

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL No. 1103 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE ANIL R. DAVE**

**AND**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

- =====
- |  |    |
|--|----|
| 1 Whether Reporters of Local Papers may be allowed to see the judgment?  | NO |
| 2 To be referred to the Reporter or not?   | NO |
| 3 Whether Their Lordships wish to see the fair copy of the judgment?   | NO |
| 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder? | NO |
| 5 Whether it is to be circulated to the Civil Judge?   | NO |
- =====

**KISHANGIRI MANGALGIRI GOSWAMI - Appellant**

**Versus**

**STATE OF GUJARAT - Respondent**

=====

**Appearance :**

MR DHAVAL D VYAS for the Appellant.

MS HANSA PUNANI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent.

=====

**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 30/10/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)**

1. The present appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment and order dated 29<sup>th</sup> August, 2003 passed by the learned Additional Sessions Judge, Court No. 9, Ahmedabad City in Sessions Case No. 16 of 2001, imposing sentence of rigorous imprisonment for 3 years and fine of Rs. 5,000/-, in default simple imprisonment for 6 months, under Section 498A of Indian Penal Code, 1860; rigorous imprisonment for 10 years and fine of Rs. 20,000/-, in default, further simple imprisonment of 1 year, under Section 306 of Indian Penal Code, 1860; and rigorous imprisonment for 5 years and fine of Rs. 20,000/-, in default further simple imprisonment of 8 months, under Section 3 of the Dowry Prohibition Act. The learned Judge further held that all the sentences imposed on the appellant shall run concurrently.

2. The short facts giving rise to the present appeal are as under:

The accused married the victim in 1989. Soon after two years of his marriage, the accused started inflicting mental and physical torture on her and she was taunted by the accused for not bringing sufficient dowry in the marriage. He also demanded from the victim an amount of Rs. 40,000/- for the purpose of purchasing house. He even wrote letters to the in-laws and demanded Rs. 40,000/- for purchasing the house. The demand was persistent. Even threats were administered to the victim and her family members. Thus, the accused inflicted mental and physical

torture on the victim which prompted her to commit suicide by burning herself on 23-03-1999 after pouring kerosene on her body. Thus, as per the prosecution case, the appellant has committed the offence punishable under Section 498A and 306 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act.

The complaint was given by Dhulagiri Gumangiri Goswami on 17-05-1999. On the strength of the complaint given by the complainant, investigation was carried out. The place where the suicide was committed by the victim was visited and the *panchnama* of the place of incident was prepared in the presence of the *panch-witnesses*. The statements of the witnesses from the neighbourhood were recorded. The injured was immediately rushed to the hospital for providing necessary treatment. *Muddamal* seized was sent to Forensic Science Laboratory for the purpose of detailed analysis. On the death of the victim, the inquest *panchnama* was prepared and the dead body was sent for autopsy. The appellant was arrested during the course of investigation. On receipt of the report from FSL, the post-mortem report along with other material, the appellant was charge-sheeted for the offences punishable under Sections 498A and 306 of Indian Penal Code (hereinafter referred to as "**IPC**" for short) as well as Sections 3 and 7 of the Dowry Prohibition Act. He was produced before the Metropolitan Magistrate, Ahmedabad, who in turn committed the case to the Sessions Court under Section 209 of the Code of Criminal Procedure, 1973 as the

case was exclusively triable by the Sessions Court.

3. The charge against the appellant was framed *vide* Exh. 1 for the offences punishable under Sections 498A and 306 of IPC read with Sections 3 and 7 of Dowry Prohibition Act. The appellant pleaded not guilty to the charge levelled against him.

4. The prosecution has examined the following witnesses in order to bring home the guilt against the appellant:-

- (i) PW-1 Dhulagiri Gumangiri Goswami at Exh. 8.
- (ii) PW-2 Gautamgiri Bhagwangiri Goswami at Exh. 14.
- (iii) PW-3 Manoharsinh Himmatsinh Rathod at Exh. 20.
- (iv) PW-4 Bhairavsinh Khumarsinh Chauhan at Exh. 24.
- (v) PW-5 Manigiri Tulsigiri Goswami at Exh. 27.
- (vi) PW-6 Mohansinh Dalitsinh Rajput at Exh. 30.
- (vii) PW-7 Puranbhai Shambhubhai Goswami at Exh. 33.
- (viii) PW-8 Raghubhai Mafatlal Thakkar at Exh. 35.
- (ix) PW-9 Rajubhai Bhogilal Mistry at Exh. 38.
- (x) PW-10 Bharwad Vasudevabhai Bhalabhai at Exh. 40.
- (xi) PW-11 Dr. Ravindra Shrikrishna Bhise at Exh. 54.
- (xii) PW-12 Arjunsinh Lalsinh at Exh. 57.
- (xiii) PW-13 Sharadbhai Limba Mali at Exh. 73.
- (xiv) PW-14 Padubhai Thavarabhai Bodar at Exh. 76.

- (xv) PW-15 Narhari Rajvibhai Patel at Exh. 79.
- (xvi) PW-16 Chandrakant Lalluram Vora at Exh. 83.
- (xvii) PW-17 Pravinsinh Bhikhubhai Jadeja at Exh. 88.

5. The prosecution has also placed reliance on the following documentary evidence:-

- (i) Complaint given by Dhulagiri Gumangiri Goswami dated 17-05-1999 at Exh. 9.
- (ii) Report of the PSO dated 17-05-1999 at Exh. 74.
- (iii) Vardhi of the VS Hospital dated 23-07-1999 at Exh. 59.
- (iv) *Panchnama* of the hand-writing of the accused dated 04-06-1999 at Exh. 81.
- (v) *Panchnama* of three letters produced by the accused dated 04-06-1999 at Exh. 21
- (vi) Inquest *panchnama* dated 23-03-1999 at Exh. 34.
- (vii) Medical Certificate of Kishangiri dated 23-03-1999 at Exh. 71.
- (viii) Application given by the complainant dated 16-04-1999 at Exh. 10.
- (ix) Certificate of VS Hospital given to Hetal Kishanji Goswai dated 23-03-1999 at Exh. 72.
- (x) P.M. Note dated 23-03-1999 at Exh. 55.
- (xi) Letter of Assistant Police Commissioner dated 26-06-1999 at Exh. 42.
- (xii) Forwarding letter of PI Ellisbridge Police Station dated 22-06-1999 at Exh. 43.
- (xiii) Checklist dated 22-06-1999 at Exh. 44.

- (xiv) Letter of PI Ellisbridge Police Station to the Handwriting Expert dated 30-12-1999 at Exh. 45.
- (xv) Reply given by Bherusinh Khumansinh to the Committee dated 31-03-1999 at Exh. 26.
- (xvi) Reply given by witness Manigiri Goswami to the Committee dated 31-03-1999 at Exh. 28.
- (xvii) Original affidavit of Bherusinh dated 16-04-1999 at Exh. 25.
- (xviii) Original affidavit of Manigiri dated 16-04-1999 at Exh. 29.
- (xix) Extract of Entry No. 42 from the original Javak Register of the Ellisbridge Police Station dated 01-02-2000 at Exh. 97.
- (xx) Detailed opinion of the Handwriting Expert dated 23-05-2000 at Exh. 52.
- (xxi) Enlarged photograph of the disputed handwriting at Exh. 46.
- (xxii) Sample of the natural handwriting at Exh. 47.
- (xxiii) Specimen writings at Exh. 48.
- (xxiv) Negative of all the aforementioned photographs at Exh. 49.

7. The defence side has examined one witness, namely, DW-1 Dineshchandra Hiralal Parmar *vide* Exh. 99.

6. At the conclusion of trial, the learned Additional Sessions Judge narrated the incriminating circumstances against the appellant and recorded his statement under Section 313 of the Code of Criminal Procedure. The appellant, in his statement under

Section 313 of the Code of Criminal Procedure, has stated that he was falsely implicated in the commission of offence and a false case was foisted on him.

7. The learned Additional Sessions Judge, after appreciating the entire gamut of oral deposition and documentary evidence, held that the appellant perpetrated mental and physical cruelty on the victim and demanded dowry and thereby he has committed the offence punishable under Section 498A IPC read with Sections 3 and 7 of the Dowry Prohibition Act. The learned Judge further held that mental and physical torture was committed by the appellant on the victim to such an extent that she was compelled to commit suicide within the meaning of Section 306 of IPC.

8. The complaint given by PW-1 Dhulagiri Gumangiri Goswami *vide* Exh. 9 was supported by his oral deposition adduced *vide* Exh. 8 and PW-2 Gautamgiri Bhagwangiri Goswami *vide* Exh. 14 as well as deposition adduced by PW-11 Dr. Ravindra Shrikrishna Bhise at Exh. 54. Necessary corroboration to the complaint has also been established by the prosecution. The deposition adduced by PW-11 Dr. Ravindra Shrikrishna Bhise *vide* Exh. 54 further supports the prosecution case and the Post-Mortem Report makes it clear that the victim committed suicide within the meaning of Section 306 IPC. It is also stated that the dead body was having a singeing kerosene like smell and the death was due to extensive burn injuries and shock. The prosecution

has, by adducing the *panchnama* of the scene of offence, the inquest *panchnama*, the *panchnama* of the letters recovered during the course of the investigation and the Report of the FSL, established the inextricable involvement of the appellant in the commission of offence. The learned Judge further held that the victim was in the advance stage of pregnancy and, therefore, she would not commit suicide unless mental and physical torture was inflicted on her. Relevant documentary evidence and the oral deposition completely established the entire link connecting the appellant with the commission of offence and as the entire chain was established by the prosecution, the learned Judge convicted the appellant for the offences punishable under Section Sections 498A and Section 306 IPC and Section 3 of the Dowry Prohibition Act.

9. Learned Advocate Mr. D. D. Vyas representing the appellant submitted that the complaint was filed by PW-1 Dhulagiri Gumangiri Goswami after around two months of the date of incident. When the complaint is filed after a gross delay of around two months, it would raise doubt about the involvement of appellant in the commission of offence and, therefore, the benefit of doubt is required to be given to the appellant. The learned Advocate further submitted that the Lal Sinh and another person, who was working as a Police Officer, had grudge against the appellant and, therefore, with a view to falsely implicate the appellant, they joined hands with the complainant to file a false complaint against the appellant. It is alleged by the prosecution that letters were written



by the victim as well as the husband of the victim demanding dowry from his in-laws but the recovery of the letters is doubtful as no *panchnama* of the seizure of letters was prepared. Even the opinion of the Hand-writing Expert is not satisfactory and since the hand-writing of the letters has not been satisfactorily established by the prosecution, the appellant cannot be convicted on the basis of the letters wherein demand for dowry was made by him. Even in absence of any cogent and convincing evidence, it cannot be presumed to have been proved by the prosecution that the hand-writing in the letters were of the appellant. The basic ingredients, as narrated in Section 306 of IPC, as per the submission of the learned Advocate, cannot be invoked in the facts of the present case against the appellant because the appellant was nowhere connected with the commission of offence. The prosecution has not established even the mental and physical torture inflicted on the victim which ultimately compelled her to commit suicide within the meaning of Section 306 IPC. Even the documentary evidence, such as, the *panchnama* of the place of incident, the *panchnama* with regard to the seizure of the clothes, the inquest *panchnama* and the Post-Mortem Report do not provide necessary corroboration to the prosecution story about the mental and physical torture inflicted by the appellant on the victim. Thus, the prosecution has miserably failed to establish by adducing cogent evidence that the appellant demanded dowry from the victim or his in-laws, therefore, benefit of the same is required to be given to him. The learned Trial Judge has erred

in placing reliance on the weak and contradictory version of the Investigating Officer for convicting the appellant. The learned Judge mainly placed reliance on the deposition of PW-1 Complainant - Dhulagiri Gumangiri Goswami and PW-2 Gautamgiri Bhagwangiri Goswami at Exhs. 8 and 14 respectively to the present case. If the deposition adduced by these witnesses is perused in proper perspective, then it is clearly established that the marriage between the appellant and the deceased took place before 8 - 10 years and after their marriage, they had cordial relationship. On further perusal of the deposition of these witnesses, it also becomes clear that there was no specific demand of dowry. The appellant had purchased ornaments for the victim and the insurance policy was taken by the appellant in the name of the victim. Thus, the relationship between the appellant and the victim was cordial and it was not strained during the subsistence of their marriage and this fact has not been taken into account by the learned Trial Judge in convicting the appellant. Thus, the learned Advocate submitted that the prosecution, on the basis of oral deposition and documentary evidence, has not established the entire link connecting the appellant with the commission of offence and since the oral deposition bristles with contradictions, benefit of doubt is required to be given to the appellant and he be acquitted for the offences punishable under Sections 498A and 306 IPC as well as Section 7 of the Dowry Prohibition Act.

10. The learned Advocate for the appellant has

placed reliance on the judgment in the case of **State of Gujarat Vs. Kalavatiben Liladhar, 2007 (2) GLR 1275**. The case before the Division Bench of the High Court was in respect of Sections 306 and 498A of IPC. The High Court held, on appreciation of evidence, that the harassment, which is alleged by the prosecution, should be consistent, persistent and of an unbearable nature which would induce the deceased to take extreme step of suicide. The learned Advocate, placing reliance on the ratio laid down in the judgment, vehemently submitted that the prosecution has miserably failed to prove that the cruelty inflicted on victim was consistent, persistent and unbearable. The prosecution has also not established the basic ingredients of Sections 306 and 498A IPC. Thus, the learned Advocate submitted that as the prosecution has not established the case against the appellant by adducing cogent and convincing evidence, he be acquitted forthwith in the matter.

11. The learned Additional Public Prosecutor Ms. Hansa Punani submitted that the prosecution has examined 17 witnesses and also produced the documentary evidence in support of the deposition adduced by the prosecution. PW-1 Dhulagiri Gumangiri Goswami, who is the father of the victim, is examined *vide* Exh. 8. He is also the complainant and the complaint given by him is produced *vide* Exh. 9. The version given in the complaint is reiterated by PW-1 Dhulagiri Gumangiri Goswami in his deposition before the Court *vide* Exh. 8. The depositions adduced by PW-2 Gautamgiri Bhagwangiri Goswami, who is the maternal

uncle of victim Kanta, and PW-4 Bhairavsingh Khumanrsingh Chauhan *vide* Exh. 24 support the deposition adduced by PW-1 Dhulagiri Gumangiri Goswami and it provides corroboration to the prosecution case. Even on perusal of the deposition adduced by PW-5 Manigiri Tulsigiri Goswami examined *vide* Exh. 27, it becomes clear that the prosecution case gets necessary support in order to prove the guilt of the accused. The prosecution has examined PW-11 Dr. Ravindra Shrikrishna Bhise *vide* Exh. 54. He had given the Post-Mortem Report after carrying out the autopsy of the dead-body *vide* Exh. 55. On perusal of the deposition adduced by Dr. Ravindra Shrikrishna Bhise *vide* Exh. 54, the hair of the deceased was emanating kerosene like smell. On her examination, it was found that she was having extensive burns on the body and the death of the victim was caused due to the injuries sustained due to severe burns. *Panch-witnesses* examined in the case further corroborate the *panchnama* of the place of incident, the *panchnama* of the seizure of clothes and the inquest *panchnama*. The prosecution has also produced *panchnama* of the handwriting of the accused in order to prove the letters written by the accused demanding dowry from the in-laws. The detailed opinion by Hand-writing Expert at Exh. 52, the enlarged photograph of the disputed handwriting *vide* Exh. 46, the sample of the natural handwriting *vide* Exh. 47, the specimen handwritings *vide* Exh. 48 and the negative of the photographs *vide* Exh. 49 corroborate the prosecution story about the letter written by the appellant to the father-in-law demanding dowry of Rs. 40,000/-. The learned

Additional Public Prosecutor submitted that the prosecution has, on the basis of the oral deposition and the documentary evidence, proved the entire link connecting the appellant with the commission of offence under Sections 498A and 306 of IPC as well as under Section 3 of the Dowry Prohibition Act and, therefore, the learned Judge has rightly convicted the appellant for the commission of the said offences. The learned Additional Public Prosecutor submitted that the discrepancies, if any, as pointed out by the learned Advocate on behalf of the appellant are of a minor nature. When the discrepancies are said to be of minor nature, then they can be ignored and the appellant can be convicted on the basis of the evidence on record of the case. The investigation, as per the submission of the learned Additional Public Prosecutor, was carried out in the most scrupulous manner and there was no loophole or lacunae in investigation. The learned Trial Judge has rightly convicted the appellant for the offences punishable under Sections 498A and 306 IPC as well as Section 3 of the Dowry Prohibition Act and the judgment rendered by the learned Trial Judge requires to be upheld. The learned Additional Public Prosecutor submitted that in view of the evidence on record of the case and the reasons assigned by the learned Judge in the judgment, since the prosecution has established the entire link connecting the appellant with the commission of offences, the appeal preferred by the appellant is required to be dismissed.

12. This Court has heard learned Advocate Mr. D.

D. Vyas for the appellant and learned Additional Public Prosecutor Ms Hansa Punani for the respondent-State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record of the case.

13. On re-appreciation of the oral deposition and the documentary evidence, we find that the appellant married Kantaben, daughter of Dhulagiri Gumangiri Goswami, somewhere in 1989-1990. After the marriage of the appellant with the victim, initially he had cordial relationship, but subsequently, started inflicting mental and physical torture on the victim and demanded dowry to the tune of Rs. 40,000/- from his father-in-law. He also wrote letters demanding dowry for the purpose of purchasing the house. Thus, the appellant inflicted mental and physical torture to such an extent that Kantaben was driven to commit suicide even though she was pregnant.

Section 306 IPC is with regard to abetment of suicide and the same is reproduced hereinbelow:

**"306. Abetment of suicide.-** If any person commits suicide, whoever abets the commission of such suicide, shall be punishment with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

On bare perusal of Section 306, it becomes clear that if any person commits suicide, then whoever abets the commission of suicide shall be punishable

with imprisonment of either description for a term which may extend to 10 years and fine. In case where the husband is found to have harassed his wife to such an extent as to drive her to commit suicide, then the provisions of Section 306 would be attracted. In the facts and circumstances of the case, the basic ingredients of Section 306 IPC are satisfied.

The prosecution has examined the father of the victim PW-1 Dhulagiri Gumangiri Goswami at Exh. 8. As per the deposition adduced by him, the appellant and Kanta were having cordial relationship in the beginning. But subsequently, he had demanded an amount of Rs. 40,000/- for the purpose of purchasing the house and as he was not in a position to give the amount of dowry, he started inflicting torture on her daughter. He has further deposed that one daughter named Hetal was born to Kanta out of the wedlock with the appellant. On 23-03-1999, he visited Rajasthan to fetch his daughter. On reaching the Dal Village, he was told that Kanta was not feeling well and, subsequently, he found the dead-body of Kanta. He has further deposed that because of demands of dowry made by the appellant, Kanta committed suicide. The complaint was given to the Ellisbridge Police Station *vide* Exh. 9 on 17-05-1999. The complaint corroborates his version in the deposition *vide* Exh. 8. In the complaint, he has narrated as to how the demand of dowry was made by the appellant to the tune of Rs. 40,000/- for the purpose of purchasing the house and when the demand of dowry could not be met, he inflicted mental and physical torture on his daughter.

As the amount of dowry could not be given to the appellant, Kanta committed suicide on 23-03-1999. Thus, in short, the version given by PW-1 Dhulagiri Gumangiri Goswami *vide* Exh. 8 is supported by his complaint *vide* Exh.9.

The prosecution has examined PW-2 Gautamgiri Bhagwangiri Goswami *vide* Exh. 14. He is the brother-in-law Dhulagiri Gumangiri Goswami and maternal uncle of Kanta. He has deposed in his testimony that Kanta married the appellant at Jariyada village before 10 years. After her marriage, she came to Ahmedabad along with the appellant. One daughter, named, Hetal was born to Kanta out of the wedlock with the appellant. When Kanta used to visit her parents house, she complained about the demand of dowry made by her husband. The appellant, as per his deposition, used to write letters demanding dowry. On perusal of the cross-examination, the witness has deposed that the appellant used to demand Rs. 40,000/- frequently from the father-in-law. Letters *vide* Exhs. 17, 18 and 19 were written by the appellant. Thus, the deposition given by Gautamgiri Bhagwangiri Goswami *vide* Exh. 14 corroborates the version given by Dhulagiri Gumangiri Goswami *vide* Exh. 8.

PW-4 Bhairavsinh Khumarsinh Chauhan is examined *vide* Exh. 24. In his testimony, he has deposed that he is staying in Amratbagh Flats situated in Ambawadi area. He knows the appellant since last 20 years and the appellant was working as a Peon in the Amratbagh Flats. The incident took place on 23-



03-1999. When he was doing his work, he heard the shouts from Kantaben. Kantaben had poured kerosene on her body and set herself ablaze. She was taken to the hospital for providing necessary treatment. He subsequently came to know that Kantaben succumbed to the injuries sustained by her. However, on perusal of cross-examination, nothing turns out from the cross-examination from this witness to dislodge his version in the examination-in-chief.

PW-5 Manigiri Tulsigir Goswami examined *vide* Exh. 27 has deposed in her testimony that Kantaben was his niece and she was having one daughter named Hetal. The appellant used to stay in Amratbagh Flats. Kantaben married the appellant 15 years prior to the date of incident. They had cordial relationship in the beginning, but subsequently, their relationship got strained. The incident took place on 23-03-1999. On hearing the shouts from the neighbourhood, he went to the place where Kantaben was staying. The crowd had gathered near the room of Kantaben and started shouting for help. As Kantaben had received serious burn injuries, she was taken to the hospital for providing immediate treatment. While she was given treatment in the hospital, she had narrated the involvement of the appellant in the commission of offence. The version given by this witness in the examination-in-chief in spite of grueling cross-examination has not been dislodged. Thus, as per the deposition of this witness, Kantaben had narrated the involvement of the appellant in the commission of crime during the treatment in the hospital.

PW-6 Mohansih Dalitsinh Rajput is examined *vide* Exh. 30 and he is one of the *panch-witnesses* in whose presence the letters were recovered. Likewise, PW-7 Puranbhai Shambhubhai Goswami examined *vide* Exh. 33 is also the *panch-witness* in whose presence the letters were recovered. PW-8 Raghubhai Mafatlal Thakkar examined at Exh. 35 has deposed in his testimony as to how the letters were recovered in his presence and after recovering the same, they were sealed in his presence for the purpose of sending the same to the expert for detailed analysis.

PW-10 Bharwad Vasudevabhai Bhalabhai is examined *vide* Exh. 40 by the prosecution with a view to prove the hand-writing of the letters which were seized during the course of investigation. He had conducted the examination of the handwriting in a scientific manner and, thereafter, submitted the report. He had identified the report submitted by him during the course of the deposition. In the cross-examination, he has deposed that the *muddamal* articles was received in a sealed cover. The sealed cover was opened by the Head of the Department. It has been emphatically contended by the learned Advocate for the appellant that the *panchnama* with regard to the recovery of the letters was not prepared and as there is lacunae in the evidence adduced by the prosecution, benefit of the same is required to be given to the appellant. The submission canvassed by the learned Advocate has no substance as the letters were seized during the course of investigation. PW-10 Bharwad

Vasudevabhai Bhalabhai had examined the handwriting in a scientific manner and on perusal of the deposition adduced by the Hand-Writing Expert, the doubt raised in this case is dispelled by the prosecution.

PW-11 Dr. Ravindra Shrikrishna Bhise examined *vide* Exh. 54 has deposed in his testimony that on the date of the incident, he was working as the Head of the Deptment in the V. S. Hospital. As per his deposition, on 23-03-1999, at about 12.45 PM, the dead body of Kantaben was brought to the hospital for the purpose of carrying out the autopsy. The autopsy was carried out at 2 O'clock in the afternoon with the help of Dr. M. C. Shah and the same was completed at 3 O'clock. As per the deposition of Dr. Ravindra Shrikrishna Bhise, the dead body was having a singeing kerosene like smell. The death, as per his deposition, was due to extensive burn injuries and shock.

PW-13 Sharadbhai Limba Mali is examined by the prosecution *vide* Exh. 73 to prove the complaint given by PW-1 Dhulagiri Gumangiri Goswami. After recording the complaint, he had forwarded the report under Section 157 of the Code of Criminal Procedure to the higher officer for taking the necessary action. He had identified the letters at Exhs. 15, 16 and 17.

PW-14 Padubhai Thavarabhai Bodar examined at Exh. 76 had recorded the statement of the witnesses during the course of investigation of I - CR No. 33 of 1999. He had recorded the statement of maternal aunt

and uncle of deceased Kantaben. He had also arrested the appellant on 02-06-1999 and, thereafter, handed-over the investigation to First PI.

PW-15 Narhari Rajvibhai Patel has been examined by the prosecution at Exh. 79 to prove the seizure of the letters from the possession of the appellant. *Panchnama*, after seizure, was prepared in the presence of *panch-witnesses*. The specimen signatures of the appellant were taken in the police station and the *panchnama* in respect of the specimen signatures was prepared in the presence of *panch-witnesses*. The deposition adduced by Narhari Rajvibhai Patel makes it abundantly clear that after the seizure of the letters from the possession of the appellant, the *panchnama* was prepared and specimen signature was also obtained and the *panchnama* in that regard was prepared. Thus, if the deposition given by PW-15 Narhari Rajvibhai Patel is perused along with the deposition adduced by PW-10 Bharwad Vasudevbbhai Bhalabhai, the prosecution, in our considered view, has established the hand-writing of the appellant in the letters produced *vide* Exhs. 15, 16 and 17 to the prosecution case.

In order to prove that the investigation of the case was carried out in a scrupulous manner, the prosecution has examined PW-16 Chandrakant Lalluram Vora at Exh. 83. Like-wise, PW-17 Pravinsinh Bhikubhai Jadeja is examined *vide* Exh. 88 to prove the fact that the investigation was done in a meticulous manner and all necessary care was taken while

conducting the investigation. It is true that some of the *panch-witnesses* have not supported the prosecution case indicating the involvement of the appellant in the commission of offence, but the same, in our view, would not help the defence.

The oral deposition adduced by prosecution is supported by the complaint given by PW-1 Dhulagiri Gumangiri Goswami *vide* Exh. 9, *panchnama* of the scene of offence *vide* Exh. 21, inquest *panchnama* *vide* Exh. 34 and *panchnama* of handwriting of the accused *vide* Exh. 81. Post-Mortem Report *vide* Exh. 55 further corroborates the prosecution story about the suicide committed by Kantaben when physical and mental torture became unbearable to her. The case against the appellant is further established by the prosecution by producing the handwriting of the disputed letters and the opinion given by Handwriting Expert *vide* Exh. 52 to the present case. Even the specimen handwritings obtained from the accused *vide* Exh. 48 and the negative photographs *vide* Exh. 49 further corroborate the prosecution case indicating the involvement of the appellant in the commission of offence.

Thus, on re-appreciation or re-evaluation of the entire evidence on record of the case, we find that the prosecution has established each and every link connecting the appellant with the commission of crime. The loopholes, which the learned Advocate for the appellant, has pointed out during the course of submissions, are of a minor nature. The prosecution has, thus, in our view, established that the mental

and physical torture was inflicted on Kantaben by the appellant after his marriage and the consistent torture which was inflicted on Kantaben became so unbearable that she was driven to commit suicide within the meaning of Section 306 IPC. Even the demand of dowry made by the appellant is proved by the prosecution in a successful manner and, therefore, we do not see any reason to interfere with the finding recorded by the learned Judge against the appellant convicting him for the offences punishable under under Section 498A and 306 of the Indian Penal Code read with Section 3 of the Dowry Prohibition Act.

13. For the foregoing reasons, we pass the following order:

#### **ORDER**

The appeal fails and is dismissed. The appellant is on bail and, therefore, his bail bond shall stand cancelled and he be taken in custody immediately. *Muddamal* be disposed of in terms of the directions given by the learned Judge of the Trial Court in the impugned judgment.

However, at this point of time, the learned Advocate for the appellant prays that the appellant may be granted time of two months to surrender as he wants to prefer an appeal to the higher forum. The prayer is accepted and the appellant is granted time of two months from today to surrender.

[ANIL R. DAVE, J.]

[H. B. ANTANI, J.]

*/shamnath*