

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

CRIMINAL APPEAL NO. 825 OF 2006

1. Bhausahab s/o Dnyanoba Kadam
Age : 43 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
2. Dnyanoba s/o Nivrutti Kadam
Age : 65 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
3. Bhagwan s/o Sitaram Pawar
Age : 57 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
4. Rajabhan s/o Dadasahab Pawar
Age : 50 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
5. Kashibai w/o Dnyanoba Kadam
Age : 60 years, occu.: household
R/o Deola, Taluka Ambejogai,
District Beed.

Appellants.

(original accused Nos.1,2,3,5 & 6)

Versus

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay, Bench
at Aurangabad).

Respondent.

Mr. R.N. Dhorde, Senior Counsel with
Mr. V.R. Dhorde, Advocate for the appellants.
Mr. M.M. Nerlikar, A.P.P. for the State/respondent.

WITH
CRIMINAL APPEAL NO. 226 OF 2007

The State of Maharashtra
Through Police Station Officer,
Ambejogai Police Station,
District Beed.

Appellant.

Versus

1. Bhausahab s/o Dnyanoba Kadam
Age : 28 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
2. Dnyanoba s/o Nivrutti Kadam
Age : 50 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
3. Bhagwan s/o Sitaram Pawar
Age : 42 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.
4. Rajabhan s/o Dadasahab Pawar
Age : 35 years, occu.: agri.,
R/o Deola, Taluka Ambejogai,
District Beed.

Respondents.

Mr. M.M. Nerlikar, A.P.P. for the State/appellant.
Mr. R.N. Dhorde, Senior Counsel with
Mr. V.R. Dhorde, Advocate for the respondents.

WITH
CRIMINAL APPEAL NO.277 OF 2007

The State of Maharashtra
Through Police Station Officer,
Ambejogai Police Station,
District Beed.

Appellant.

Versus

Kashibai Dnyanoba Kadam
Age : 45 years, occu.: household
R/o Deola, Taluka Ambejogai,
District Beed.

Respondent.

Mr. M.M. Nerlikar, A.P.P. for the State/appellant.
Mr. R.N. Dhorde, Senior Counsel with
Mr. V.R. Dhorde, Advocate for the respondents.

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL,JJ.**

Date of reserving judgment : 17th April, 2018.

Date of pronouncement of judgment: 7th June, 2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. Vires of the judgment of conviction passed by Adhoc Additional Sessions Judge, Ambejogai dated 01.12.2006 in Sessions Case No.50/1990 is challenged by the original accused Nos.1 to 3, 5 and 6 in Criminal Appeal No.825/2006. Respondent is the State of Maharashtra.

2. Criminal Appeal No.226/2007 is filed by the State of Maharashtra against the same judgment and order, for enhancement of sentence of convicted accused persons. Respondents in this appeal are original accused Nos.1 to 3 and 5.

3. Criminal Appeal No.277/2007 is preferred by the State of Maharashtra against the judgment and order challenging the acquittal of accused No.6 Kashibai of the offences punishable under Sections 304-B, 201 and 120-B of the Indian Penal Code (hereinafter referred to as the "I.P.C.").

4. Facts leading to institution of these appeals, in brief, are that the informant Sudhakar (PW-4) belonged to village Deola. However, he used to reside at Ambejogai with his wife Shakuntala (PW-9), son and daughter. Deceased Aruna was one of his daughter who married accused No.1 on 14.03.1988. After the marriage, deceased cohabited with accused No.1 at village Deola alongwith his father (accused No.2), mother (accused No.6) and brother (accused No.4). Accused Nos.3 and 5 are maternal uncles of accused No.1. Agricultural land of the informant Sudhakar (PW-4) was also situated in village Deola and Sudhakar used to look after this land and for that purpose he used to stay in village Deola, as per requirement. Suresh Pawar (PW-6) is a minor boy who used to reside in the field of informant as helping hand. At the time of marriage of deceased with accused No.1, dowry amount of Rs. 51,000/- in cash and 12 Tolas gold was agreed to be given to accused No.1 by informant Sudhakar (PW-4). Though the marriage was happily solemnized, out of dowry amount of Rs. 51,000/-, only Rs. 36,000/- in cash and 12 Tolas gold was given to accused No.1 and an amount of Rs. 15,000/- remained in balance. Therefore, after six months from the date of marriage, accused persons started demanding the balance dowry amount from Sudhakar (PW-4). Due to financial crisis he could not pay the balance dowry amount to the accused persons and promised to pay the same at the time of ensuing Diwali festival. However, accused started ill-treatment to

the deceased on account of demand of balance dowry amount by beating her, by talking with her in insulting and teasing manner as well as by keeping her starving. Whenever deceased paid visit to her parental home, she informed her parents regarding ill-treatment to her at the hands of accused and requested them to pay the balance dowry amount. Few days before the incident deceased wrote one in-land letter (Exh.158) to her father and requested him to send the balance dowry amount at the earliest and informed him about her miserable condition at matrimonial home.

5. In the month of August 1989 informant Sudhakar (PW-4) had been to village Deola for agricultural work. On 22.08.1989 when Sudhakar (PW-4) had been to hotel for tea at about 8.00 a.m., accused No.4 visited that hotel and took Sudhakar (PW-4) to the house of accused. When Sudhakar (PW-4) visited the house of the accused, he saw that dead body of deceased was lying in Gobar Gas Tank situate near the house of the accused. He also noticed injury to the left eye of the deceased. When he informed the accused that it was the matter of murder, accused Nos.1 to 5 took the informant Sudhakar (PW-4) inside the house and made him to sit in one room. Accused No.2 sat with informant Sudhakar and did not allow him to go outside the house. At that time, dead body of deceased was taken out from the tank and she was cremated near Gobar Gas Tank hastily by accused persons. Thereafter the informant Sudhakar was released from confinement at about 4.00

p.m. Due to this occurrence, the informant was in mentally disturbed and confused condition, and therefore, he could not take immediate steps against the accused persons. At last, on 28.08.1989 he went to Ambejogai and lodged report (Exh.50) to Police Station, Ambejogai about the occurrence.

6. In the result, Crime No.169/1989 came to be registered against the accused persons for the offences punishable under Sections 120-B, 201, 302 and 498-A of I.P.C.

7. P.S.I. Bajirao Rathod (PW-11) conducted investigation of this crime and prepared spot panchanama (Exh.39), seized one ear ring of the deceased from the Gobar Gas Tank. He also seized sample of ash from the spot where deceased was cremated. When accused No.1 was in police custody, as per his disclosure statement (Exh.41), small earthen pot containing ash and bone pieces was seized from his possession (Exh.42). Investigating Officer also seized two in-land letters and one chit produced by the informant Sudhakar and one exercise book as specimen handwriting of the deceased. The seized ash and bone pieces were referred to Forensic Laboratory for examination. After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Ambejogai.

8. Offences punishable under Sections 302, 304-B of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Ambejogai.

9. Charge (Exh.15) was framed against accused Nos.1 to 6 for the offences punishable under Sections 498-A, 302, 201, 120-B read with Section 120-A of the Indian Penal Code. This charge was altered and fresh charge (Exh.29) was framed against accused Nos.1 to 6 under Sections 302, 498-A, 201 read with Section 120-B of I.P.C. Subsequently additional charge (Exh.70) was also framed under Section 304-B read with Section 120-B of the I.P.C. Accused pleaded not guilty and claimed trial.

10. The then Additional Sessions Judge, Ambejogai, after considering the evidence placed on record, pleased to acquit all the accused of all the charges. Against that judgment and order of acquittal, Criminal Revision Application No.69/2003 was preferred and Single Judge of this Court, by allowing that Revision, remanded the case for reconsideration to the Sessions Court, Ambejogai with liberty to both the sides to lead additional evidence.

11. After considering the evidence placed on record, the learned trial Court pleased to convict accused Nos.1 and 2 for the offence punishable under Section 304-B of I.P.C. and sentenced them to suffer rigorous imprisonment for seven years each and to pay fine of Rs. 5,000/- each. Accused Nos.1, 2 and 6 were also convicted for the offence punishable under Section 498-A of the I.P.C. and they were sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- each. Accused Nos.1, 2, 3 and 5 were also convicted for the offence punishable under Section

201 of I.P.C. and they were sentenced to suffer rigorous imprisonment for two years each and to pay fine of Rs.1,000/- each. No separate sentence was passed for the offence punishable under Section 120-B of I.P.C. Therefore, these appeals.

12. Heard strenuous arguments of learned Senior Counsel Shri R.N. Dhorde for the appellants/convicted accused persons and learned A.P.P. for the State.

13. Learned Senior Counsel for the appellants submitted that though the alleged incident occurred on 22.08.1989, father of deceased lodged F.I.R. (Exh.50) to Police Station, Ambejogai on 28.08.1989. He submitted that inordinate delay in lodging F.I.R. is not properly explained by the prosecution. Therefore, concoction of false case against the accused cannot be ruled out. He placed reliance on the cases of **“Shankarlal Vs. State of Rajasthan”, [(2004) 10 SCC 632]** and **“Thulia Kali Vs. State of Tamil Nadu” [(1972) 3 SCC 393]**, wherein the ratio laid down by the Apex Court is that, *“delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay the report not only gets benefits of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation”*.

14. The next objection raised by learned Senior Counsel for the appellants is that the prosecution has examined only interested

and related witnesses, and therefore, on the basis of the testimony of such interested, inimical and related witnesses, the conviction cannot be based. In support of this contention, he placed reliance on the cases of **“Hem Raj and others Vs. State of Haryana” [(2005) 10 SCC 614]**, **“Deepak Kumar Vs. Ravi Virmani and another” [(2002) 2 SCC 737]** and **“Kashi Vishwanath Vs. State of Karnataka” [(2013) 7 SCC 162]**. In these cases the Apex Court ruled that, *“failure to examine independent and material witnesses though available, without explanation by the prosecution, would not by itself give rise to adverse inference, but would assume significance when evidence of alleged eye witnesses raises serious doubt about their presence at the time of occurrence”*.

15. The next limb of the argument of learned Senior Counsel for the appellants is that the testimony of Sudhakar (PW-4) is in conflict with the testimony of Vijaykumar (PW-7) regarding demand of dowry and payment of dowry. He submitted that even so called chit and letter (Exhs. 157 and 158) of the deceased to her father are not proved to be in the handwriting of deceased, as those letters were not referred to Handwriting Expert to obtain his opinion. He contended that even the evidence of Sudhakar (PW-4) and Shakuntala (PW-9) as well as Chaturabai (PW-10) regarding ill-treatment to the deceased at the hands of accused is contradictory with each other, and therefore, prosecution cannot prove that soon before the death of deceased, she was subjected to ill-treatment by

accused for demand of dowry.

16. The next submission of learned Senior Counsel is that from the cross-examination of the prosecution witnesses it has come on record that the accused persons are rich and wealthy, and therefore, it is improbable that they would ill-treat the deceased for demand of meager amount of Rs. 15,000/-. Therefore, the evidence of prosecution witnesses is not acceptable that the deceased was harassed and ultimately killed for demand of balance dowry of Rs.15,000/-.

17. Learned Senior Counsel for the appellants also pointed out that from the cross-examination of Chaturabai (PW-10) and from the evidence of Shakuntala (PW-9) it emerges that these parental relatives of the deceased were present at the time of cremation of deceased, and therefore, the prosecution cannot prove that the deceased was hastily cremated without giving intimation to the parental relatives of the deceased. He submitted that, therefore, defence of the accused is most acceptable that the deceased died natural death, due to labour pains. He also pointed out that from the cross-examination of Sudhakar (PW-4) it emerges that he attended rites of collection of bones of deceased on the third day from the date of cremation. Therefore, the prosecution cannot prove that the deceased died of unnatural death. Learned Senior Counsel also pointed out that the deceased was not cremated at unusual place of

cremation, but in the past also the relatives of the accused persons were cremated in the same land, where the deceased was cremated. In support of his submission, he placed reliance on the cases of **“Chattarsingh Vs. State of Haryana” (AIR 2009 SC 378)** and **“Sujit Vishwas Vs. State of Assam” [(2013) 12 SCC 406]**. In these both cases the Apex Court held that conviction on the basis of circumstantial evidence is permissible only when the circumstances relied upon are proved beyond doubt and are incompatible with innocence of the accused. It is the duty of the Court to ensure that mere conjectures or suspicion do not take place of legal proof. Mere abscondance of the accused does not lead to a firm conclusion of his guilty mind. He has drawn our attention to the case of **“Vikramjit Singh Vs. State of Punjab” [(2006) 12 SCC 306]** wherein it is ruled that burden of proving fact especially within the knowledge of the accused does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved, the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same subject to certain statutory exceptions.

18. Learned Senior Counsel for the appellants has also placed reliance of the cases of State of **“Rajasthan Vs. Ramanand”, [(2017) 5 SCC 694]** and **“Anjankumar Vs. State of Assam” [(2017) 14 SCC 359]**. The ratio of these cases is that

suspicion cannot take place of legal proof.

19. The next submission of the learned Senior Counsel is that in the case at hand, demand for dowry and cruelty soon before the death of deceased is not proved by the prosecution, and therefore, the presumption as to dowry death under Section 304-B of the I.P.C. and 113-B of the Evidence Act cannot be raised against the accused persons. He placed reliance on the cases of **“Ramaiah Vs State of Karnataka” [(2014) 9 SCC 365]**, **“Bharat Bhushan Vs State” of M.P. [(2014) 13 SCC 425]** and **“Baijnath and another Vs State” of M.P. [2015 DGLS (SC) 1233]**. The ratio of these cases is that unless an act of cruelty or harassment is proved to have been caused by accused husband or relative to the deceased soon before her death in connection with demand of dowry, the accused cannot be held liable under Section 304-B of I.P.C.

20. In reply, learned A.P.P. for the State submitted that in the case at hand Sudhakar (PW-4), Vijaykumar (PW-7), Shankuntala (PW-9) and Chaturabai (PW-10) have categorically corroborated the versions of each other regarding harassment of the deceased by accused for demand of balance dowry amount of Rs.15,000/-. He also pointed out that Sudhakar (PW-4) and Vijaykumar (PW-7) are the witnesses in whose presence the total dowry of Rs. 51,000/- in cash and 12 Tolas gold was settled in between accused and informant, and out of this amount, cash of

Rs.36,000/- and 12 Tolas gold was given to the accused at the time of marriage. Therefore, there is sufficient evidence to prove that accused demanded dowry from the parental relatives of the deceased and for non-fulfillment of that demand accused ill-treated the deceased till her death. According to A.P.P, therefore, presumption under Section 113-B of the Indian Evidence Act can be drawn against accused persons that they caused dowry death of the deceased.

21. The next submission of learned A.P.P. is that no substance has been placed on record by accused to show that the deceased died due to labour pains. He pointed out that neither police is informed about unnatural death of the deceased nor even the Police Patil or Grampanchayat of village Deola.

22. The next submission of the learned A.P.P. is that the deceased was hastily cremated without waiting for parental relatives of the deceased. Even the cremation was carried out near Gobar Gas Tank where the dead body of was found by the witnesses.

23. The next submission of the learned A.P.P. is that before the date of incident Madhukar Yadav (PW-8) heard shouts of a woman at night hours from the house of accused and Hanumant Pawar (PW-5) had witnessed that at night hours one human body was taken out by accused from their house. He submitted that the circumstantial evidence placed on record together with harassment of deceased for demand of dowry soon before her death, is

sufficient to draw presumption under Section 113-B of the Indian Evidence Act to hold that the accused persons committed dowry death of the deceased.

24. Regarding the delay in lodging F.I.R., explanation has been offered by learned A.P.P. that due to threatening by accused persons, the informant Sudhakar could not approach the police within reasonable time. He also submitted that due to mentally disturbed condition of the parents of deceased because of the sudden death of their daughter, they were not expected to approach the police immediately after the occurrence. He pointed out that when no previous enmity is established in between accused and the parental relatives of deceased, merely on the ground of delay in lodging F.I.R., the prosecution case cannot be thrown out.

25. Learned A.P.P. has pointed out that the letter (Exh.158) written by deceased to her father few days before her death speaks that there was persistent demand of dowry by accused and on account of demand of dowry the deceased was subjected to harassment. He pointed out that in this letter it is mentioned that the deceased was counting days in the house of accused due to her physical and mental harassment.

26. According to learned A.P.P., inconsistencies emerged in the testimonies of Sudhakar (PW-4), Shakuntala Pawar (PW-9) and Vijaykumar Pawar (PW-7) are minor and those inconsistencies do not shake the basic versions of these witnesses, and therefore, no

importance can be given to those minor discrepancies.

27. The last submission of learned A.P.P. is that the punishment imposed by the learned trial Court for the offence punishable under Section 304-B of I.P.C. is highly inadequate and deserves to be enhanced. He placed reliance on the case of **“Ram Badan Sharma Vs State of Bihar”** reported in **(AIR 2006 SC 2855)**, wherein the Apex Court observed that,

“A reading of Section 304B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her

death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304B I.P.C. also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied.

In cases where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, Section 304B IPC is attracted”.

28. In the case at hand, the total prosecution case is based on the circumstantial evidence. No eye witness is available who had actually seen the accused while ill-treating the deceased or while killing the deceased. The evidence regarding ill-treatment for demand of dowry is in the form of personal disclosure by deceased before her parents and relatives as well as by one letter (Exh.158) written by deceased to her father few days before her death. These statements of the deceased are admissible in evidence and relevant only under Section 32 (1) of the Evidence Act, if it is proved that those statements are made by deceased, regarding part of the transactions, which resulted into death of deceased.

29. The accused are facing main charges under Section 304-B of the I.P.C. i.e. "dowry death". This provision was inserted by the Act 43 of 1986 and came into force w.e.f. 19.11.1986. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it's wise to insert a provision relating presumption of dowry death (Section 113-B of Evidence Act) on proof of certain essentials. The attempt was to encounter difficulties of proof by creating presumption.

30. A careful analysis of Section 304-B of I.P.C. shows that this section has the following essentials : (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances; (2) Such death should have occurred within seven years of the marriage; (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; (4) Such cruelty or harassment should be for or in connection with demand for dowry. This section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

31. The principles of Section 304-B of I.P.C. and Section 113-B of the Evidence Act are summarised by Supreme Court in the case of "**Kashmir Kaur Vs. State of Punjab**", (AIR 2013 SC 1039),

as under :-

- (a) *To attract the provisions of Section 304B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.*
- (b) *The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.*
- (c) *Such death occurs within seven years from the date of her marriage.*
- (d) *That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.*
- (e) *Such cruelty or harassment should be for or in connection with demand of dowry.*
- (f) *It should be established that such cruelty and harassment was made soon before her death.*
- (g) *The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.*
- (h) *It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act.*
- (i) *Therefore, the expression "soon before" would*

normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

- (j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.*
- (k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304B.*
- (l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304B were not satisfied.*
- (m) The specific significance to be attached is to the time of the alleged cruelty and harassment to*

which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage.

32. To substantiate the charges levelled against the accused, prosecution examined total 11 witnesses including Investigating Officer. Out of these witnesses, Nanasaheb Pawar (PW-1) is the panch witness on spot panchnama (Exh.39) of the Gobar Gas Tank where dead body of deceased was found by her father Sudhakar Pawar (PW-4) and uncle Vijaykumar Pawar (PW-7). Chandrakant (PW-2) is the panch witness on recovery of one earthen pot containing ash and bone pieces of the deceased, from the possession of accused No.1 as per his disclosure statement (Exh.41) and seizure memo (Exh.42). As per C.A. Report, no poison was detected in the bone pieces of deceased, and therefore, seizure of ash and bones from the possession of accused No.1 holds no importance, as the cremation of deceased near Gobar Gas Tank is an admitted fact in between the parties. Raghunath Mane (PW-3) is the panch witness in whose presence the Investigating Officer seized two in-land letters (Exhs. 158 and 159) alleged to be in the handwriting of deceased, one exercise book and one photograph, from the possession of the informant Sudhakar (PW-4). Sudhakar Pawar (PW-4) is the father of deceased. Hanumant Pawar (PW-5) is the witness who claims that in one night at about 9.00 to 10.00 p.m. he witnessed that accused Nos.1 to 4 and 6 took

out human body outside their house. Suresh Pawar (PW-6) is the boy who was maintained by informant Sudhakar (PW-4). This witness is examined to prove that in-land letter (Exh. 158) was handed over to him by deceased which was delivered to the parents of deceased. Vijaykumar Pawar (PW-7) is the cousin of informant and this witness claims that in his presence dowry was settled in between the informant and accused persons and partly paid to the accused. Madhukar Yadav (PW-8) is the witness who heard shouts of one woman at night hours from the house of accused No.2. Shakuntalabai (PW-9) is the mother of deceased and Chaturabai (PW-10) is aunt of the informant who claims that she was present at the time of cremation of deceased. P.S.I. Bajirao Rathod (PW-11) is the Investigating Officer.

33. As observed above, as the accused are facing charges under Section 304-B of I.P.C., burden lies on the prosecution to prove that the deceased died within seven years from the date of her marriage and death of deceased was caused by burns or body injury or otherwise than under normal circumstances. In the case at hand, undisputedly the deceased married accused No.1 on 14.03.1988 and she died on 22.08.1989. Thus, death of deceased within the period of seven years from the date of her marriage is not disputed point in between the parties.

34. It is also not the case of prosecution or defence that the deceased died due to burns. According to accused, deceased died

due to labour pains at the time of her delivery and on the other hand prosecution claims that accused persons killed the deceased. In other words, the prosecution case is that the deceased died otherwise than under normal circumstances. To prove that the deceased died otherwise than under normal circumstances, prosecution examined Sudhakar (PW-4), who is father of deceased and Vijaykumar (PW-7), who is the cousin of informant Sudhakar and uncle of deceased. In addition to this, prosecution examined Shakuntala (PW-9), mother of the deceased and Chaturabai (PW-10) who is close relative of the informant and who is resident of village Deola.

35. Sudhakar (PW-4) deposed before the Court that the deceased married accused No.1 on 14.03.1988 and thereafter she cohabited with accused No.1, who jointly resided with accused Nos.2, 4 and 6 at Deola. Accused Nos.3 and 5 are the brothers of accused No.6, but they reside separately in another house at village Deola. From the evidence of Sudhakar (PW-4) it emerges that his agricultural land is also situate in village Deola and to look after his agricultural land he used to visit Deola in every alternate week. In the initial part of his deposition, this witness deposed regarding the agreement as well as payment of dowry to the accused persons. However, that part of the evidence would be considered subsequently. From the evidence of Sudhakar (PW-4) it emerges that on 22.08.1989 in the morning hours when he had been to hotel

at Deola for tea, that time accused No.4 informed him that he was called by accused Nos.2 and 6 at their residence. Therefore, Sudhakar (PW-4) went to the house of accused Nos.1, 2, 4 and 6. At that place he was informed by accused Nos.1, 2, 4 and 6 that Aruna died at the time of her delivery. Accused persons showed dead body of Aruna which was lying in the Gobar Gas Tank. From the testimony of Sudhakar (PW-4) it further emerges that he noticed bleeding injury to the left eye of Aruna and her bangles as well as wrist watch were in broken condition. He also noticed that only 1 to 1 ½ ft. water was available in the Gobar Gas Tank. When Sudhakar (PW-4) asked the accused persons not to move the dead body from the Tank as the intimation was to be given to the Police Patil and police about death of Aruna, that time accused Nos. 1, 2 and 4 took the informant Sudhakar inside their house and threatened him to commit his murder and compelled him to keep mum. Sudhakar (PW-4) was made to sit in one room inside the house and accused No.2 sat near him. Thereafter within 1 to 1 ½ hours accused cremated dead body of Aruna in the premises of their house.

36. From the evidence of Sudhakar (PW-4) it further emerges that after the above incident he was not in fit state of mind and he lodged report to Police Station, Ambejogai after 5 to 6 days from the date of the incident. He has duly proved his F.I.R. (Exh.50). From the testimony of Sudhakar (PW-4) it further emerges that when police prepared spot panchnama, that time ear

ring (Article-A) of Aruna was found in Gobar Gas Tank. The evidence of Sudhakar (PW-4) was fully corroborated by Vijaykumar Pawar (PW-7).

37. Vijaykumar Pawar (PW-7) also deposed that on 22.08.1989 accused Dattoba Pawar informed him about death of Aruna due to fall in Gobar Gas Tank. According to Vijaykumar (PW-7), when he reached to the spot of incident, he saw that dead body of Aruna was lying in the water in Gobar Gas Tank and there was injury to her left eye. This witness and accused Nos.1 and 4 took out the dead body from Gobar Gas Tank. From the testimony of Chaturabai (PW-10) it emerges that on the date of incident she came to know about the occurrence from her grand daughter, and therefore, when she rushed the above-said Gobar Gas Tank, she found that dead body of Aruna was lying in Gobar Gas Tank.

38. Out of these three witnesses, importance cannot be given to the testimony of Chaturabai (PW-10) for the reason that the statement of Chaturabai (PW-10) was recorded by Investigating Officer after inordinate delay, on 18.09.1989. No reason has been assigned by Investigating Officer for such delay. Therefore, possibility cannot be ruled out that Chaturabai (PW-10) was a prepared witness. So also, material improvements are noticed in her testimony. Therefore, her testimony deserves to be ignored.

39. However, the testimony of Sudhakar (PW-4) regarding finding of dead body on 22.08.1989 in Gobar Gas Tank of the

accused persons is also corroborated by is F.I.R. (Exh.50). In F.I.R. (Exh.50) there is specific mention regarding finding of dead body of Aruna in Gobar Gas Tank. The evidence of Sudhakar (PW-4) is assailed by learned defence Counsel mainly on the ground of delay of six days in lodging F.I.R. However, recently in the case of **“Mukesh and another Vs State and others” [(2017) 6 SCC 1]**, the Apex Court observed that,

“Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused”.

40. In view of this legal position, if the circumstances of this case are considered, it reveals that prior to occurrence of the incident, the relations in between Sudhakar (PW-4) and accused persons were smooth. Though in the unreasonably lengthy cross-examination of Sudhakar (PW-4) the defence has tried hard to bring on record that there were groups in the village and the informant was on inimical terms with the accused persons, he cannot bring on

record any iota of evidence to show that the informant and accused were on inimical terms. On the other hand, from the cross-examination of Sudhakar (PW-4) the defence has brought on record that the informant Sudhakar had good relations with accused persons and even accused No.1 used to visit and meet Sudhakar (PW-4) in his field at Deola. Even during pregnancy of deceased Aruna, the accused No.1 visited the house of Sudhakar (PW-4) at Ambejogai alongwith Aruna for her treatment. Thus, obviously Sudhakar (PW-4) had no motive or any other reason to falsely implicate the accused persons in the present case with the serious charge of dowry death. Even Vijaykumar (PW-7) is the person who has friendly relations with the accused persons. From the cross-examination of Vijaykumar (PW-7) defence has brought on record that accused No. 5 is the Sarpanch and Vijaykumar (PW-7) is Deputy Sarpanch of Grampanchayat Deola and they contested the election in one panel. From his cross-examination the defence has brought on record that this witness was on visiting terms with accused No.2 and he had tea and dinner at the house of accused No.2. Thus, obviously Vijaykumar (PW-7) has no reason to depose falsely against the accused persons regarding finding of dead body of Aruna in Gobar Gas Tank.

41. Another important aspect is that from the testimony of panch Nanasaheb Pawar (PW-1) it emerges that at the time of preparation of panchnama of the spot of occurrence, one gold ear

ring, which was broken in two pieces, was found in Gobar Gas Tank. According to Nanasaheb Pawar (PW-1), this gold ear ring (Article-A) was identified by informant Sudhakar (PW-4) as ear ring of his daughter Aruna. Even Sudhakar (PW-4) has repeated the same version that he showed Gobar Gas Tank where the dead body of Aruna was found and at the time of preparation of Panchanama gold ear ring (Article-A) in two pieces was found in the said Gobar Gas Tank. Even in spot panchnama (Exh.39) there is specific reference of seizure of gold ear ring from the water of Gobar Gas Tank, which was in two pieces. At the stage of evidence also this gold ear ring (Article-A) was identified by Sudhakar (PW-4) as the ear ring of his daughter Aruna. No explanation has been given on behalf of accused in their statements recorded under Section 313 of Cr.P.C. regarding finding of this gold ear ring from Gobar Gas Tank. Therefore, the oral testimony of Sudhakar (PW-4) and Vijaykumar (PW-7) regarding finding of dead body inside Gobar Gas Tank on 22.08.1989 in the morning hours, is also duly corroborated by circumstantial evidence i.e. seizure of gold ear ring (Article-A) of the deceased from the said Gobar Gas Tank vide panchnama (Exh.39).

42. As observed above, as Sudhakar (PW-4) had no motive to concoct false case against the accused, the delay of six days in lodging F.I.R. is not fatal to the prosecution case. Otherwise also, in the F.I.R. (Exh.50) itself the informant has given explanation for delay that due to death of his daughter, he was unwell and

therefore, there was delay in lodging F.I.R. If Sudhakar (PW-4) was sensitive person, then certainly due to sudden and unnatural death of his daughter, he may get mentally disturbed and he may not be in a position to lodge F.I.R. against the accused persons. The other relatives of Sudhakar (PW-4) had no reason to lodge report against accused persons, and therefore, only on the ground of delay in lodging F.I.R., the testimonies of Sudhakar (PW-4) and Vijaykumar (PW-7) which are otherwise trustworthy and corroborated by circumstantial evidence, cannot be disbelieved only on the ground of delay in lodging F.I.R. We hold that on the basis of oral testimonies of Sudhakar (PW-4) and Vijaykumar (PW-7) corroborated by seizure of ear ring (Article-A) from the Gobar Gas Tank, the prosecution has duly proved that on 22.08.1989 dead body of Aruna was found in Gobar Gas Tank.

43. Burden lies on the prosecution to rule out that death of Aruna was accidental death. No doubt, even in the statement recorded under Section 313 of the Code of Criminal Procedure, none of the accused has whispered a single word regarding death of Aruna due to accidental fall in Gobar Gas Tank water. Otherwise also, after going through spot panchnama (Exh. 39) it emerges that the Gobar Gas Tank was built up in cement and bricks, having width of 9 ft. and depth of 9 ft. It is also mentioned in the spot panchnama that only 1 ½ ft. deep water was available in the Gobar Gas Tank. Thus, from the situation of this Gobar Gas Tank it can be gathered

that the accidental fall in Gobar Gas Tank water and possibility of death due to drowning in the tank water, is absolutely rule out by spot panchnama (Exh.39). Another important aspect is that, was the death of Aruna due to accidental fall in Gobar Gas Tank water, definitely the accused would have informed the Police Patil or concerned Police Station about the accidental death of Aruna. However, in the case at hand, undisputedly no intimation was given about the death of Aruna to either Police Patil or to Police Outpost, Dhawra which is nearer than Ambejogai Police Station to village Deola. Therefore, the possibility of accidental death of Aruna is absolutely ruled out by the prosecution. So also it was impossible for deceased to commit suicide in one and half feet deep water in Gobar Gas Tank. Moreover, as per C.A. Report (Exh.61) no poison was detected in the bones of deceased. Therefore, even suicidal death of deceased due to consumption of poison, is out of question.

44. From the evidence on record, it further emerges that though Sudhakar (PW-4), who is the father of deceased, was called to the house of accused persons and dead body of Aruna was shown to him, he was not allowed to attend the funeral, but he was made to sit inside the house of accused persons. Learned defence Counsel has pointed out that in the F.I.R. (Exh.50) there is no specific mention of threatening to Sudhakar (PW-4) and his confinement inside the house. However, the legal position cannot be ignored that the F.I.R. is not an encyclopedia of the prosecution

case, and therefore, each and every minute details of the occurrence need not be mentioned in the F.I.R. In the normal circumstances, Sudhakar (PW-4) would have allowed to attend the funeral of his daughter. However, Shakuntala (PW-9) as well as Chaturabai (PW-10) have nowhere deposed in their evidence regarding presence of Sudhakar (PW-4) at the time of cremation of Aruna.

45. From the evidence of Shakuntala (PW-9), who is the mother of deceased, it emerges that on the date of the incident when she was present at Ambejogai, accused No.3 visited her house at about 11.00 a.m. by jeep and by that jeep took, Shakuntala (PW-9) and her son Balu and two relatives, to Deola under the pretext that Aruna was seriously ill. However, when Shakuntala (PW-9) reached to Deola, by that time, dead body of Aruna was already on fire. It means that though the accused persons made farce that the parental relatives of the deceased were intimated by them about death of Aruna and they were present at the time of funeral, in fact, none of the parental relative was allowed to attend the funeral. On the other hand, the above evidence placed on record clearly indicates that the dead body of Aruna was hastily cremated by accused persons without intimating the nearest Police Station or even the Police Patil and without waiting for even close parental relatives of deceased. If these overall circumstances of the case are taken into consideration, only one conclusion can be drawn

that on 22.08.1989 Aruna died otherwise than under normal circumstances within seven years of her marriage.

46. Before parting with this point, we must make it clear that evidence of Hanumant Pawar (PW-5) that in one night he saw some abnormal activities outside the house of accused persons and the evidence of Madhukar Yadav (PW-8) that in one night heard shouts of a woman from the house of accused No.2, needs no more consideration, because the testimonies of these two witnesses are absolutely vague regarding exactly on which date, the so called incident occurred. So also, the conduct of these witnesses is absolutely abnormal that despite knowing such abnormal activities and shouts of a woman, they kept mum till the death of deceased, though the father of deceased Sudhakar (PW-4) was well available in the village Deola. Thus, the evidence of these both witnesses needs to be ignored as not trustworthy.

47. In view of the above discussion, now we have reached to the conclusion that the prosecution has proved beyond reasonable doubt that the deceased Aruna died within seven years from her marriage under the circumstances which are otherwise than normal. Now the question arises whether "soon before death" of Aruna she was subjected to ill-treatment by accused persons in connection with demand of dowry. Therefore, burden lies on prosecution to prove that there was certain settlements at the time of marriage about dowry and after marriage there was demand of

dowry and further for non-fulfillment of that demand there was ill-treatment to Aruna by her husband and his relatives. To discharge this burden, prosecution has placed reliance on the evidence of Sudhakar (PW-4) and Vijaykumar (PW-7).

48. Sudhakar (PW-4), who is the father of deceased, has categorically deposed before the Court that at the time of settlement of marriage of Aruna with accused No.1, it was agreed that he should pay Rs. 51,000/- in cash and 12 Tolas gold as dowry and he should bear the expenses of marriage. According to Sudhakar (PW-4), at the time of marriage he paid Rs. 36,000/- in cash and gave gold of 12 Tolas to the accused persons. The expenses of the marriage were also borne by him. Sudhakar (PW-4) has made it clear that out of agreed dowry amount, the amount of Rs. 15,000/- was not paid at the time of marriage and he assured that he would pay that balance dowry amount within a year or 1 ½ year. This witness has made it clear that at the time of settlement of this agreement of dowry, Sahebrao Patil, Pandharinath Yadav and Vijaykumar Pawar (PW-7) were present alongwith other persons. Even Vijaykumar Pawar (PW-7) has corroborated the version of Sudhakar (PW-4) by deposing that he attended the meeting for settlement of marriage and in the meeting held in the Wada of accused No.1, accused No.1, accused No.2, Sahebrao Patil, Pandharinath Yadav, Bhanudas Devarwale, Dadasaheb Pawar and informant Sudhakar (PW-4) were present alongwith him.

Vijaykumar (PW-7) has also repeated the same version that it was settled that Sudhakar (PW-4) should pay cash of Rs. 51,000/- and 12 Tolas gold as dowry to accused No.2. He also made it clear that the informant Sudhakar (PW-4) paid cash of Rs. 36,000/- and 12 Tolas gold and an amount of Rs. 15,000/- out of the dowry amount was in balance. The evidence of these witnesses is assailed by learned defence Counsel on the ground of inconsistent statements of these witnesses as well as on the ground that no independent witness is examined, because Vijaykumar (PW-7) is relative of informant Sudhakar (PW-4). Learned Senior Counsel for the appellants also pointed out that Vijaykumar (PW-7) was not eldest brother of his family.

49. However, presence of Vijaykumar (PW-7) cannot be doubted only because he is not the eldest male person from his family or only because he is relative of informant Sudhakar (PW-4). It is a matter of common sense that at the time of settlement of marriage normally relatives from both parties are invited and therefore, prosecution is not expected to examine any independent person to prove the settlement of terms of dowry in between accused No.2 and Sudhakar (PW-4). So also, it is not necessary that only eldest member of the family should be invited at the time of such meeting. Therefore, only because Vijaykumar (PW-7) was not eldest brother of his family or he is younger than Advocate Pawar, his testimony cannot be doubted. On the other hand, from his

cross-examination it emerges that he was Deputy Sarpanch of village Deola and accused No.5 was Sarpanch. Therefore, he was well acquainted with family of Sudhakar (PW-4) as well as with the family of accused persons. In the circumstances, presence of Vijaykumar (PW-7) in the meeting of settlement of marriage as a respectable and responsible person from the village and known to both families, is most normal and natural circumstance. We do not find anything abnormal regarding contention of Vijaykumar (PW-7) regarding his presence at the time of meeting of settlement of marriage.

50. The evidence of Vijaykumar (PW-7) is also assailed by learned Senior Counsel for the appellants on the ground of improvements. However, after careful examination of the testimony of Vijaykumar (PW-7) it emerges that the so called improvements in the testimony of Vijaykumar (PW-7) have been brought on record by defence itself in the cross-examination of this witness. Therefore, whatever improvements or additional statements have been brought on record in the cross-examination of Vijaykumar (PW-7) cannot be treated as omissions. The omissions in the testimony of a witness are only related with the statement of witness in his examination-in-chief and statement before the police. By bringing more improvements in cross-examination of the witness, defence cannot say that there are material omissions in the testimony of the witness.

51. No doubt, claim of Vijaykumar (PW-7) that the agreed

dowry amount and gold was paid in his presence is nothing but exaggeration, for the simple reason that in the cross-examination Sudhakar (PW-4) has admitted that at the time of payment of dowry amount of Rs. 36,000/- and gold of 12 Tolas, only accused No.2 was present and no third person was present.

52. The testimony of Sudhakar (PW-4) regarding agreement of dowry amount of Rs. 51,000/- in cash and 12 Tolas gold as well as part payment of dowry amount of Rs. 36,000/- and 12 Tolas gold is also corroborated by his F.I.R. (Exh.50). As observed in the first part of the judgment, Sudhakar (PW-4) is not an inimical witness, but he is a person who was having good and cordial relations with accused persons before the death of Aruna. Therefore, he has no reason to make false allegations regarding the statement of dowry and demand of balance amount of dowry by accused persons. So also, version of Sudhakar (PW-4) regarding demand of balance amount of dowry of Rs. 15,000/- is also corroborated by letter (Exh.158) written by deceased to this witness as well as by testimony of Shakuntala (PW-9). Of course, the evidence in the form of letter (Exh.158) will be considered in subsequent part of the judgment. At this stage it is suffice to say that the testimony of Sudhakar (PW-4) which is corroborated by Vijaykumar (PW-7), Shakuntala (PW-9) and letter of deceased (Exh.158) is sufficient to hold that at the time of settlement of marriage, the dowry amount of Rs. 51,000/- and gold of 12 Tolas

was settled in between Sudhakar (PW-4) and accused persons and out of that dowry amount, an amount of Rs. 15,000/- remained in balance as unpaid dowry.

53. Now, burden lies on the prosecution to establish that accused demanded this balance dowry amount and for non-fulfillment of their demand, they ill-treated Aruna soon before her death. Sudhakar (PW-4) further deposed in his evidence that after the marriage Aruna visited her parental home for 5 to 6 times and before six months of her death, Aruna made complaint to this witness that accused persons started demanding the balance dowry amount and for that reason they also started beating to her and started keeping her starving. Though defence has challenged the correctness of this version on the ground that it is improvement, in F.I.R. (Exh.50) the informant Sudhakar (PW-4) has clearly mentioned that out of the dowry amount, an amount of Rs. 15,000/- was in balance and he promised to pay that balance amount after Diwali. In F.I.R. (Exh.50) it is specifically mentioned that deceased Aruna informed her father that on account of balance dowry amount, her family members started humiliating her by talking in teasing manner and she was also subjected to beating and she was kept starving by her husband and brother-in-law. In the last para of F.I.R. (Exh.50) the informant has made it clear that for non-fulfillment of demand of balance amount of dowry of Rs. 15,000/-, all accused ill-treated his daughter by beating her and thereby killed her.

Therefore, it cannot be said that the version of Sudhakar (PW-4) before the Court is material improvement. It is not expected that deposition of witness before the Court shall be word to word reproduction of contents of F.I.R. Minor discrepancy in between deposition of informant (PW-4) and recitals of F.I.R. (Exh.50) is most natural and overmuch importance cannot be given to those minor discrepancies. Therefore, we find that no material admissions have been brought on record by learned defence Counsel in the cross-examination of Sudhakar (PW-4) to disbelieve his version regarding agreement of dowry, part payment of dowry and harassment of deceased at the hands of accused for non-fulfillment of demand of balance amount of dowry.

54. The evidence of Sudhakar (PW-4) is also corroborated by his wife Shakuntala (PW-9) who also deposed before the Court that after marriage initially Aruna did not make complaint against accused persons, however, subsequently she started complaining that for recovery of dowry amount her in-laws, husband and brothers of husband started giving ill-treatment to her. She also made it clear that Aruna told her that accused used to tease her by uttering that when there was no money with parents of Aruna to pay dowry, why they performed her marriage. Even Vijaykumar (PW-7) corroborated the version of parents of deceased by deposing that two months before the death of Aruna she told this witness to request her father to pay the balance dowry amount. Even Suresh

(PW-6), who was the minor boy maintained by informant in his field and who used to reside at Deola, deposed that when he visited the house of accused No.1, Aruna told him that all accused persons ill-treated her for recovery of dowry amount. The oral versions of these witnesses are further corroborated by letter (Exh.158) of Aruna which was written few days before her death to her father Sudhakar (PW-4).

55. Suresh Pawar (PW-6) deposed before the Court that he was maintained by Sudhakar (PW-4) and he used to take milk from cattle shed of Sudhakar (PW-4) to his house at Ambejogai daily. Suresh (PW-6) is the witness who resided at Deola in the field of the informant Sudhakar (PW-4) and he was on visiting terms to the house of accused and Sudhakar (PW-4). From the testimony of Suresh (PW-6) it further emerges that one in-land letter was given to him by deceased Aruna and he delivered that letter to the mother of Aruna and he also deposed regarding delivery of one chit to Sudhakar (PW-4) which was handed over by accused No.1. Regarding these in-land letter and chit, Sudhakar (PW-4) has given clarification that the in-land letter (Exh.158) was written to him by deceased Aruna and in that letter she requested him to pay the balance dowry amount of Rs. 15,000/- immediately and she informed him in the same letter regarding harassment to her. Sudhakar (PW-4) has duly identified handwriting of Aruna in the in-land letter (Exh.158). For comparison he has also produced one

previously written letter (Exh.159) by Aruna to her sister. The trial Court has undertaken the exercise of comparison of handwriting of the previous letter (Exh.159) of Aruna to her sister with letter (Exh.158) written by Aruna to her father few days before her death. The trial Court was satisfied that the handwriting in both letters tallies with each other.

56. It is to be noted that Sudhakar (PW-4) being father of deceased Aruna was competent witness to identify her handwriting and prove it. Therefore, identification of handwriting of Aruna by Sudhakar (PW-4) in the letter (Exh.158) is sufficient proof of that letter. Though this material was made available to the Investigating Officer (PW-11), he was total negligent in referring those important documents to the Handwriting Expert for its comparison. Therefore, only way available with the prosecution was to get identified handwriting of deceased on the letter (Exh.158) through her father Sudhakar (PW-4) and the same has been rightly done by the then A.P.P.

57. After going through this letter (Exh.158), it becomes clear that it was written on 06.06.1989 to Sudhakar (PW-4) by deceased Aruna. In that letter deceased Aruna has specifically written as under :-

“Dear father, despite every difficulty, please pay the dowry amount within 15 days. This is my humble request. Daily I have to hear as to why marriage was

performed though money was not available. Each day is passing alike a year. Please send Chi. Balu on 24th June to fetch me and please arrange Dohal Jevan (a dinner which is traditionally arranged by the relatives in the advanced stage of pregnancy of a woman). Dear father, I am eagerly waiting. Please send Balu and make payment of money. Inform Balu to bring memo from the college”.

These clear recitals of the letter of deceased, which was written just two months before the death of deceased Aruna, spells out in clear words that there was persistent demand of dowry amount to her and on that count she was harassed and insulted by her family members and each day at her matrimonial home was passing as one year. In other words, this letter indicates that for non-fulfillment of demand of dowry, she was subjected to harassment and ill-treatment by her family members and she was just counting days. In the case at hand, undisputedly accused Nos.1,2, 4 and 6 used to live jointly at Deola with deceased. Therefore, this letter (Exh.58) together with the above discussed oral complaints of deceased with her parents and relatives, is definitely sufficient to hold that soon before the death of Aruna she was subjected to ill-treatment by accused Nos.1, 2, 4 and 6. This letter and oral complaints of deceased before her parents are certainly admissible under Section 32 (1) of the Evidence Act as statement of deceased in respect of the transactions which resulted

in her death.

58. Learned trial Court rightly considered this letter (Exh.158) and the above discussed evidence of Sudhakar (PW-4), Shakuntala (PW-9), Vijaykumar (PW-7) and Suresh (PW-6) and reached to proper conclusion that deceased Aruna died within seven years from the date of her marriage under the circumstances otherwise than normal and soon before her death she was subjected to ill-treatment by accused Nos.1, 2, 4 and 6.

59. Though learned Senior Counsel for the appellants raised objection that the accused were owner of 100 Acres of agricultural land and financially sound and therefore it is not possible that they would demand a meager amount of Rs. 15,000/- from the parents of deceased, this objection holds no water because greedy nature of human being never depends upon his financial condition. On the other hand, in majority of bride harassment cases, the family of husband is financially sound and despite their good financial condition they harass their daughter-in-law for extracting more money from the parental relatives of the bride. Thus, the above objection raised by learned Senior Counsel is rejected.

60. Regarding the objection in respect of non-examination of independent witnesses, it is suffice to say that in such cases the harassment of woman occurs inside the four-walls of the house, and therefore, normally there would not be any independent eye witness of the harassment. So also, it is normal tendency of the public at

large that nobody dares to depose before the Court as a witness in such matrimonial disputes or bride killing cases. Therefore, examination of related witnesses cannot be a ground to disbelieve their versions when otherwise they are trustworthy. In the case at hand, as observed above, the oral testimony of the parents and other witnesses is also corroborated by letter (Exh.158) of deceased written two months before her death.

61. Learned Senior Counsel pointed out that the father of deceased was present at the time of collection of Hasti (bones) on the third day after the cremation of deceased. However, this being part of last rites of the beloved daughter of Sudhakar (PW-4), his presence at the time of these rites cannot be viewed with suspicion and it will not give any benefit to the accused when written complaint of the deceased (Exh.158) speaks a lot against them.

62. In the case of **Kashmir Kaur & anr. Vs. State of Punjab** (cited supra), the Apex Court has explained deeming fiction under Section 304-B of the Indian Penal Code as follows:-

“Section 304-B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of

Section 304-B. Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304-B were not satisfied. The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.”

63. So also, in **Amar Singh Vs. State of Rajasthan etc., reported in (AIR 2010 SC 3391)**, the Apex Court ruled that :-

“14. Once it is established by the prosecution that soon before her death the deceased was subjected by the appellant to harassment or cruelty in connection with demand for dowry, the Court has to presume that the appellant has committed the offence under Section 304-B, IPC. This will be clear from Section 113-B of the Indian Evidence Act which states that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had

caused the dowry death. The prosecution in this case had led sufficient evidence before the Court to raise a presumption that the appellant had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption.”

64. As discussed above, in the case at hand, the prosecution has proved beyond reasonable doubt that on 22.08.1989, deceased Aruna died under unnatural circumstances and soon before her death, she was subjected to ill-treatment by accused Nos.1, 2, 4 and 6 for demand of balance amount of dowry. So far as accused Nos.3 and 5 are concerned, the evidence against them regarding exact part played by them is uncertain and they did not reside jointly in the house of accused No.2. In letter (Exh.158) of deceased no complaint is made against outsiders. Therefore, learned trial Court rightly held that charge under Section 304-B of the I.P.C. is not proved against accused Nos.3 and 5. So also, as accused No.4 died during pendency of the trial, the question of his conviction for any offence does not survive.

65. In the case at hand, though prosecution has discharged initial burden of proving the necessary ingredients of Section 304-B of I.P.C. and though onus shifted on accused No.1, 2 and 6 to rebut the presumption available against them, no defence witness has been examined by the accused persons to prove that Aruna died natural death during her delivery. Even in the statement recorded

under Section 313 of the Code of Criminal Procedure, despite sufficient opportunity to these accused persons, they did not furnish any explanation regarding the circumstances in which deceased Aruna died. Therefore, in view of law settled by Apex Court in above cited authorities and considering the presumption available against the accused persons under Section 304-B and 113-B of the Evidence Act, we have no hesitation to hold that prosecution has proved beyond reasonable doubt the charge against accused No.1, 2 and 6 for the offence punishable under Section 304-B of the Indian Penal Code.

66. The evidence placed on record is also sufficient to hold that accused Nos.1, 2 and 6 conspired together to cause dowry death of deceased for demand of dowry and to ill-treat her for recovery of balance dowry amount. As accused Nos.3 and 5 did not reside jointly with accused Nos.1 and 2 in the same house, but as they resided separate in another house at Deola and as they had not played active part for demand of dowry as per recitals of the letters of the deceased (Exh.158), we hold that only accused Nos.1, 2 and 6 can be held guilty for the offence of conspiracy punishable under Section 120-B of the I.P.C.

67. The accused persons are also facing charges under Section 201 of the I.P.C. Regarding hasty cremation of dead body without giving intimation to the police or Police Patil, the evidence of Sudhakar (PW-4) is absolutely clear that on 22.08.1989 when dead

body of Aruna was shown to this witness, he was compelled to sit inside the house of accused No.2 and that time he was threatened by accused Nos.1, 2 and 4. When Sudhakar (PW-4) was sitting inside the house of accused No.2 along with accused No.2, that time the dead body of Aruna was cremated near the Gobar Gas Tank. Thus, the evidence of Sudhakar (PW-4) is only in respect of the part played by accused Nos.1, 2 and 4 for hasty cremation of the dead body of Aruna. He is not specific regarding the part played by accused Nos.3 and 5 at the time of cremation. Even Vijaykumar (PW-7), who claims that he was present at the time of cremation of Aruna, does not speak regarding the part played by accused Nos.3 and 5 or 6 at the time of cremation. Therefore, charge under Section 201 of I.P.C. is proved only against accused Nos.1, 2 and 4. As accused No.4 died during pendency of the trial, he cannot be convicted for any offence. Therefore, only accused Nos.1 and 2 can be convicted for the offence punishable under Section 201 of the I.P.C.

68. So also, as discussed above, prosecution has also proved that accused Nos.1, 2 and 6 ill-treated deceased Aruna to get fulfillment of demand of balance dowry amount. Therefore, they are rightly convicted by trial Court for the offence punishable under Section 498-A of I.P.C..

69. After going through the judgment passed by trial Court, it emerges that trial Court has acquitted accused No.6 of the offence

punishable under Section 304-B of the Indian Penal Code without assigning proper reasons. The said acquittal is challenged by the State by filing Criminal Appeal No.277/2007. As observed above, there is cogent evidence even against accused No.6 to prove the offence against her punishable under Section 304-B of the I.P.C. However, trial Court totally ignored that evidence and recorded acquittal of accused No.6 for the offence punishable under Section 304-B of the I.P.C. That part of the judgment of trial Court being against record, is definitely perverse. It calls for interference in this appeal against the acquittal. In view of above discussion, even accused No.6 deserves to be convicted for the offence punishable under Section 304-B of I.P.C. along with accused Nos.1 and 2. Therefore, Criminal Appeal No.277/2007 deserves to be allowed and accused No.6 deserves to be convicted for the offence punishable under Section 304-B read with Section 120-B of I.P.C.

70. In view of above discussion, we have come to the conclusion that conviction of accused Nos.3 and 5 for the offence punishable under Section 201 read with Section 120-B of I.P.C. deserves to be set aside. However, conviction of accused Nos.1 and 2 under Section 304-B read with Section 120-B of I.P.C. deserves to be confirmed. So also, conviction of accused Nos.1, 2 and 6 for the offence punishable under Section 498-A read with Section 120-B of I.P.C. deserves to be confirmed.

71. State has also preferred Criminal Appeal No.226/2007 for enhancement of sentence imposed against accused Nos.1, 2, 3 and 5. However, at the stage of argument, learned A.P.P. could not point out any circumstance on record to enhance the punishment imposed by the trial Court. Otherwise also, considering the facts and circumstances of the case as well as age of all accused, we are satisfied that the sentence of imprisonment imposed by trial Court against the convicted accused is just, proper and needs no interference. However, it has come to notice that though under Section 304-B of the I.P.C. sentence of fine is not prescribed under law, the learned trial Court erroneously imposed fine of Rs. 5,000/- each against accused Nos.1 and 2 for the offence punishable under Section 304-B of the I.P.C. That much part of the sentence imposed by trial Court deserves to be set aside.

72. As observed above, accused No.6 also deserves to be convicted for the offence punishable under Section 304-B read with Section 120-B of the I.P.C. and therefore, Criminal Appeal No.277/2007 preferred by the State against the order of acquittal of accused No.6 needs to be allowed.

73. It follows that Criminal Appeal No. 825/2006 preferred by accused Nos.1 to 3, 5 and 6 against the order of conviction deserves to be partly allowed only to set aside conviction of accused Nos.3 and 5. Criminal Appeal No.226/2007 preferred by the State for enhancement of sentence deserves to be dismissed.

74. Accordingly, we proceed to pass the following order.

ORDER

- (1) Criminal Appeal No.825/2006 is partly allowed.
- (2) Criminal Appeal No.277/2007 is allowed.
- (3) Criminal Appeal No.226/2007 is dismissed.
- (4) The order passed by Adhoc Additional Sessions Judge, Ambejogai dated 01.12.2006 in Sessions Case No.50/1990, is modified as under :-
 - (i) "Accused No.1 Bhausahab Dnyanoba Kadam, accused No.2 Dnyanoba Nivrutti Kadam and accused No.6 Kashibai Dnyanoba Kadam are held guilty under Section 235 (1) of the Code of Criminal Procedure for the offence punishable under Section 304-B read with Section 120-B of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for seven years each".
 - (ii) "Accused Nos.1 Bhausahab Dnyanoba Kadam, accused No.2 Dnyanoba Nivrutti Kadam and accused No.6 Kashibai Dnyanoba Kadam are held guilty under Section 235 (1) of the Code of Criminal Procedure for the offence punishable under Section 498-A read with Section 120-B of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs. 1,000/- (Rupees One Thousand) each, in default to suffer simple imprisonment for 15 days".

- (iii) “Accused Nos.1 Bhausaheb Dnyanoba Kadam and accused No.2 Dnyanoba Nivrutti Kadam are held guilty under Section 235 (1) of the Code of Criminal Procedure for the offence punishable under Section 201 read with Section 120-B of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for two years each and to pay a fine of Rs. 1,000/- (Rupees One Thousand) each, in default to suffer simple imprisonment for 15 days”.
- (iv) “No separate sentence is passed for the offence punishable under Section 120-B of the Indian Penal Code”.
- (v) “The substantive sentence shall run concurrently”.
- (vi) “Set off be given under Section 428 of the Code of Criminal Procedure for the period already undergone”.
- (vii) “Accused No.3 Bhagwan Sitaram Pawar and accused No.5 Rajabhan Dadasaheb Pawar are acquitted of the offences punishable under Section 304-B, 498-A, 201 read with Section 120-B of the Indian Penal Code. Their bail bonds and surety bonds shall stand cancelled”.
- (viii) “Accused No.6 Kashibai w/o Dnyanoba Kadam is acquitted of the offence punishable under Section 201 read with Section 120-B of the Indian Penal Code”.

- (ix) "Out of muddemal property, ear ring (Article-A) be returned to Sudhakar Namdeo Pawar, resident of Deola, Taluka Ambejogai, District Beed. Remaining muddemal being worthless, be destroyed after the period of appeal is over".
- (5) The fine amount of Rs. 5,000/- each deposited by accused Nos.1 and 2 and fine amount of Rs.1,000/- each deposited by accused Nos.3 and 5 be refunded to them after the period of appeal is over.
- (6) Under Section 437-A of the Code of Criminal Procedure, accused No.3 Bhagwan Sitaram Pawar and accused No.5 Rajabhan Dadasaheb Pawar shall furnish before the trial Court the bail bonds with surety for the amount of Rs. 15,000/- (Rupees Fifteen Thousands) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed against this judgment and the said bail bonds shall remain in force for a period of six months from today.
- (7) Accused No.1, 2 and 6 shall surrender to their bail bonds before the trial Court immediately to undergo the sentence.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE