some of which are medico-legal and others which belong to physiology. Where there is oxygen in the atmosphere, the next possible cause of asphyxia is obstruction of the external air passages. This may be due to a gag across the mouth and nostrils, sometimes seen in robbery or murder, where a cloth or other fabric may be tightly held or tied around the face. Alternatively, a gag may be stuffed into the mouth and although initially the airway may still be patent through the nose, collections of saliva and mucus, together with oedema of the pharynx and nasal mucosa, may progressively shut off the nasal airway with consequent total lack of access of air. Another cause, sometimes accidental, is the enveloping of the head by an impervious sheet, such as plastic of the polythene variety. This is a well-known method of suicide in Western countries, as well as an accident in children who pull a plastic bag over the head, thus occluding the external air passages. The air passages may be blocked beyond the junction of the nasal and oral cavities, at the level of the pharynx and larynx. This can occur from mechanical obstruction or from natural disease. In the present case, according to P.W.17, due to strangulation, air passage to the internal tissues was obstructed which led to the death of Jyothi. Therefore, finding bluish discolouration of conjuncture of lips, fingers and toenails was due to

obstruction of air passage only. Thus, there is clear evidence on record that the death of Jyothi was due to asphyxia.

Now, whether or not asphyxia was due to suicidal hanging or homicidal strangulation (manual strangulation) is the question to be decided. Manual strangulation or homicidal strangulation is the most common cause of death on account of asphyxia and it is also known as strangulation by ligature. There are marked differences between "***hanging***" and "***strangulation***" according to HWV Cox's Medical Jurisprudence and Toxicology and they are as follows:

Trait	Hanging	Ligature Strangulation
Face	Pale and petechiae are not common	It is livid, congested and full of petechiae
Ligature mark	Oblique usually seen high up in the neck above the thyroid cartilage and incomplete	Transverse, completely encircles the neck and usually below the thyroid cartilage
Base	Pale, hard and parchment like	Soft and reddish
Subcutaneous Tissue	It is white, hard and glistening below the mark	Ecchymoses present below the mark
Neck	Stretched and elongated	Not so
Hyoid Bone	Fracture is common	Fracture is rare
Thyroid Cartilage	Fracture is rare	Fracture is common
Tongue	Swelling and protrusion are not so common	Are well marked
Saliva	Usually runs out of mouth	Absent
Bleeding	From the nose, mouth and the ears are not so common	From the nose, mouth and ears are common
Involuntary Discharge	Of the faeces and urine are not common	Are commonly seen
Seminal Fluid	Usually seen at the glans penis	Rarely seen

The following are the marked differences between hanging and strangulation according to Modi's Medical Jurisprudence and Toxicology:

S.No.	Hanging	Ligature Strangulation
1.	Mostly suicidal	Mostly homicidal
2.	Face – Usually pale and petechiae rare	Face – Congested, livid and marked with petechiae
3.	Saliva – Dribbling out of the mouth down on the chin and chest	Saliva – No such dribbling
4.	Neck – Stretched and elongated in fresh bodies	Neck – Not so

5.	External signs of asphyxia, usually not well marked	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect)
6.	Bleeding from the nose, mouth and ears very rare	Bleeding from the nose, mouth and ears may be found
7.	Ligature mark – Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchmentlike	Ligature mark – Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish
8.	Abrasions and ecchymoses round about the edges of the ligature mark, rare	Abrasions and ecchymoses round about the edges of the ligature mark, common
9.	Subcutaneous tissues under the mark – White, hard and glistening	Subcutaneous tissues under the mark – Ecchymosed
10.	Injury to the muscles of the neck – Rare	Injury to the muscles of the neck – Common
11.	Carotid arteries, internal coats ruptured in violent cases of a long drop	Carotid arteries, internal coats ordinarily ruptured
12.	Fracture of the larynx and trachea – Very rare and that too in judicial hanging	Fracture of the larynx and trachea – Often found also hyoid bone
13.	Fracture – dislocation of the cervical vertebrae – Common in judicial hanging	Fracture – dislocation of the cervical vertebrae – Rare
14.	Scratches, abrasions and bruises on the face, neck and other parts of the body – Usually not present	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body – Usually present
15.	No evidence of sexual assault	Sometimes evidence of sexual assault
16.	Emphysematous bullae on the surface of the lungs – Not present	Emphysematous bullae on the surface of the lungs – May be present

In view of the above differences between hanging and strangulation comparing with the observations of P.W.17 *vide* Ex.P25, where P.W.17 found a ligature mark of 44 x 2 c.m. encircling the neck about middle of the neck well defined with red base on the body of Jyothi which could have been caused with soft material. If the death of Jyothi was due to hanging either homicidal or suicidal, question of finding ligature mark of 44 x 2 c.m. encircling the neck does not arise. The reason for this is, in case of hanging, ligature on neck will be only part of neck and upwards head that means in oblique '/' shape; and the knot of rope or anything used for hanging will be on the top of ligature but P.W.17 found ligature around the neck and such ligature must be due to strangulation. In case of hanging, ligature mark will be oblique, non-continuous placed high up in the neck between the chin and the

larynx, the base of the groove or furrow being hard, yellow and parchment – like and, in case of strangulation, ligature mark will be horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.

Basing on the report of Siddhartha Medical College, Vijayawada, *vide* Ex.P27, learned counsel for the accused contended that, in the absence of finding fracture to hyoid bone, the death can be said to be due to suicidal hanging since possibility of fracture of hyoid bone is rare in case of hanging but, as seen from the differences between hanging and strangulation, ligature will be above the thyroid cartilage in ordinary course of events to obstruct air passage to internal tissues which result in asphyxia death. Moreover, finding bluish colour on lips, fingers and toenails during *post mortem* examination is another strong circumstance to conclude that due to obstruction of air passage to internal tissues, the death was caused. No doubt, hyoid bone was not found fractured but, in case of children and young persons, fracture of hyoid bone is rare as hyoid bone in young children and young adults is pliable and rarely fractures even under extreme pressure as observed in HWV Cox's Medical Jurisprudence and Toxicology at page No. 353 in the last sentence of the first paragraph. In view of the observations referred *supra*, absence of any fracture to hyoid bone alone is insufficient to conclude that the death was due to suicidal hanging of Jyothi but taking into consideration of finding ligature mark of 44 x 2 c.m. encircling neck above middle of the neck and above the thyroid cartilage indicates that the death of Jyothi was due to strangulation. In the entire cross-examination of P.W.17, learned counsel for the defence could elicit nothing to prove that the cause of death of Jyothi was due to suicidal hanging.

When this Court found that the death of Jyothi was due to strangulation, still it is the duty of the Court to find out whether or not strangulation is homicidal or suicidal. It is evident from the evidence of P.W.17, who conducted *post mortem* examination, coupled with the evidence of P.W.16 that injuries were found on the body of Jyothi, mostly on both knees and shoulders. In case of suicidal strangulation, the person, who strangulates, has to apply pressure while tightening the material used for strangulation; thereby, causing abrasions or any injuries on

shoulders does not arise; and there is a minimum possibility of sustaining injuries on both knees due to struggle; but, in case of homicidal strangulation, the victim may try to save her life and, in the struggle, there is every possibility of sustaining injuries on neck and shoulders and all other parts of the body including knees or, some times, the victim may cause injuries while she was struggling to escape from the hands of the person who was strangulating. Thus, it is clear that, in case of homicidal strangulation, injuries will be found on various parts of body including neck, shoulders, knees *etc.*, due to struggle of the victim to save her life but those injuries will be absent normally in case of suicidal strangulation or accidental strangulation. Therefore, basing on the injuries found on the body of Jyothi referred in column No. 7 of Ex.P22 and the opinion expressed by the inquest panchayatdars in column Nos. 9 and 10 coupled with the evidence of P.W.16 and P.W.17, it can safely be held that the death of Jyothi was due to homicidal strangulation. The trial Court, though did not discuss the differences between homicidal strangulation and suicidal strangulation or homicidal hanging and suicidal hanging, recorded a finding that the cause of death of Jyothi was due to strangulation. However, failure to discuss anything about the cause of death either due to suicidal hanging or strangulation by the trial Court itself is not a ground to reverse the finding recorded by the trial Court.

Both in Modi's Medical Jurisprudence and Toxicology and Taylor's Principles and Practice of Medical Jurisprudence, it has been clearly indicated that suicide by self-strangulation is very rare. For committing suicide by self-strangulation, the person committing suicide must take aid of a contrivance so as to ensure application of sufficient force until death by strangulation. Without such contrivance, sufficient force cannot be applied because initially with the application of force, insensitivity will develop for which the hands pulling the ends of the string must get loosened as held by the Apex Court in ***Odabarish Mishra Vs. Kuntala Mishra***^[7]. In the present case, as per the scene observation report marked as Ex.P21, no contrivance was found at the scene of occurrence. In such, it is difficult to hold that Jyothi is strangulated herself and her death was due to suicidal strangulation. Therefore, based on the material discussed in the earlier paras, we find that the cause of death of Jyothi was due to asphyxia on account of

homicidal strangulation. Accordingly, we hold that Jyothi died due to asphyxia on account of homicidal strangulation.

It is the case of the prosecution, as per the allegations made in the charge sheet, that A1, sharing his common intention with A2 and A3, caused the death of Jyothi suspecting her fidelity as she did not conceive through him and for her failure to meet the illegal demand of payment of additional dowry but the trial Court framed a common charge against A1 to A3 for the offence punishable under Section 302 r/w 34 I.P.C. Though the trial Court did not record any finding whether A1 caused or perpetrated murder of Jyothi sharing common intention with A2 and A3, but recorded a general finding that A1 to A3 caused the death of Jyothi.

The case of prosecution is totally based on circumstantial evidence and they are as follows:

- (a) Leaving Jyothi at the house of P.W.1 by A1 on the ground that she did not conceive through him and threatened her to remain there itself unless she met the illegal demand for payment of additional dowry;
- (b) Entering into compromise with Jyothi when she gave complaint to Mandavalli Police against all the accused for the offence punishable under Section 498-A I.P.C.;
- (c) Motive to do away with the life of Jyothi;
- (d) Seizure of M.O.1 half saree on the confession made by A1 leading to discovery finding bloodstains on M.O.1; and
- (e) Unnatural death of Jyothi in the house of A1 to A3.

The settled principle of law is that when the case of prosecution rests on circumstantial evidence, it is the duty of the prosecution to establish each and every link in the chain of circumstances relied upon by the prosecution; otherwise it is difficult to record conviction of the accused for the grave and serious offence. Every evidentiary circumstance is a probative link, strong or weak and must be made out with certainty link after link forged firmly by credible testimony which

may form a strong chain of sure guilt binding the accused; each link taken separately may just suggest but when hooked on to the next and on again may manacle the accused inescapably; only then can a concatenation of incriminating facts suffice to convict a man, short of that is insufficient as held by the Apex Court in ***Dharam Das Vs. State of U.P.***^[8]; ***Mahmood Vs. State of U.P.***^[9]; and ***Hukum Singh Vs. State of Rajasthan***^[10]. In ***Prabhakar Vs. State of Maharashtra***^[11], the Apex Court held that circumstantial evidence is enough to sustain conviction. In the facts of the above case, victim died due to asphyxia; at the time of death, only the accused was present; but before that, the victim tried to commit suicide by poisoning. Murder and disappearance of evidence proved by circumstantial evidence in ***Gyano alias Gyonwati Vs. State of Uttar Pradesh***^[12]. In cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. It is also contended that accused giving false explanation that he was absent at the time of incident is another additional link. The said contention is supported by the judgment of the Apex Court in ***Harendra Narain Singh Vs. State of Bihar***^[13], wherein the Apex Court held that when an accused is sought to be convicted on the strength of circumstantial evidence, before absence of explanation or a false explanation of the accused for the circumstances and the facts proved against him is used as additional link against the accused, the Court should satisfy itself that (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved; (2) the circumstances point to the guilt of accused with reasonable definiteness; and (3) the circumstances are in proximity to the time and situation where all these conditions are fulfilled. Similarly, false plea of alibi would be an additional link in the chain of circumstances as held by the Apex Court in ***Babudas Vs. State of M.P.***^[14]

From the law laid down by the Apex Court in various judgments, it is clear

that, when the case of prosecution is based on circumstantial evidence, it is the obligation of the prosecution to prove each and every circumstance so as to complete the chain of circumstances. The burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn and the facts so established must be consistent with the hypothesis of guilt of accused but any circumstance consistent with innocence of accused is entitled to benefit of doubt.

In view of the law laid down by the Apex Court, we would like to examine the legality of the finding recorded by the trial Court against the accused for the offence punishable under Sections 302 and 498-A I.P.C. The trial Court recorded its finding based on circumstantial evidence only since the incident took place during early hours of 28-08-2006 in a room of the house of the accused at Chandrala Village. The first circumstance relied upon by the prosecution is that dropping Jyothi at the house of P.W.1 on the lame excuse that she did not conceive through A1 and demanded to bring additional dowry. The trial Court believed the same. However, before us, learned counsel for the accused contended that, in the absence of production of copy of F.I.R., the case of prosecution cannot be believed. Refuting the contentions, learned Public Prosecutor would contend that, in case of family disputes, police would not immediately register crime and they try to settle the matter referring to family counseling centers *etc.,*. Thereby, the police did not register crime against the accused for the offence punishable under Section 498-A I.P.C. basing on the complaint dated 14-08-2006 and, consequently, it is not a ground to disbelieve the case of prosecution.

To substantiate this circumstance, the prosecution examined Dammu Ananda Bai, paternal aunt of the deceased Jyothi, as P.W.1 who performed the marriage of Jyothi with A1. In her examination in chief, P.W.1 testified that, in the year 2002, A1 and Jyothi came to her house at Bhyravapatnam; stayed there for 1 ½ years but they were not blessed with children by then; thereafter, A1 and Jyothi went to Chandrala Village to reside in the house of parents of A1; later, shifted their family to Hyderabad and both worked in a company; even while working at Hyderabad, A1 used to suspect the fidelity of Jyothi; then, some disputes arose

between them; and, thereafter, A1 sent back Jyothi to her parents for dowry on the ground that their salary was insufficient. It is also her case that Jyothi conceived while working at Hyderabad but A1 administered pills for abortion. On 06-08-2006, A1 and his wife came to the house of P.W.1 on the eve of panchayat elections to franchise their votes in the village and later went to Hyderabad again. While so, on 13-08-2006, A1 to A3 and Sujata, sister of A1, brought Jyothi to the house of P.W.1 and left Jyothi at her house asking her to join A1 with dowry, else not to reach their house. Thereupon, on 14-08-2006, Jyothi gave report to Mandavalli Police but, due to intervention of Yesobu Raju, Prathipadu Sarpanch, Vice President D.Andreiah, and Utchula Dayasali, who were bought by A2, the matter was compromised and suggested Jyothi to withdraw the complaint. Accordingly, on 17-08-2006, Jyothi had withdrawn the complaint. A1 to A3 and elders took Jyothi to the house of the accused at Chandrala Village. In cross-examination of P.W.1, learned counsel for the accused made an attempt to elicit that no report was given by Jyothi against the accused but nothing was elicited in the cross-examination to disprove the alleged report by Jyothi against A1 to A3. P.W.1 expressed her inability to state crime number of the case registered by Mandavalli Police. P.W.1 denied the suggestion put to her that she did not disclose the said report in Ex.P1 and also in her statement recorded under Section 161 Cr.P.C. Except suggesting and getting denial about the report dated 14-08-2006 allegedly given by Jyothi, nothing was elicited. In view of the consistency in the evidence of P.W.1, her testimony cannot be disbelieved. As such, P.W.1 is wholly reliable witness.

P.W.2-Nagathota Annapurna, natural mother of the deceased Jyothi, was living separately with her husband on account of her serious illness of tuberculosis. The consistent evidence of P.W.2 in her examination in chief is that, Jyothi was left at the house of P.W.1 by A1 to A3 and Sujatha; Jyothi gave a report to police; however, the matter was settled due to intervention of elders of Prathipadu and Chandrala; and A1 to A3 took Jyothi along with them due to compromise promising to look after Jyothi properly. In cross-examination, a vain attempt was made to elicit that A1 to A3 and Sujatha never left Jyothi at the house of P.W.1. Thus, nothing could be elicited in the cross-examination of P.Ws.1 and

2 regarding the first circumstance.

P.Ws.3 to 12 did not support the case of prosecution to prove any of the circumstances. However, in examination in chief, P.W.10 supported the case of prosecution with regard to mediation between Jyothi and the accused one month prior to her death but denied that it relates to the dispute between Jyothi and A1.

P.W.13 in examination in chief clearly testified that, Jyothi and A1 came to Bhyravapatnam to franchise their vote in panchayat elections and returned to Chandrala Village; thereafter, left for Hyderabad; 10 days later, they returned to Chandrala Village; A1 used to suspect Jyothi; hence, A1 to A3 brought Jyothi to Bhyravapatnam and left at the house of P.W.1; thereupon, Jyothi filed a case for maintenance and harassment for dowry; A2 and A3 proposed compromise terms; Sarpanch of Prathipadu by name Yesobu Raju, Dayasali and four other elders of Chandrala Village came to Bhyravapatnam and mediated the dispute; A1 to A3 informed them that they were giving up their claim for dowry and that they would take back Jyothi with them; complaint given to Mandavalli Police was withdrawn; and Jyothi was taken by A1 to A3 to their residence at Chandrala Village. In cross-examination, nothing was elicited to disprove the compromise effected by elders and withdrawing the same by Jyothi.

P.W.14-M.Someswara Rao, Head Constable of Mandavalli Police Station, specifically testified that, on 15-08-2006, Jyothi came to Police Station and presented a report against her husband, parents-in-law, brother-in-law and co-sister complaining that they were harassing her for dowry; a G.D. entry was made and referred the matter to family counseling center; later, on 17-08-2006, Jyothi came to Police Station and informed that there was no need to take any action on the report presented by her as the matter was settled; and, immediately, he made a G.D. entry regarding compromise. In cross-examination, P.W.14 admitted that he did not collect the G.D. entry from the Police Station and he did not investigate into the report to find out the truth or otherwise in the contents of the report made by Jyothi. A suggestion was put to him that he was speaking false against the accused. No doubt, the G.D. entry was not produced before the Court. However, P.W.14 is not competent to collect the G.D. entry as he is not the investigating officer in the present case. At best, the investigating officer-P.W.19 is competent

to collect the G.D. entry copy but, in the cross-examination of P.W.19, nothing was elicited as to why the G.D. entry copy was not collected during investigation. Therefore, in the absence of suggesting anything to P.W.19 that no complaint was given to Mandavalli Police by Jyothi complaining harassment for dowry by A1 to A3, putting any suggestion to P.W.14 would not serve any purpose.

It is not the case of prosecution that A1 to A3 did not leave Jyothi at the house of P.W.1 demanding additional dowry, Jyothi gave report to police and the matter was compromised since no suggestion was put to P.Ws.1, 2, 13 and 14 denying the entire incident. In the absence of suggesting, the defence of the accused cannot be accepted in view of the principle laid down in ***M.B.Ramesh (D) by L.Rs. Vs. K.M.Veeraje (D) by L.Rs. and others***^[15], wherein the Apex Court reiterated the principle laid down in ***A.E.G.Carapiet Vs. A.Y.Derderian***^[16], wherein a Division Bench of Calcutta High Court held that

"Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is a rule of essential justice."

On close analysis of entire evidence on record, P.Ws.1 and 2 are close relatives and the accused are also closely related to them. P.W.13, who is resident of Bhyravapatnam, had no enmity with any of the accused since no enmity was suggested to P.W.13 in the entire cross-examination. Thereby, P.W.13 is an independent witness and his testimony, therefore, inspires confidence of this Court. As such, P.W.13 is totally reliable witness. Similarly, P.W.14 is an official witness who testified about giving report to police by Jyothi. P.W.14 had no necessity to speak false against the accused and his evidence is only regarding making G.D. entry and other steps taken by him after compromising the matter. Therefore, the evidence of P.W.14, being an official witness, cannot be discarded to establish the evidence of compromise in the report given by Jyothi against the accused complaining harassment for dowry. Thus, the prosecution established the incident of A1 to A3 subjecting her to cruelty for her failure to meet the illegal demand for payment of additional dowry. Apart from that, Jyothi was brought back by the accused after compromise on 17-08-2006 to their house at

Chandrala village. On close analysis of entire evidence, we find that the prosecution established the first circumstance.

As per the material on record, A1 was having no permanent employment. After marriage of A1 with Jyothi, they came to Bhyravapatnam in the year 2002 and stayed there for about 1 ½ years as testified by P.W.1 and that they were not blessed with children till they shifted their residence to Hyderabad to work in a company. Moreover, Jyothi had conceived while they were residing at Hyderabad but A1, suspecting her character that she did not conceive through him, administered pills for abortion. However, this was not denied by the accused in the marathon cross-examination of P.W.1. Thus, the incident of administering pills for abortion itself points out directly that A1, suspecting her fidelity and character, stooped to the extent of aborting her pregnancy. However, as discussed in the earlier circumstance, Jyothi gave complaint to Mandavalli Police complaining that A1 to A3 subjected her to cruelty for her failure to meet the illegal demand for payment of additional dowry and, later, the matter was compromised on 17-08-2006 due to intervention of elders. Immediately, Jyothi was brought back on the same day to the house of A1 to A3 at Chandrala Village. Within five days thereafter, Jyothi was murdered in a room of the house of the accused. Thus, it is clear from the attending circumstances of the case that the accused might have settled the matter with the intervention of elders and brought back Jyothi to put an end to her life, otherwise there is no necessity for her to die. Moreover, the specific contention of the accused is that Jyothi committed suicide by hanging but we find that the cause of death of Jyothi was due to homicidal strangulation but not due to suicidal strangulation in the earlier paras. When Jyothi was residing along with the accused in the same house and when there is no scope for entering into the house to third parties, the necessary inference to be drawn from the attending circumstances is that she was murdered by the accused alone. In fact, it was not the case of the accused that Jyothi was murdered by somebody else.

The burden of proof in the present case is shifted to the accused to prove a fact which is within their exclusive knowledge in view of Section 106 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), for the reason that the death of Jyothi took place in a room which is exclusively accessible to the accused. In the

entire cross-examination, nothing was elicited to exculpate them and, even in examination of the accused under Section 313 Cr.P.C., they did not give any explanation much less reasonable explanation to accept that the death of Jyothi was due to suicidal hanging. In **Alber Oraon Vs. State of Jharkhand**^[17], the Apex Court held that

"We reiterate the series of judgments passed by this court which effectively transfer the burden of proving innocence to those accused who were living with the deceased within the confines of the home. In the present case, the bodies of the three deceased victims were exhumed after three to six weeks of their unnatural death and no convincing explanation has been proffered by the convict as to why he did not report their prolonged absence to the police. The convict was a mason and also a civil works contractor, and was, therefore, accomplished and competent to dig a soak pit and dispose of the three bodies in that soak pit and then make a brick covering thereon."

In such situation, the burden will normally shift to the accused, who are presumed to be innocent, till their guilt is proved beyond reasonable doubt in view of Section 106 of the Act of 1872. In an identical situation, in **State of Rajasthan Vs. Thakur Singh**^[18], the Supreme Court, while deciding shifting of burden of proof of a fact especially within the knowledge of any person, held as follows:

"The law is quite well settled, that burden of proving guilt of the accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused, and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts. In the instant case, since the deceased died an unnatural death in the room occupied by her and the respondent, cause of unnatural death was known to the respondent. There is no evidence that anybody else had entered their room or could have entered their room. The respondent did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred, nor did he set up any case that some other person entered room and caused the unnatural death of his wife. The facts relevant to the cause of the death of the deceased being known only to the respondent, yet he chose not to disclose them or to explain them. The principle laid down in Section 106, Evidence Act, is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that the deceased was murdered by the respondent. It is not that the respondent was obliged to prove his innocence or prove that he had not committed any offence. All that was required of the respondent was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this. The High Court has very cursorily dealt with the evidence on record and has upset a finding of guilt by the trial Court in a situation where the respondent failed to give any explanation whatsoever for the death of

his wife by asphyxia in his room. In facts of the case, approach taken by the trial Court was the correct approach under the law and the High Court was completely in error in relying primarily on the fact that since most of the material prosecution witnesses (all of whom were relatives of the respondent) had turned hostile, the prosecution was unable to prove its case. The position in law, particularly Section 106, Evidence Act, was completely overlooked by the High Court, making it arrive at a perverse conclusion in law."

In the facts of the above judgment, the respondent-accused was married to the deceased. On the day of the incident, he took the deceased and their daughter inside a room in his house and bolted it from within. Throughout the day, he kept the room locked like that. The other ladies in the house tried to persuade him to open the door of the room, but he did not do so. Later in the evening, the body was removed from above the house and it was then discovered that the respondent had killed the deceased. The door of the room was broken open and the respondent was caught and tied by his brothers and other relatives. Although, out of 25 witnesses, 14 of them, who were immediate relatives of the respondent, turned hostile, still the trial Court found that some basic facts were nevertheless established. These basic facts were that the deceased was found lying dead in the room occupied by her and the respondent and P.W.15 (doctor) deposed that the deceased had some injuries on her person but cause of her death was asphyxia and strangulation. The facts of the above judgment are almost identical to the present facts of the case, more particularly the cause of death, finding of injuries on the body so also non-accessibility of the room to any third person except to the accused and supporting medical evidence but the accused did not give any explanation as to how the incident occurred except contending that her death was due to suicidal hanging which we have already disbelieved in the earlier paras based on medical evidence. Thereby, A1 miserably failed to establish the circumstances under which the incident took place. Therefore, the totality of the circumstances conclusively established that Jyothi was brought back only to do away with her life. Thus, the trial Court rightly believed the above circumstance. Even after reappraisal of entire evidence, we find no illegality in the finding recorded by the trial Court and the trial Court arrived at such conclusion only after appreciation of entire evidence.

The prosecution also relied on confession leading to discovery after arrest

of the accused. Ex.P23 is confessional statement of A1 (admissible portion) leading to discovery. Undisputedly, confession made before police is inadmissible in evidence but confession leading to discovery is admissible under Section 27 of the Act of 1872. As seen from Ex.P23, after arrest of A1 by police in the presence of mediators, during interrogation, A1 made confession leading to discovery and he promised to show the half saree kept in the eaves of the thatched house of Daveedu which was used for strangulating Jyothi.

P.W.16-B.Suribabu, the then in-charge Panchayat Secretary of Chandrala Village, testified that on 30-08-2006, on called by Inspector of Police, he went to Gudlavalleru Police Station. He along with P.Nageswararao accompanied by Inspector of Police, proceeded to Kaviraja Nagar near Angaluru and noticed the presence of A1. Immediately, the police apprehended him. During interrogation, A1 made confessional statement leading to discovery marked as Ex.P23 and assured that he would show the half saree if anybody accompanies with him which was kept in the eaves of the thatched house of Madhiri Daveedu. Ex.P23 is scribed by him. P.W.16 further testified that he, the Inspector of Police and other mediators went to the house of Madhiri Daveedu on being led by A1. Thereupon, A1 picked out one half saree from the eaves of the thatched house of Madhiri Daveedu. The Inspector of Police seized the same under cover of seizure panchanama Ex.P24 and he identified M.O.1 before the Court. In cross-examination, a suggestion was put to P.W.16 that A1 never made any confession leading to discovery, M.O.1 was not seized under Ex.P24 and Exs.P23 and P24 were prepared at Police Station but got denial of it.

P.W.19-J.Seetharama Swamy, Inspector of Police, arrested the accused in the presence of P.W.16 and P.Nageswara Rao. According to his evidence, on 30-08-20216, on receipt of reliable information, secured the presence of P.W.16 and P.Nageswara Rao, proceeded to Kaviraja Nagar Bus Stop, found A1 and arrested him in the presence of mediators. During the course of interrogation, A1 made confession leading to discovery while assuring that he will produce the half saree, which was kept in the eaves of his neighbour Daniel, and his statement was reduced into writing which was marked as Ex.P23. P.W.19 also testified about A1 leading them to the house of Daniel, picking out M.O.1 from the eaves of the house

of Daniel and seizure of the same under Ex.P24. In cross-examination, a suggestion was put to P.W.19 that A1 was not arrested at Kaviraja Nagar Bus Stop on 30-08-2006 in the presence of P.W.16 and P.Nageswara Rao, A1 never made any confession leading to discovery and M.O.1 was not seized under Ex.P24 but got denial of the same. Therefore, nothing was elicited to disprove the seizure of M.O.1 under Ex.p24 on the confession made by A1 leading to discovery. P.Ws.16 and 19 are official witnesses who had no enmity to speak falsehood against the accused. According to Section 25 of the Act of 1872, confession made before a police officer is inadmissible in evidence. However, Section 27 of the Act of 1872 is almost an exception to the rule and, if any fact is discovered in pursuance of the statement of the accused, who is in custody, leading to discovery of incriminating material, such information is admissible in evidence. The scope of Section 27 of the Act of 1872 was discussed by the Apex Court in **Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh and another** ^[19], wherein it was held that

"When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. In the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact, it becomes a reliable information."

In the present facts of the case, the discovery, on the statement made by A1, is seizure of M.O.1 which confirmed the culpability of the accused. Therefore, 'fact discovered' as envisaged under Section 27 of the Act of 1872 embraces the place from which the object was produced and knowledge of the accused as to it but the information given must relate distinctly to that effect. Here, the fact discovered directly and distinctly relates to the incident of murder. In such circumstance, by applying the doctrine of confirmation, we hold that the guilt of the accused is confirmed by Ex.P23 admissible portion of the statement of A1 leading

to discovery and seizure panchanama marked as Ex.P24. Therefore, the testimony of P.Ws.16 and 19 is to be accepted as they are wholly reliable witnesses.

As per the evidence of P.Ws.16 and 19, M.O.1 was seized under Ex.P24 and the same was sent to Forensic Science Laboratory with letter of advice for opinion. Ex.P28 is opinion of F.S.L. According to it, the laboratory received a plastic jar containing pieces of stomach and intestine in brownish turbid liquid; a plastic jar containing pieces of liver and kidney in brownish turbid liquid; and a paper parcel labeled as Cr.No. 68/2006 of Gudlavalleru P.S. containing one rose coloured polyester voni. On analysis of item Nos. 1 and 2, they opined that item Nos. 1 and 2 did not contain any poisonous substance but detected blood on item No. 3 (half saree). Detection of blood on item No. 3 is another strong circumstance to believe that the death of Jyothi was due to strangulation. M.O.1 is the device used in strangulation. Normally, oozing of blood in case of strangulation may not be possible. However, *ante mortem* injuries were found on the shoulder of the deceased Jyothi. M.O.1 would have stained with blood because of *ante mortem* injuries. Therefore, detecting blood on item No. 3 is a strong reason to believe that with M.O.1, Jyothi was strangled till her death.

One of the grounds urged by learned counsel for the accused in the grounds of appeal and before us during argument is that, when the half saree was seen by P.W.1 near the head of Jyothi when P.W.1 visited the house of the accused on receipt of phone call, question of recovery of M.O.1 on the confession made by A1 leading to discovery is doubtful. No doubt, in the evidence of P.W.1, she categorically stated that, on receipt of phone call at about 5 p.m. on 28-08-2006, she went to the house of the accused; there, only A2 and A3 were present; she found the dead body of Jyothi inside the house; and she also found ligature mark around the neck due to strangulation with voni on the neck and throat of Jyothi and injuries on knees and left eye. P.W.1 further testified that the said voni was in rose colour and found near the head of the victim on cot. In fact, as per observation report Ex.P21 coupled with the evidence of P.Ws.16 and 19, voni was not found on cot near the head of the deceased Jyothi. However, Ex.P21 was drafted on 29-08-2006 at the scene of occurrence. If really voni was found in the

house at the head of the deceased Jyothi, that would have been mentioned in Ex.P21. Even otherwise, possibility of removing voni and concealing it after visit of the house of A1 by P.W.1 cannot be ruled out since there is long gap of more than 12 hours between observation of scene of offence and visit of the house of A1 by P.W.1. Therefore, it is not a ground to disbelieve the seizure of M.O.1 under Ex.P24.

On re-appraisal of entire evidence, the testimony of P.Ws.16 and 19 is worthy of credence and they are wholly reliable witnesses. Therefore, basing on their testimony coupled with Exs.P23 and P24 and M.O.1, P.W.19 seized bloodstained half saree in the presence of P.W.16 and P.Nageswara Rao basing on the confession leading to discovery on production of the same by A1 picking out the same from the eves of the house of Daveedu is free from any doubt and believable. Thus, the prosecution established the circumstance beyond reasonable doubt.

The cumulative effect of the proved circumstances directly points out the guilt of the accused. That apart, when the death took place in the house of the accused, it is for them to explain the cause of death either by suggesting in cross-examination or by examining any independent witness but, more curiously, they set up plea of alibi and elicited in the evidence of hostile witnesses that they were absent at the time of incident at the house as they were attending weeding work in agricultural land. In any view of the matter, the unnatural death of Jyothi in the house of the accused due to strangulation is established and no explanation was offered except setting up the plea of alibi.

Since the prosecution established the unnatural death of Jyothi, who caused the death of Jyothi is now the question to be decided by us. According to the prosecution, A1 alone murdered Jyothi sharing common intention with A2 and A3 but the trial Court failed to record any finding about sharing of common intention of A1 with A2 and A3. To rope A2 and A3 for the offence for sharing common intention, it is the duty of the prosecution to establish that A2 and A3 instigated or aided A1 to commit murder of Jyothi and they were also physically present. In the absence of proof of encouraging any criminal enterprise, conviction of A2 and A3 along with A1 for the offence punishable under Section

302 I.P.C. is impermissible. To attract Section 34 I.P.C., two postulates are indispensable namely, (1) the criminal act (consisting of series of acts) should have been done not by one person but by more than one person and (2) doing of every such individual act cumulatively resulting in the commission of criminal offence have been in furtherance of the common intention of all such persons as held by the Apex Court in **Suresh Vs. State of U.P.**^[20], **Mithu Singh Vs. State of Punjab**^[21], and **P.R.Manikyala Rao Vs. State of A.P.**^[22]

To convict any person for sharing of common intention to commit crime, there must be participation of everyone. In **Nand Kishore Vs. State of Madhya Pradesh**^[23], the Apex Court held that

"The criminal act, according to Section 34 I.P.C., must be done by several persons. The emphasis in this part of the Section is on the word 'done'. It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity."

In the present case, the role played by A2 and A3 was not spoken by any of the witnesses and the trial Court also did not record any finding as to sharing of common intention of A1 with A2 and A3 resulting commission of murder of Jyothi. However, it is enough if the prosecution established sharing of common intention to commit the offence and in furtherance thereof each one of the accused played his assigned role by doing separate acts, similar or diverse as held by the Apex Court in **Nandu Rastogi Vs. State of Bihar**^[24]. Even to apply this principle, there is nothing on record to establish that A2 and A3 aided or instigated A1 to commit murder of Jyothi and no incriminating evidence is found to establish the role played by A2 and A3 to commit murder of Jyothi by A1. That apart, there is no iota of evidence to prove pre-arranged plan among A1 to A3 to rope A2 and A3 for the offence punishable under Section 302 r/w 34 I.P.C.

In **Sudip Kr. Sen and others Vs. State of West Bengal and others**^[25], the Apex Court held that

"Section 34 Indian Penal Code embodies the principle of joint liability in the doing

of a criminal act and essence of that liability is the existence of common intention. Common intention implies acting in concert and existence of a pre-arranged plan which is to be proved/inferred either from the conduct of the accused persons or from attendant circumstances. To invoke Section 34 Indian Penal Code, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention. Common intention implies pre-arrange plan. Under Section 34 Indian Penal code, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The essence of liability under Section 34 Indian Penal Code is conscious mind of persons participating in the criminal action to bring about a particular result. The question whether there was any common intention or not depends upon inference to be drawn from the proved facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted."

Learned Public Prosecutor contended that all the accused were present in the house and it is for them to explain the reasons for the death of Jyothi. No doubt, all the accused were present in the house and their contention was that the death was due to suicidal hanging in their absence, more particularly they attended to weeding work but this cannot be believed for the reason that the death took place 36 hours prior to commencement of *post mortem* examination at 2.30 p.m. on 29-08-2006. Thus, 36 hours relates back to around 2.30 a.m. on 28-08-2006. Even according to the evidence of P.W.17, *Post Mortem* Doctor, by the time of commencement of *post mortem* examination, rigor mortis was passed off and putrefaction was in advanced stage. Normally, 36 hours time is required for passing off rigor mortis. Even according to Modi's Medical Jurisprudence and Toxicology, 2 to 3 hours margin for the estimated of death is permissible. If 2 to 3 hours margin is accepted, the death would have been taken place at or about 12 p.m. Even otherwise, presence of partly digested food in the stomach of Jyothi is another strong circumstance to conclude that murder of Jyothi took place during the intervening midnight of 27-08-2006 and 28-08-2006. When the death took place in the midnight or early hours of the day, question of A2 and A3 attending weeding work does not arise. When the death took place in the midnight or early hours, presence of A2 and A3 in a closed room, where wife and husband living together, does not arise in normal course of events. Therefore, presence of A2

and A3 aiding A1, with pre-plan, to commit murder of Jyothi is doubtful when two views are possible, one to inculcate and the other to exculpate A2 and A3. The view favourable to A2 and A3 can be accepted extending benefit of doubt. Therefore, it is difficult for us to believe sharing of common intention by A1 with A2 and A3 to kill Jyothi but the trial Court, without recording any finding, convicted A2 and A3 for the offence punishable under Section 302 r/w 34 I.P.C. Hence, the conviction of A2 and A3 for the offence punishable under Section 302 r/w 34 I.P.C. is liable to be set aside and is, accordingly, set aside.

Learned Public Prosecutor contended that, when plea of alibi is set up, it is for A1 to establish the same. Though the evidence to establish his absence at the place and time of occurrence of incident is relevant under Section 11 of the Act of 1872, still the burden is upon the accused to prove the plea of alibi either by examining independent witnesses or by eliciting anything in cross-examination of the prosecution witnesses. Unfortunately, the accused failed to elicit anything in the cross-examination of the prosecution witnesses except in the evidence of hostile witnesses who are neither reliable nor unreliable. Therefore, based on the testimony of hostile witnesses, it is difficult to accept the plea of alibi set up by A1. Even in examination of the accused under Section 313 Cr.P.C., the accused did state nothing about the cause of death and it is a strong circumstance to believe that A1 committed murder of Jyothi. In support of the contentions of Learned Public Prosecutor, he placed reliance on ***Sanatan Naskar and another Vs. State of West Bengal***^[26], wherein the Apex Court discussed the scope of examination of accused under Section 313 Cr.P.C. and held that

"Section 313 Cr.P.C. is wide and it is not a mere formality. Answers given in examination by accused are relevant for finding truth and examining veracity of prosecution case but are not strictly evidence and can be used within permissible limits envisaged by Cr.P.C. Courts may rely on portion of statement of accused and find him guilty on consideration of other evidence against him led by prosecution, however, such statements should not be considered in isolation but in conjunction with evidence adduced by prosecution since the statement in examination of accused under Section 313 Cr.P.C. is not a substantive evidence."

If the principle laid down in the above judgment is applied to the present facts of the case, failure to explain the cause of death and establish the same when the death took place inside the house ruling out the possibility of third party

entry into the house is a strong circumstance to find the accused guilty for the murder of Jyothi.

In ***Shaikh Sattar Vs. State of Maharashtra***^[27], the Apex Court held that

"In a criminal trial, when plea of alibi was set up, the burden of proof is on the accused to establish the same by leading positive evidence. Failure to substantiate the same would not necessarily lead to success of prosecution case which has to be independently proved by prosecution beyond reasonable doubt. Thus, the plea of alibi has to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant at the place of occurrence at relevant time and failure to establish the same is another strong ground to believe the case of prosecution."

As the case of the prosecution is based on circumstantial evidence and proved circumstances directly pointing out the guilt of A1 for the offence punishable under Section 302 I.P.C., the Court can record conviction of the accused as held by the Apex court in ***State of Haryana Vs. Jagbir Singh and another***^[28], wherein the Supreme Court held that

"Conviction of the accused solely based on circumstantial evidence is permissible only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. Thus, the circumstances have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances."

In ***Chandrashekarappa Vs. State of Karnataka***^[29], the Apex Court held that

"When the case of prosecution is based on circumstantial evidence and set up false plea of alibi and when failed to substantiate the same, the accused is liable to explain his own conduct and death of the deceased, failing which conviction and sentence under Section 302 I.P.C. is to be upheld."

By applying the above principle to the present facts of the case, we have no hesitation to conclude that, for failure of A1 to substantiate the plea of alibi, recording of conviction against A1 for the offence punishable under Section 302 I.P.C. cannot be reversed.

Learned Public Prosecutor further contended that when a particular fact is within the knowledge of the accused, it is for them to explain, otherwise an adverse inference has to be drawn and placed reliance on ***State of Punjab Vs.***

Karnail Singh^[30], wherein the Apex Court held that

"If facts within the special knowledge of the accused are not satisfactorily explained, such factor is against him. The said factor, though by itself not conclusive of his guilt, is relevant while considering the totality of the circumstances."

Therefore, applying the principles laid down in the above judgments to the facts of the present case, the prosecution established the guilt of A1 for the offence punishable under Section 302 I.P.C. but failed to establish sharing of common intention by A1 with A2 and A3 to kill Jyothi.

To convict a person for the grave offence punishable under Section 302 I.P.C., the prosecution has to prove that accused had intention to kill victim and knowledge that injuries caused on the body are sufficient to cause death of that person. In the present case, Jyothi was brought back from the house of P.W.1 after settling the criminal case for the offence punishable under Section 498-A r/w 34 I.P.C., kept her in a room and strangled her till death with M.O.1. If A1 had no intention, question of bringing back Jyothi to his house at Chandrala Village, tying around her neck with M.O.1 and strangulating till her death does not arise. As an ordinary prudent man, it is a common knowledge of anyone that such strangulation would lead to death. Therefore, we find that A1 committed grave offence punishable under Section 302 I.P.C. strangulating his wife Jyothi while she was carrying fourth month pregnancy. Hence, we confirm the conviction of A1 for the offence punishable under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay fine of Rs.500/- with default sentence while setting aside the conviction and sentence imposed against A2 and A3 for the offence punishable under Section 302 r/w 34 I.P.C. Accordingly, the point is held.

In Re. Point No. 1:

The second charge framed against the accused is for the offence punishable under Section 498-A r/w 34 I.P.C. on the ground that A1, being husband, and A2 and A3, being in-laws, subjected Jyothi to cruelty for her failure to meet the illegal demand for payment of additional dowry. It is the specific case of the prosecution from the beginning that marriage of Jyothi with A1 was performed as per Hindu custom on 27-05-1999 at Mandavalli. At the time of

marriage, P.W.1 paid an amount of Rs.20,000/- besides presenting one gold ring to A1 towards dowry. Thereafter, A1 and Jyothi lived happily for 3 years. After 3 years, A1, suspecting fidelity of Jyothi, used to harass and humiliate her at the instigation of A2 and A3 demanding additional dowry. When the said harassment came to the notice of P.W.1, she made efforts through elders to settle the issue and the elders reprimanded the accused.

A1 and Jyothi shifted their residence to Hyderabad from Chandrala Village to eke out their livelihood but A1 continued harassment and humiliation of Jyothi on the ground that she did not conceive through him, used to beat her indiscriminately on the said ground, brought her back to the house of P.W.1 and went away. On 14-08-2006, Jyothi reported the matter to Mandavalli Police complaining the harassment meted out by her in the hands of the accused. During pendency of the complaint, on 17-08-2006, elders intervened and the accused took Jyothi to Chandrala Village. Thus, A1 subjected Jyothi to harassment for her failure to meet the illegal demand for payment of additional dowry at the instigation of A2 and A3.

To substantiate the case of prosecution, the prosecution examined P.W.1 who performed the marriage of Jyothi with A1. P.W.1 categorically testified that there were differences between A1 and Jyothi and they stayed in her house for a period of 6 months. Later, A1 to A3 took back Jyothi to their house on account of mediation. P.W.1 advised Jyothi not to develop any difference with her husband and advised the accused to look after Jyothi properly. Even in the year 2002, A1 and Jyothi came to Bhyravapatnam and stayed there for a period of 1 ½ years but they were not blessed with children. Later, they went back to Chandrala Village. From there, they shifted to Hyderabad to eke out their livelihood and both of them used to work in a company. During stay at Hyderabad, Jyothi was conceived but A1 blamed her for conceiving and made an attempt to abort by administering pills. They came back to Bhyravapatnam in connection with panchayat elections to franchise their vote and, after franchising their vote, they were living in Chandrala Village. On 13-08-2006, A1 to A3 along with one Sujatha brought Jyothi to the house of P.W.1 and left Jyothi at her house asking her to join them with dowry, else not to come back. Thereupon, she gave report to Mandavalli Police against

the accused for subjecting her to cruelty demanding additional dowry. Later, the matter was compromised and Jyothi was taken back to the house of the accused at Chandrala Village where she was murdered. Thus, P.W.1 supported the case of prosecution in all respects in her examination in chief. In cross-examination, learned counsel for the accused put several suggestions denying the alleged incident that took place on 06-08-2006 but got denial of them. Curiously, in cross-examination, a suggestion was put to P.W.1 that, in Ex.P1 report or in her statement recorded by police under Section 161 Cr.P.C., she did not state about arrival of Jyothi and stay of Jyothi and A1 at Bhyravapatnam for 1 ½ years; and A1 and Jyothi went back to Chandrala Village. In fact, there is no such allegation in Ex.P1 report and that by itself is not a ground to disbelieve the incident for the reason that F.I.R. need not contain all details since it is only an information to police to set the criminal law into motion in a cognizable case. Mere omission to mention stay of A1 and Jyothi for a period of 1 ½ years at the house of P.W.1 in Ex.P1 is not a ground to disbelieve her evidence since F.I.R. need not contain all the details. It is also suggested to P.W.1 that A1 to A3 along with Sujatha brought Jyothi to her house on 13-08-2006 and left there demanding dowry but got denial of it. However, P.W.1 could not disclose the crime number registered by Mandavalli Police basing on the report given by Jyothi on 14-08-2006 but that by itself is not a ground to disbelieve her testimony since she, being a lady with rural background, is not supposed to testify all the minute details.

P.W.2 is mother of the deceased Jyothi. P.W.2 also testified about the harassment meted out by her daughter Jyothi in the hands of the accused for her failure to meet the illegal demand of payment of additional dowry. In cross-examination, learned counsel for the accused could elicit nothing except suggesting that Jyothi was never subjected to harassment for her failure to meet the illegal demand for payment of additional dowry. Thus, the evidence of P.Ws.1 and 2 is free from any omissions and they are wholly reliable witnesses. However, the omissions, pointed out by learned counsel for the accused referred in the earlier paras, are of insignificant and, in fact, a minor discrepancy is a guarantee of truth.

The prosecution also examined P.W.14, the then Head Constable of

Mandavalli Police Station, who registered crime basing on the report of Jyothi and made a G.D. entry. Later, he referred the matter to family counseling center; due to intervention of elders, the matter was settled in the family counseling center; and again he made necessary entry in general diary. Therefore, the evidence of P.W.14, who is an official witness, is free from any doubts and he is not interested either in the case of prosecution or in the defence.

Apart from the evidence of P.W.14, P.W.13, resident of Bhyravapatnam, also spoke about the petty quarrels between the deceased Jyothi and the accused in connection with dowry during her lifetime, shifting of their residence from one place to other and about the report given by Jyothi to Mandavalli Police complaining that A1 to A3 subjected her to cruelty for her failure to meet the illegal demand for payment of additional dowry as she was brought by A1 to A3 and Sujatha to the house of P.W.1 with a demand to bring additional dowry. As the matter was referred to family counseling center, elders by name Yesobu Raju, Dayasali and four other elders of Chandrala Village intervened and settled the matter. Thereupon, Jyothi had withdrawn the complaint as she was taken back to Chandrala Village by A1 to A3 while informing that they gave up their claim for dowry and promised to look after Jyothi. He also testified about the death of Jyothi. In cross-examination of P.W.13, a different story was invented by the defence. It was suggested to P.W.13 that his father was having one acre of land; P.W.1 occupied the same by staying there; A3 opposed the said occupation; and he persuaded P.W.1 to give the same to him but the said suggestion was denied. However, it is a subsequent invention since it was not suggested to any of the witnesses and even not explained in examination of the accused under Section 313 Cr.P.C. The consistent evidence of P.W.13, who is an independent witness, corroborated the testimony of P.Ws.1 and 2.

P.W.15, who is resident of Chandrala Village, admitted in his examination in chief that, about 2 years, Jyothi and A1 lived at Chandrala Village; later shifted to Prathipadu; later, Hyderabad; and lived for two years at Hyderabad; and also admitted about their visit of Bhyravapatnam to franchise their vote and then to Chandrala Village. At best, the evidence of P.W.15 is useful only to prove the visit of A1 and Jyothi to Bhyravapatnam to franchise their vote but that is not sufficient

to rope any of the accused with the offence punishable under Section 498-A I.P.C. P.W.15 totally resiled from his earlier statement recorded by police and turned hostile. Though P.W.15 was cross-examined after obtaining permission from this Court, nothing could be elicited in support of the prosecution case.

Similarly, P.W.16 testified about observation of scene of offence *etc.*, but his evidence is not relevant.

In any view of the matter, as per our discussion on the earlier point, Jyothi was murdered by A1 in a room of the house of the accused at Chandrala Village during midnight or early hours of the day, where there was no possibility to enter into the house by any third party, and we also recorded a finding that the death of Jyothi was not due to suicidal hanging or suicidal strangulation but it was due to homicidal strangulation. Therefore, the evidence on record proved that Jyothi was subjected to cruelty for her failure to meet the illegal demand by A1 to A3. The consistent evidence of P.Ws.1, 2 and 13, regarding bringing of Jyothi to Bhyravapatnam to the house of P.W.1, leaving her there demanding additional dowry and her giving complaint to police, was substantiated by the evidence of P.W.14. If really A1 to A3 did not subject Jyothi to cruelty, question of giving report to Mandavalli Police does not arise in normal course of events having led marital life for a substantial period with A1. When the evidence on record, more particularly the direct witness P.W.1 to the incident and the official witness P.W.14, established that A1 to A3 subjected Jyothi to cruelty, compromised the matter and, later, murdered her at their residence. The unnatural death of Jyothi and the incident of leaving her at the house of P.W.1 on 13-08-2006 cumulatively established that Jyothi was subjected to cruelty for her failure to meet the illegal demand for payment of additional dowry.

To attract the offence punishable under Section 498-A I.P.C., it is for the prosecution to prove that there must be relationship of wife and husband between the deceased Jyothi and A1 and relationship of in-laws with A2 and A3 and the accused caused either mental or physical harassment. Leaving Jyothi at the house of P.W.1 demanding additional dowry directly amounts to mental cruelty and such humiliation on earlier occasions also corroborates the incident. When Jyothi was humiliated and treated with cruelty on more than one occasion and

later murdering her directly amount to an offence punishable under Section 498-A I.P.C. There was a quarrel between Jyothi and A1 few days prior to her death, A1 repeatedly ill-treated her, tortured mentally, later murdered and such circumstances would certainly attract the offence punishable under Sections 498-A and 304-B I.P.C. as held by the Apex Court in **Pawan Kumar Vs. State of Haryana**^[31]. In an identical situation, in **State of U.P. Vs. Ramesh Prosad**^[32], the Supreme Court held that

"When the wife was murdered in her bedroom and the dead body was burnt in that very room and there was evidence that the wife was subjected to cruelty, charge under Sections 302 r/w 201 and 498-A I.P.C. has been established."

In similar facts, in **Vijay Pal Singh and others Vs. State of Uttarkhand**^[33], the Supreme Court held that

"Cruelty or harassment need not always be demonstrated in the form of physical violence. The fact that a married woman had to go out of her in-laws' house and that the in-laws had made demand for dowry as a precondition for taking her back and that even a panchayat was held at the local level to sort out the issue, are sufficient indicators of cruelty or harassment, mental, if not, physical."

The principle laid down in the above judgments is directly applicable to the present facts of the case on the ground that, about 12 days prior to her unnatural death in her bedroom, Jyothi was left at the house of P.W.1 demanding dowry and establishing the same by cogent and satisfactory evidence by examining the direct witness P.W.1 is sufficient to hold that A1 to A3 are guilty for the offence punishable under Section 498-A I.P.C. Therefore, there is direct evidence to establish the involvement of A1 to A3 in subjecting Jyothi to cruelty for her failure to meet the illegal demand for payment of additional dowry and, thus, the prosecution established the guilt of A1 to A3 for the offence punishable under Section 498-A I.P.C. beyond reasonable doubt by adducing cogent and satisfactory evidence. Hence, the trial Court rightly convicted A1 to A3 for the offence punishable under Section 498-A I.P.C. and we find no error in the judgment of the trial Court warranting interference even after re-appraisal of entire evidence. Therefore, the conviction and sentence passed by the trial Court against A1 to A3 for the offence punishable under Section 498-A I.P.C. is hereby confirmed holding this point against the accused.

In the result, the calendar and judgment passed in S.C.No. 130 of 2008 on the file of the Court of Additional District and Sessions Judge, Gudivada, Krishna District, is hereby set aside in part acquitting A2 and A3 for the offence punishable under Section 302 r/w 34 I.P.C. while confirming the conviction and sentence passed against A1 for the offence punishable under Section 302 I.P.C. and the conviction and sentence passed against A1 to A3 for the offence punishable under Section 498-A I.P.C. Since A2 and A3 already undergone the punishment for the offence punishable under Section 498-A I.P.C., they are set at liberty henceforth if they are not required in any other case. Pending miscellaneous petitions, if any, in this appeal shall stand dismissed in consequence.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 21-04-2016.

JSK

[\[1\]](#) 2010 (1) ALD (CrI.) 699 (AP)

[\[2\]](#) (2010) 8 SCC 593

[\[3\]](#) (1999) 9 SCC 242

[\[4\]](#) (2006) 10 SCC 681

[\[5\]](#) (2003) 11 SCC 271

[\[6\]](#) (2014) 14 SCC 222

[\[7\]](#) AIR 1997 SC 286

[\[8\]](#) AIR 1975 SC 241

[\[9\]](#) AIR 1976 SC 69

[\[10\]](#) 1977 CrI.L.J. 639 (SC)

[\[11\]](#) AIR 1982 SC 1217

[\[12\]](#) 1995 CrI.L.J. 1016

[\[13\]](#) AIR 1991 SC 1842

- [\[14\]](#) (2003) 9 SCC 86
- [\[15\]](#) AIR 2013 SC 2088
- [\[16\]](#) AIR 1961 CALCUTTA 359
- [\[17\]](#) (2014) 12 SCC 306
- [\[18\]](#) (2014) 12 SCC 211
- [\[19\]](#) (2015) 7 SCC 148
- [\[20\]](#) AIR 2001 SC 1344
- [\[21\]](#) AIR 2001 SC 1929
- [\[22\]](#) AIR 2004 SC 132
- [\[23\]](#) (2011) 12 SCC 120
- [\[24\]](#) AIR 2002 SC 3443
- [\[25\]](#) AIR 2016 SC 310
- [\[26\]](#) (2010) 8 SCC 249
- [\[27\]](#) (2010) 8 SCC 430
- [\[28\]](#) (2003) 11 SCC 261
- [\[29\]](#) (2003) 11 SCC 299
- [\[30\]](#) (2003) 11 SCC 271
- [\[31\]](#) AIR 1996 SC 958
- [\[32\]](#) AIR 1996 SC 2766
- [\[33\]](#) (2014) 15 SCC 163