

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 423 OF 2002

The State of Maharashtra
Through Police Station Officer,
Police Station Kalamnuri,
Taluka Kalamnuri,
District Hingoli

..Appellant

Versus

1. Ramrao Kishanrao Chavan
Age 28 years, Occu. Agri.,
R/o Nandapur, Taluka Kalamnuri,
District Hingoli
2. Rangrao s/o Kishanrao Chavan,
Age 35 years, Occu. Agri.,
R/o as above
3. Santosh s/o Kisanrao Chavan,
Age 26 years, Occu. Agri.,
R/o as above
4. Kishanrao s/o Vithalrao Chavan,
Age 65 years, Occu. Agri.,
5. Vithabai w/o Kishanrao Chavan,
Age 60 years, Occu. Agri.,
R/o as above

..Respondents

Mr S.J. Salgare, APP for appellant
Mr Abhay Ostwal, Advocate for respondents

**CORAM : T.V. NALAWADE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 8.12.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 9.1.2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. This is an appeal by the State aggrieved by the judgment of acquittal of accused nos.1 to 5 for offences under Sections 498-A,

304-B alternative 302 read with Sec.34 of Indian Penal Code delivered by the learned Additional Sessions Judge, Hingoli dated 30.4.2002 in Sessions Case No.62 of 2001.

2. The facts relevant for deciding this appeal may be stated as follows:

The crime was registered at C.R. No.73/2001 under Sections 302, 304-B, 498-A read with Sec.34 of Indian Penal Code on the basis of F.I.R. Exh.62 lodged by P.W.4 Ananda Patange, resident of Kondhur, at Police Station Kallamnuri. As per the F.I.R., deceased Indubai was sister of P.W.4 Ananda. Her marriage was solemnised with accused no.1 Ramrao, residing at Nandapur, Taluka Kalamnuri on 13.5.1996. Accused no.2 Rangrao and accused no.3 Santosh are brothers of accused no.1 and accused no.4 Kishan and accused no.5 Vithabai are their parents. They were residing together and were doing agricultural work. Indubai was given good treatment for first six months, but thereafter all the accused started ill-treating her and assaulting her for petty reasons. They started demanding from her dowry of Rs.1 lac for purchasing a field. When Indubai visited her maternal house, she disclosed these facts to her maternal relatives. She also wrote some letters, however, since her parents were poor, they were unable to meet the demand. In order to preserve the married life of Indubai, her maternal relatives persuaded her to resume co-habitation. P.W.4 Ananda and his father had persuaded all the accused that they should not assault and ill-treat Indubai. However, ill-treatment to Indubai continued. When Indubai was pregnant for two months, she was not provided food and was

assaulted and she was told that if dowry of Rs.1 lac would be paid, then only she would be maintained. On 26.4.2001, there was marriage of P.W.4 Ananda, which was attended by Indubai. That time, she told her maternal relatives that she was subjected to unbearable harassment and they should pay Rs.1 lac to them, as she was unable to bear the ill-treatment. Still, they persuaded Indubai to resume co-habitation and sent her back to her matrimonial house. On 19.5.2001 at 3.00 p.m., one neighbourer Deorao gave a message that accused no.1 Ramrao had called them in their field. Hence, P.W.4 Ananda and his cousin Waman went to the field of the accused at 4.00 p.m. Ramrao told P.W.4 Ananda that Indubai was not taking meals, as she had sulked. P.W.4 Ananda noticed that there were signs of injuries on her neck and Indubai was not talking. She was unconscious. There were also injury marks on her person. All the accused were present there. They did not allow them to minutely observe body of Indubai. Then, she was put in auto-rickshaw and she was brought to Dr. Kandi at Hingoli. Dr. Kandi advised them to take her to Civil Hospital. They took Indubai to Civil Hospital, Hingoli but doctors from Hingoli advised them to take her to Civil Hospital, Nanded. When they reached near Ardhapur, they realised that Indubai must have died. When she was taken to the Civil Hospital, Nanded, she was examined and declared dead. P.W.4 Ananda noticed injuries of assault on her neck, back, ribs and elbow. He accordingly lodged F.I.R. on 21.5.2000 at 4.10 p.m. P.W.14 P.I. Todase conducted the investigation. He drew spot panchnama and inquest panchnama. He also got autopsy done on the dead body. P.W.3 Dr. Suryakant in his post mortem notes recorded cause of death by throttling. The statements of material witnesses

were recorded. The chits purported to be written by deceased to her maternal relatives were seized and school notebook of Indubai as a specimen handwriting was also seized. Chits and the notebook were sent to handwriting expert. The handwriting expert supported the prosecution case. The accused came to be arrested. Viscera was forwarded to Chemical Analyst. On completion of investigation, the charge-sheet was submitted in the Court.

3. In due course, the case was committed to the Court of Sessions. The Charge was framed at Exh.10 under Section 498-A, 302, 304-B read with Sec.34 of Indian Penal Code in the alternative, 302 read with Section 109 of Indian Penal Code. The accused pleaded not guilty. The prosecution examined fourteen witnesses. The accused have denied that Indubai died of throttling. The defence has examined Medical Officer from Hingoli, who has stated that Indubai had suspected meningitis and he had reported the matter to police and forwarded the patient to Civil Hospital, Nanded.

4. After considering the matter on merits, the learned Additional Sessions Judge acquitted all the accused of all the charges. Hence this appeal.

5. Mr S.J. Salgare, learned A.P.P. for the State argued that there is reliable evidence of relatives of Indubai that the accused had subjected her to dowry demands and ill-treatment. She had written letters, which are proved through examination of handwriting expert. She had from time to time given information about her ill-treatment to her maternal relatives, lastly on 26.4.2001 at the time of marriage of

her brother P.W.4 Ananda. Within 15 to 18 days thereafter she has met with a death. He relied on the evidence of P.W.3 Dr. Suryakant and the post mortem notes showing that scratches were found on the neck and two contusions were found in scapula and lumber region and the doctor has given opinion that Indubai met with a death due to asphyxia due to throttling. He argued that it is a case of custodial death and, therefore, all the accused should be held guilty. Besides, he argued that the death has occurred within seven years of marriage and the presumption under Section 113-B of the Evidence Act will be applicable. The accused can be held guilty under Section 304-B of Indian Penal Code for dowry death.

6. Per contra, learned Advocate Mr Abhay Ostwal has argued that in case of throttling, the death is instantaneous and Indubai could not have survived for such a long time. He referred to the evidence of defence to show that the opinion about death by throttling cannot be accepted and Indubai has met with a natural death due to meningitis. He also argued that the allegations about dowry demands and ill-treatment are vague, not supported with any circumstantial evidence and are unreliable. There were no previous complaints. There is delay of two days in lodging the F.I.R. The letters sent by Indubai are not proved to be in her handwriting. Her specimen handwriting is not proved by examining the witness. P.W.4 Ananda brother of deceased and accused no.1 Ramrao both were together in taking Indubai to Civil Hospital, Hingoli and thereafter to Civil Hospital, Nanded. The accused have given intimation about ill health of Indubai to the informant. The conduct of the accused rules out the possibility that

they had subjected her to ill-treatment. Hence, the learned trial Judge has rightly acquitted the accused and no interference is called for. He has relied on number of rulings on the point of proof of handwriting evidence and scope of appellate Court in interfering with the judgment of acquittal. On the basis of evidence on record, the points for our consideration with our findings are as follows:

- (I) Whether Indubai met with
homicidal death ? .. Not proved
- (II) Whether accused nos.1 to 5 in
furtherance of their common
intention committed murder of
Indubai ? .. Not proved
- (III) Whether accused nos.1 to 5 in
furtherance of their common
intention subjected Indubai to
cruelty by making dowry demands
and physical and mental ill-treatment? .. Proved
- (IV) Whether accused nos.1 to 5 in
furtherance of their common
intention caused dowry death of
Indubai ? .. Not proved
- (V) What order ? .. Accused 1 to 5 are held
guilty under Section
498-A r/w Sec.34 of IPC

- REASONS -

7. The prosecution has examined fourteen witnesses and produced number of documents, which may be conveniently grouped as follows:

(I) Custodial death

P.W.4 Ananda, brother of deceased. His F.I.R. dated 21.5.2001 Exh.62.

P.W.3 Dr. Suryakant and provisional death certificate Exh.55 Post Mortem notes Exh.56 showing death by throttling.

There is counter evidence by defence D.W.!. Dr Sudhir - case papers Exh.93 maintained by him.

Reference letter to Government Medical College, Nanded Exh.94. Intimation to P.S.I. Hingoli, Exh.98.

P.W.2 Nandabai, wife of brother-in-law of deceased Indubai, who has given a statement before the police and before learned Judicial Magistrate, First Class under Sec.164 of Cr.P.C. Exh.50 that accused no.1 had committed murder of Indubai by throttling. She turned hostile.

(II) Evidence of ill-treatment, dowry demand :

P.W.4 Ananda, brother of the deceased

P.W.12 Sambharrao, father of the deceased

P.W.9 Bhagwan, a neighbour of P.W.12 Sambharrao

P.W.10 Uttam, a neighbourer

P.W.11 Subhash, a neighbourer

(III) Evidence of written complaints by Indubai :

P.W.4 Ananda, brother of the deceased

P.W.12 Sambharrao, father of the deceased

P.W.13 Sahebrao, seizure of note book

admitted handwriting Article 11 (panchnama Exh.82)

Seizure of three post cards and one letter on a paper,

panchnama Exh.67 proved by P.W.6 Laxman

P.W.5 Sanjay handwriting expert – his opinion Exh.65

and the xerox copies of disputed document produced at

A-1, A-2, A-3 and Articles A-3 A-4, A-6 to A-11

(IV) Panchas and other evidence:

P.W.1 Baburao – spot panch – panchnama at Exh.46

P.W.7 Sahebrao – panch to inquest panchnama Exh.70

P.W.8 Madhav – discovery of rope used for assault by

accused no.1 Ramrao (Panchnama at Exh.74)

P.W.14 Investigating Officer P.I. Shriram Todse

8. P.W.2 Nandabai, wife of brother-in-law of the deceased was posed as eye witness, but she declined to support the prosecution. In the cross-examination by learned Advocate for the accused, she has completely admitted the defence story. The evidence shows that she had given statement under Section 164 Cr.P.C. before the Magistrate, which is at Exh.50. It is a cryptic statement nonetheless Nandabai had stated before Magistrate that accused no.1 Ramrao, husband of Indubai had committed her murder by throttling and she had witnessed the incident on the date of incident at 10.00 a.m. at her

matrimonial house. Her evidence before this Court is totally contradictory to it. Besides, she had filed civil suit for partition. Certified copy of the plaint therein also discloses that on 19.5.2001 (this certified copy ought to have been exhibited, but it is not exhibited), accused no.1 Ramrao had ill-treated and assaulted Indubai and committed her murder.

9. We also find that there were certain letters written by Nandabai to her parents. Those were not got proved through Nandabai. We find that the evidence of Nandabai will have to be discarded altogether. Her statement under Section 164 or the plaint filed by her in the suit disclosing certain material facts about the murder cannot be used as substantive piece of evidence as she is not supporting the prosecution.

10. The evidence of P.W.4 Ananda shows that he is material witness on the point of murder of Indubai. As per his evidence, on 19.5.2001, he received message from the accused at 3.00 p.m. that accused no.1 Ramrao had called him to his house. He and Deorao went to the house of accused. Ramrao told them that Indubai was sulking and was not talking. Then he, Waman and accused no.1 Ramrao went to Nandapur at 4.00 p.m. He found Indubai sleeping on a wooden cot. She was not talking and was unconscious. He stated that accused no.1 Ramrao and in-laws of Indubai did not allow him to closely observe Indubai's body. She was carried in auto-rickshaw from Nandapur to Hingoli. They first went to the hospital of Dr. Kandi, but he did not examine her. P.W.4 Ananda stated that he had seen marks

on throat and marks of violence on her body. Dr. Kandi saw her from a distance and proposed them to take her to government hospital. She was brought to Government Hospital, Hingoli. The doctor from Government Hospital, Hingoli referred her to Government Hospital, Nanded. At 7.00 p.m., they left Hingoli for proceeding to Nanded by a private jeep. P.W.4 Ananda, contrary to his previous statement stated that Indubai was dead at Nandapur and he felt so while leaving Nandapur, but his previous statement disclosed that he had stated that when they reached near Ardhapur, Indubai showed symptoms of her death. When Indubai was taken to the Civil Hospital at 9.00 p.m., she was declared dead. He stated that there were marks of violence on her throat, rib cage and shoulder. He stated that he was not aware whether Indubai was examined or not in Civil Hospital, Hingoli, but he admitted that they had reached Civil Hospital, Hingoli at 5.45 p.m.

11. P.W.7 Sonbarao Dathikar is panch to the inquest panchnama Exh.70. He stated that in the hospital at Nanded, he had seen the dead body of a woman. There were marks of violence on the right side of neck, right ear and right scapular region and blood was oozing from the mouth. He has proved inquest panchnama Exh.70.

12. In the cross-examination, it was brought on record that he was returning after attending a movie, but that is not much relevant.

13. The main evidence is of P.W.3 Medical Officer Dr. Suryakant. He along with Dr. Paliwal conducted post mortem on the dead body on 20.5.2001 at 2.30 to 3.30 p.m. He noticed following facts :

- 1) Rigor mortis present
- 2) Following three surface wounds :
 - (I) two contusions on left scapula admeasuring 2 cms in circumference one below the other
 - (II) A contusion on right lumber region admeasuring 4 cm x 2 cm rectangular in shape
 - (III) Scratches on neck. There were two finger nail marks in the center over the marks in the center over thyroid cartilage. There were two nail marks on (1) left side and (2) nail marks on right side below the above scratches. Subcutaneous tissue was found congested.

He stated that all the three injuries were ante mortem and there was congestion in brain, serous pleura, both lungs, pericardium, large vessels, esophagus, stomach and its contents, small intestine, large intestine, liver, pancreas, spleen and kidney. He had preserved the viscera but Chemical Analyst's report disclosed that there was no poisoning. He, therefore, confirmed his opinion that probable cause of death was due to asphyxia due to throttling. His provisional post mortem certificate is at Exh.55 and post mortem report is at Exh.56. He stated that injury no.3 was possible due to forceful throttling by both the hands and injury nos.1 and 2 were possible by rope Court article no.10.

14. Dr.Paliwal initially denied, but after referring to Dr. Modi's jurisprudence, agreed that throttling means constriction produced by the pressure of the fingers and palms on the throat. He admitted that injury no.3 is scratches caused by finger nails. Those were superficial in nature. In further cross-examination, he admitted that there were no contusions on the neck showing thumb marks or finger marks on the neck. He had opened the respiratory track. He found no fracture of hyoid bone. No fracture of larynx, trachea and thyroid cartilages. He admitted that no damage to the trachea and larynx. He had stated that walls of thorax ribs cartilages were found intact. He admitted that in case of epileptic attack, there is arrest of breathing and oozing of froth but such froth is not reddish in colour. He admitted that in case of throttling, the death is instant (this opinion does not seem to be sound). Throttling may cause obstruction in supply of oxygen, which can cause internal damage and the death may be delayed, but learned A.P.P. has not cross-examined him on this point.

15. In the present case, P.W.4 Ananda was along with Indubai right from 4.00 to 9.00 p.m. Indubai was unconscious, but alive. She was brought to Civil Hospital, Hingoli. She was examined there and D.W.1 Dr. Sudhir Bhagat had attended to her. His evidence that he had examined her and prepared case papers and given treatment does not appear to be correct. As per case papers, Indubai was in the hospital from 5.50 to 6.00 p.m. It is impossible for D.W.1 Dr. Bhagat to examine her, note down all the symptoms including vital parameters and then provide her medical treatment in the form of I.V.fluid, injectable ampicillin, gentamicin, Soda Bicarb Oxygen

inhalation Dexamethazone etc. as deposed by him. Dr Bhagat has produced case papers running into six pages. We find that his evidence is not reliable and trustworthy regarding the treatment given by him and preparation of case papers as time of ten minutes is too short for writing such lengthy symptoms and treatment, but he has produced copy of his intimation letter to the Police about bringing Indubai Ramrao Chavan in unconscious condition to the police station and referring her to expert management. We find the evidence of Dr. Bhagat reliable to the extent that when Indubai was brought to him, she was unconscious and serious, but alive.

16. The evidence of Dr. Suryakant discloses that besides scratches on the neck, no other symptoms causing internal damage to the respiratory system were noted by him. The death was not instant. There was no internal damage to larynx, trachea, hyoid bone and thyroid cartilage, bronchus walls of thorax and ribs. The evidence of doctor that there was froth oozing from the mouth and scratches were found on the neck is insufficient to hold that deceased Indubai met with a homicidal death by throttling. P.W.3 Dr. Suryakant's admission that the death could have been instant, either favours the prosecution or throws doubt about his expert knowledge.

17. There are three contusions noticed on the body, two are circular (with diameter of 2 cm) and one is rectangular 4 x 2 cm. These contusions are not possible by a rope (tarata). The opinion of Dr. Suryakant that these contusions were possible by rope Article 10 is not medically sound and cannot be believed. Learned A.P.P. Mr Salgare relied on :

- 1) **Appasaheb and anr. Vs. State of Maharashtra (2007) 9 SCC 721** (Para 11 with regard to definition of dowry)
- 2) **Hira Lal and ors. Vs. State (Govt. of NCT), Delhi (2003)8 SCC 80** (Expression “soon before” before her death)
- 3) **Satvir Singh and Ors. Vs. State of Punjab and anr. (2001) 8 SCC 633** (with regard to presumption under Sec113-A of the Evidence Act)
- 4) **K. Prema S. Rao & anr.Vs.Yadla Shrinivasa Rao & anr. (2003) 1 SCC 217** (with regard to the interpretation of provisions of Section 304-B IPC – dowry death)
- 5) **Magan Bihari Lal Vs. The State of Maharashtra (1977) 2 SCC 210** (The expression opinion on the point of handwriting should be received with great caution. It cannot be sole basis of conviction. The corroboration is required for such opinion)

In the present case, the evidence on record creates a doubt whether deceased Indubai met with unnatural death or not. There is a possibility that she might have died naturally. In the light of this possibility, no presumption of dowry death can be drawn though the allegations of ill-treatment for dowry are established. We find that there is no reliable and trustworthy evidence to show that deceased Indubai met with a homicidal death. In the light of these facts, the conviction under Section 302 of Indian Penal Code is certainly not sustainable. Points no.1 and 2 are answered accordingly.

18. Proof on subjecting Indubai to cruelty :

P.W.4 Ananda (brother) and P.W.12 Sambharrao (father) are the main witnesses to the charge of Section 498-A read with Sec.34 of Indian Penal Code. As per admitted facts, Indubai married to accused no.1 Ramrao on 13.5.1996 and thereafter started co-habiting with him. The other accused were also residing with them. P.W.4 Ananda has stated that dowry of Rs.91,000/- was settled before marriage. Rs.66,000/- was paid at the time of marriage and Rs.25,000/- could not be paid due to poverty. Indubai was treated well for a period of six months after marriage, but thereafter her husband and in-laws started ill-treating on petty grounds. They were asking her to bring Rs.1 lac for purchasing land and were beating her on that count. Whenever she was visiting her maternal house, she was narrating these instances of ill-treatment to them. She had also written letters to them, but still they persuaded her to resume co-habitation and persuaded the accused not to beat her. Still, the ill-treatment was continued and Indubai was not provided food, even when she was pregnant. He deposed that lastly on 26.4.2001, Indubai attended his marriage and that time she again narrated to them about ill-treatment by her husband and family members. She deposed about unbearable beatings on account of non-payment of Rs.1 lac. Still, P.W.4 Ananda and family members of Indubai persuaded her to resume co-habitation and on 19.5.2001 they received news about her death.

19. The cross-examination of P.W.4 Ananda shows that there is no reference in his F.I.R. Exh.62 about agreement to pay dowry of Rs.91,000/-, payment of dowry amount of Rs.66,000/- and outstanding

amount of Rs.25,000/-. His evidence regarding ill-treatment is very vague. He admitted that no demand of Rs.1 lac was made directly from them, but through Indubai. Such demand was made for the first time on 26.12.2000 and Indubai intimated to them by a letter. He did not make enquiry about the details of the land to be purchased. His evidence shows that Indubai's cousin Ranjana was also residing in Nandapur. They did not make any enquiry with her. Unfortunately, though he had carried handwritten letter of Indubai, the same was not shown to him and was not got it proved.

20. P.W.12 Sambharrao is father of deceased Indubai. He has deposed about dowry demands and ill-treatment as per evidence of P.W.4 Ananda. His evidence is again vague with regard to allegations of beating. He deposed that he had made payment of Rs.25,000/- to the accused after Shimga and before Gudipadwa of 1998. That time, the accused had assured that they would not ill-treat Indubai, but again there was demand of Rs.1 lac and ill-treatment on account of not meeting the demand.

21. He has proved the handwriting of Indubai in two letters and one chit. One letter is dated 17.4.1999, another is dated 26.12.2000 and the chit was brought by his son Ananda. These muddemal articles 3, 5 and 6 were shown to him and he identified them, but those were not exhibited at that time. Subsequently, those are marked as Exhs.97, 98 and 99. In cross-examination, he deposed that at the time of marriage, one Vijayrao Deshmukh was mediator. Amount of Rs.66,000/- was paid fifteen days before the marriage. He had not

received any letter from his daughter Indubai from 1997-98. He deposed that on 26.4.2001, for the first time he learnt about demand of dowry of Rs.1 lac. He admitted that the two letters did not disclose about demand of Rs.1 lac for purchasing a land.

22. With regard to the letters Exh.97, 98 and 99 there is evidence of handwriting expert Sanjay Hathkar. He had compared these letters along with notebook, but there is no evidence that the notebook contained specimen handwriting of Indubai. Neither P.W.4 nor P.W.12 have deposed to prove admitted handwriting of Indubai in the said notebook. Therefore, the evidence of handwriting expert is of no use. However, there is categorical evidence of P.W.12 that he had received two letters sent by post. Letter Exh.97 bears the postal endorsement dated 17.4.1999. It is addressed to P.W.12 Sambharrao. It shows that Indubai reported about use of very bad language by her mother-in-law and lot of harassment and beating to her. The husband was demanding Rs.1 lac and as she could not bring the money, her husband, mother-in-law and brother-in-law were assaulting her. Her brother-in-law was calling her as 'wife'. Father-in-law was also scolding her and due to ill-treatment her brain was not working and her father should pay the money immediately and the ill-treatment was unbearable to her.

23. Letter Exh.98 is also received by P.W.12 Sambharrao. It bears stamps dated 10.1.2000 and 18.1.2000 (of Kondhur the place of P.W.12 Sambharrao). In this letter also there is complaint that she was subjected to heavy ill-treatment. Her brother-in-law did not allow her to sleep throughout the night and her bedding was torn by him.

Her husband was instigating him to assault her and used to say that his wife was dead for him. All persons were scolding her and were saying that she was curse to their family, nobody was supporting her. She could not conceive how she could reside in such house. She warned that her maternal relatives should not visit their house. Her father-in-law was telling her husband to leave her to her maternal house. She warned that if something would happen to her, her father should not spare anybody. These letters are sent by post, whereas letter Exh.99 stands on a different footing, as it is brought by hand delivery. P.W.4 Ananda has not proved this letter. Therefore, evidence of P.W.12 that this letter was sent by post to him cannot be believed. However, as far as postal letters are concerned, those are relevant as per Section 32 (2) of the Evidence Act. Illustration (g) to Section 32 reads as follows:

“(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.”

Illustration (c) to Section 21 of the Evidence Act reads as follows:

“(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).”

Thus, the postal endorsements on the post cards ensure the communication as those cannot be manipulated and those were actually written. The handwriting is proved by P.W.12 Sambharrao. He being father must be aware of her handwriting. These two letters clearly disclosed that deceased Indubai was subjected to ill-treatment by all the accused for non-payment of money. There is no specific reference of amount in one letter but there is reference that the ill-treatment and beatings was on account of non-payment of dowry. We, therefore, find that these letters corroborate the evidence of P.W.4 Ananda and P.W.12 Sambharrao on the point of ill-treatment. Besides, there is evidence of P.W.9 Bhagwan, P.W.10 Uttam and P.W.11 Subhash, neighbours who have deposed about payment of dowry of Rs.25,000/- in their presence. We, therefore, hold that accused nos.1 to 4 had subjected Indubai to cruelty and, therefore, they are guilty for the offence punishable under Section 498-A read with Sec.34 of Indian Penal Code. Learned Advocate Mr Abhay Ostwal for the appellant relied upon following rulings :

- 1) State of U.P. Vs. Ram Sajivan and ors., (2010) SCC 529
(Paragraphs 47 to 59)**
- 2) Mohammed Ankoos and ors. Vs. Public Prosecutor,
High Court of A.P. Hyderabad (2010) 1 SCC 94
(Paragraphs 15 and 37)**
- 3) Ghurey Lal Vs. State of U.P. (2008) 10 SCC 450
(Paragraph 3 and 69 to 73)**

4) Tota Singh and anr. Vs. State of Punjab (1987) 2 SCC 529**(Paragraph 6)****5) Sheo Swarup and ors. Vs. Kind Emperor****AIR 1934 (Privy Council 227 (2)****6) Zwinglee Ariel Vs. State of M.P. AIR 1954 SC 15****(Paragraph 9)****7) State of Goa Vs. Sanjay Thakran and anr.****(2007) 3 SCC 755 (Paragraph 16)**

In all these cases, it is laid down that though the appellate Court has vast powers to reappreciate the entire evidence, the finding recorded by the trial Judge in case of acquittal should be considered and when two views are probable, the one in favour of the accused should be preferred. The finding of the trial Court of acquittal should not be set aside without compelling reasons. In this case, we find that the learned trial Judge has not considered the letters written by the deceased to her father, which are admissible in evidence in view of postal endorsements thereon and identification of the handwriting by her father. Those letters are written by the deceased, just within a short period before her death. If these letters would have been considered, there was no scope for acquitting the accused of offence punishable under Section 498-A/34 of Indian Penal Code. Hence, the finding of the learned trial Judge to the extent of acquittal under Section 498-A of Indian Penal Code needs to be interfered. In the result the appeal deserves to be allowed.

24. Accused nos.1 to 4 are held guilty for offence punishable under Section 498-A read with Sec.34 of the Indian Penal Code and not guilty under Section 302 read with Sec.34 of Indian Penal Code. They shall be heard on the point of sentence.

25. Registrar (Judicial) is directed to send intimation to the concerned Police Station to keep the accused present before this Court on 16th January 2018, for hearing them on the point of sentence.

(A.M. DHAVAL, J.)

(T.V. NALAWADE, J.)

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