HIGH COURT OF TRIPURA
AGARTALA

CRL.A(J) 64 of 2019

Sri Babul Miah,
son of Karam Ali,
resident of Rajdharnagar,
PS: Kakraban,
District: Gomati, Tripura

----Appellant(s)

Versus

The State of Tripura

---- Respondent(s)

For Appellant(s)	: Mr. Raju Datta, Adv.
For Respondent(s)	: Mr. S. Debnath, Addl. PP
Date of hearing	: 24.06.2020
Date of pronouncement	: 22.12.2020
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

Judgment & Order

The appellant was charged under Sections 498A and 304B of the IPC and alternatively, under Section 302 of the IPC along with two other accused namely Karam Ali and Anwara Begam by the Sessions Judge, Gomati Judicial District. The other two accused were acquitted from the charge on benefit of doubt but the appellant has been convicted under section 498A and 304B of the IPC by the Sessions Judge, having observed that from the evidence of PWs-2, 3, 4 7, 9 and 11, it has clearly transpired that wife of the appellant namely Rahima Begam @ Marjina was

being tortured and harassed by the appellant on demand of dowry, particularly for articles like televisions etc. That harassment goaded the victim to commit suicide. Pursuant to the said conviction, the appellant has been sentenced to suffer rigorous imprisonment of 3 (three) years and to pay fine Rs.5000/- with default stipulation for committing offence punishable under Section 498A of the IPC. He has been further sentenced to suffer rigorous imprisonment for 10 (ten) years and to pay fine of Rs.10,000/- with default stipulation for committing offence punishable under Section 304B of the IPC. It has been directed if the fine money is realized, the same shall be paid to the father of Rahima Begam (the deceased). Both the sentences are directed to run concurrently. The period of detention as undergone by the appellant has been directed to be set off from the term of imprisonment under Section 428 of the CrPC. The said judgment and order of conviction and sentence dated 21.09.2019 are challenged by the appellant in this appeal.

[2] Based on a written complaint (Exbt-2) filed by one Rajjak Miah (PW-3) on 02.06.2016, Kakraban PS Case No.2016KKB042 under Section 498A/302/34 of the IPC was registered and taken up for investigation. In the said complaint, PW-3 had revealed cognizable offence to the officer-in-charge of the said police station by stating that his daughter, Rahima Begam

was given marriage to the appellant as per *Shariat* law. At the time of marriage, a cash of Rs.5000/- gold jewelry weighing 1½ *bhari, wooden furniture etc.* were given away on demand of the groom. His daughter and the appellant lived their married life peacefully for one and half year. One girl child was born in the wedlock. After birth of the girl child, Babul Miah (the appellant) Karam Ali (the accused who has been acquitted) Anwara Bibi (the other accused who has been acquitted) and Habul Miah (the brother of the appellant) started torturing his daughter physically and mentally. They had increased their torture on his daughter by saying that "the materials given in marriage were not good enough". His daughter used to inform him about such incidents over her mobile phone. As PW-3 was not comfortable with his finance, he could not give the television set at the time of marriage. Moreover, the appellant had one television in their house. When his daughter went to watch that television, the accused persons used to make bad comments e.g. if you want to see the television, then bring it from your father's house.

[3] On 24.05.2019, the appellant had beaten his daughter severely. Several times, PW3 visited his daughter's matrimonial home to bring his daughter. Every time the accused persons used to tell him to change the material those were given in the marriage, else his daughter would not be permitted to go to their

house. On 01.06.2016, the day before the filing of the complaint (Exbt-2) at about 9.30 pm when the PW3 had called his daughter, she told him that the appellant had told her that she would never be allowed to go to her father's house. On 02.06.2016 about 10 am in the morning, one Rubel Miah, a resident of Rajdhannagar, informed him over telephone that Rahima had died by hanging a few moments ago. PW3 having the said information, rushed to the place of the appellant along with his relatives. Thereafter, in that context, he hasstated in the complaint as follows:

> **"I noticed that Rahima had been laid down over the bed after she was brought down from the hanging state on a ceiling fan *by Gamcha* (the napkin) I firmly believe by observing my daughter that my daughter Rahima had not committed suicide by hanging herself. The accused persons had hanged my daughter by killing her and later they brought her down from there and laid down over the bed."**

[4] After the investigation was complete, the police filed that final report chargesheeting the accused persons, as noted before. Since the offences, except of the section 498A of the IPC are exclusively triable by the Court of Sessions, on taking cognizance, the police papers were committed to the court of the Sessions Judge who on 17.01.2018 framed the charge as described before. The accused persons including the appellant had denied the charge and claimed to be tried in accordance with law.

[5] The prosecution, in order to substantiate the charge, adduced as many as 15 witnesses (PWs 1 to 15) including the

complainant (PW-3). That apart, the prosecution had introduced 7 documentary evidence (Exbts-1 to 11) including the inquest report (Exbt-1) and the post mortem examination report (Exbt-6). After the prosecution's evidence was recorded by the Sessions Judge, the appellant and the other accused persons were separately examined under Section 313(1)(b) of the CrPC for having their response in respect of incriminating materials as surfaced in the evidence. The accused persons including the appellant reiterated their plea of innocence and stated that they have been falsely implicated with *mala fide* intention.

[6] In order to rebut the prosecution evidence, two witnesses (DWs 1 to 2) were examined by the defence. Mr. R. Datta, learned counsel appearing for the appellant has contended that the trial judge while returning the finding of conviction, failed to appreciate the evidence objectively. He has overlooked the materials discrepancies, improved versions and contradictions in the statement of PWs 3, 4, 7, 9, and 11 on whose testimonies, the find of the conviction has been returned. There is no convincing evidence of torture or harassment on demand of dowry soon before the death of the deceased. More importantly, there is no evidence of unlawful demand in order to establish cruelty to punish the appellant under Section 498A of the IPC. The investigation carried out by PWs 13, 14 and 15 cannot be stated

to be in accordance with law. Mr. R. Datta, learned counsel for the appellant has contended that there was no investigation. There is no evidence to show that PW-3 or the deceased had complaint against the appellant during her lifetime. Mr. Datta, learned counsel has quite emphatically submitted that from the evidence of DWs 1 and 2, it has clearly transpired that the marital life of the appellant and the deceased was quite normal and cordial. On the day of the occurrence, the room in which the deceased was found hanging from a fan was bolted from inside that was to be broken to enter into the room. As such, the prosecution story of murder is figment of wild imagination. But the investigating officers were greatly influenced by the hypothesis of murder and they had carried out an offender-centric investigation and such investigation cannot be termed as fair investigation.

[7] In support of his contention, Mr. Datta, learned counsel has relied on a decision of the apex court in **Appasaheb and Another vs. State of Maharashtra** reported in **(2007) 9 SCC 721** where the apex court had occasion to observe that the definition of "dowry" as provided by Section 2 of the Dowry Prohibition Act is sufficient to understand the meaning and purport of dowry. Dowry is fairly well known in the social custom or practice in India. It has been observed in **Appasaheb** (supra) as follows:

> **"Dowry is a fairly well known social custom or practice in India. It is well settled principle of**

interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. : AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India : AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses of for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

[8] Mr. Datta, learned counsel has also referred to a decision of the apex court in **Durga Prasad and Another vs. State of Madhya Pradesh** reported in **(2010) 9 SCC 73** where the apex court had occasion to observe as under:

> **"16. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to allow the benefit of doubt to the appellants having particular regard to the fact that except for certain bald statements made by PWs.1 and 3 alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of Section 113-B of the Indian Evidence Act, 1872, in order to bring home the guilt against an accused under Section 304-B IPC.**
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> **17. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of**
> **burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned.**

> **18. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the Appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only.**
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> **19. The decision cited by Mr. R.P. Gupta, learned Senior Advocate, in Biswajit Halder's case : (2008) 1 SCC 202, was rendered in almost similar circumstances. In order to bring home a conviction under Section 304- B IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry. In our view, the prosecution in this case has failed to fully satisfy the requirements of both Section 113-B of the Evidence Act, 1872 and Section 304-B of the Indian Penal Code.**
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> **20. Accordingly, we are unable to agree with the views expressed both by the trial Court, as well as the High Court, and we are of the view that no case can be made out on the ground of insufficient evidence against the appellants for conviction under Sections 498-A and 304-B IPC. The decision cited by Ms. Makhija in Anand Kumar's case : (2009) 3 SCC 799 deals with the proposition of shifting of onus of the burden of proof relating to the presumption which the Court is to draw under Section 113-B of the Evidence Act and does not help the case of the State in a situation where there is no material to presume that an offence under Section 304-B IPC had been committed."**
>
> **[Emphasis added]**

[9] It has been also noted in **Durga Prasad** (supra) that it has to be kept in mind that when no charge is framed against the accused under the provisions of Dowry Prohibition Act, 1961 and the evidence as laid in order to prove the dowry demand for purpose of section 304B of the IPC that too on a demand of some articles like fan, in **Durga Prasad** (supra) having referred to **Biswajit Halder vs. State of West Bengal** reported in **(2008) 1 SCC 202**, it has been observed that in order to substantiate the charge under Section 304B of the IPC, it will not be sufficient to

only lead evidence showing that cruelty or harassment had been meted out to the victim and such harassment was in connection with demand for dowry. Unless the said foundation of evidence is laid, no presumption under section 113B of the Evidence Act can be drawn.

[10] Mr. Datta, learned counsel has also referred a few other decisions of the apex court in order to lay the law relating to interpretation or the interplay of Section 113B of the Indian Evidence Act, and Section 304B of the IPC. In **Hira Lal and Others vs. State (Govt. of NCT), Delhi** reported in **(2003) 8 SCC 80**, the apex court had observed as follows:

> **A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. 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 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods "soon after the theft, is either the thief has received the**

> **goods knowing them to be stolen, unless he can account for his possession". The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that 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. <u>There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."</u>**
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> **[Emphasis added]**

[11] In the same line, the apex court in **Smt. Shanti and Another vs. State of Haryana** reported in **(1991) 1 SCC 371** has extensively dealt with Section 304B of the IPC juxtaposed with Section 113B of Indian Evidence Act and the impact of the provision of Section 2 of the Dowry Prohibition Act, 1961 for inferring a dowry death. With illustrations (See Para 5 of the report) the apex court has held as follows:

> **"4. Section 304B I.P.C. reads as follows:**
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> **"304B. Dowry death-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.**
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> **Explanation-<u>For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.</u>**
>
> **(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less the seven years but which may extend to imprisonment for life."**
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> **This section was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths. It lays down that where the death of a woman is caused by any burns or *bodily injury or occurs otherwise than under normal***

circumstances **within seven years of her marriage and it is shown that soon before the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called "dowry death" and the husband or relatives shall be deemed to have caused her death and shall be punishable with imprisonment for a minimum of seven years but which may extend to life imprisonment. As per the explanation to the section, the "dowry" for the purposes of this section shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 which defines "dowry" as follows:**

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

(a) by one party to a marriage to the other party to the marriage; or

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

Keeping in view the object, a new Section 113-B was introduced in the Evidence Act to raise a presumption as to dowry death. It reads as under:

"113B. *Presumption as to dowry death* - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

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

One another provision which is relevant in this context in Section 498A I.P.C. which reads as under:

"498-A, *Husband or relative of husband of a woman subjecting her to cruelty*- Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation **- For the purposes of this section, "cruelty" means-**

a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

A careful analysis of Section 304B shows that this section has the following essentials:

(1) The death of a woman should be caused by burns of bodily injury or otherwise than under normal circumstances;

(2) Such death should have occurred within seven years of her 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.

Section 113B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the Court shall presume that such person has committed the dowry death. The meaning of "cruelty" for the purposes of these sections has to be gathered from the language as found in Section 498A and as per that section "cruelty" means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry". With this background of the provisions of law we shall examine the facts in the instant case.

5. Both the courts below have held that the two appellants did not send the deceased to her parent's house and drove out the brother as well as the father of the deceased complaining that scooter and television have not been given as dowry. We have carefully examined this part of the prosecution case and we are satisfied that the prosecution has established beyond all reasonable doubt that the appellants treated the deceased cruelly and the same squarely comes within the meaning of "cruelty" which is an essential under Section 304B and that such cruelty was for demand for dowry, It is an admitted fact that death occurred within seven years of the marriage. Therefore three essentials are satisfied. Now we shall see whether the other essential namely whether the death occurred otherwise than under normal circumstances is

also established? From the evidence of P.W.I, the father, P.W.2 the brother, and P.W.3 the mother, it is clear that they were not even informed soon about the death and that the appellants hurriedly cremated the dead body. Under these circumstances the presumption under Section 113B is attracted. The accused examined defence witnesses to rebut the presumption and to show that the deceased suffered heart-attack. We have examined the evidence of D.Ws 2 and 3 and we agree with the courts below that this theory of natural death cannot be accepted at all. No material "was placed to show that the deceased suffered any such attack previously. If it was natural there was no need for the appellants to act in such unnatural manner and cremate the body in great and unholy haste without even informing the parents. Because of this cremation no post-mortem could be conducted and the actual cause of death could not be established clearly. There is absolutely no material to indicate even remotely that it was a case of natural death. It is nobody's case that it was accidental death. In the result 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 is attracted and this position is not disputed. Therefore, the prosecution has established that the appellants have committed an offence punishable under Section 304B beyond all reasonable doubt.

6. Now we shall consider the question as to whether the acquittal of the appellants of the offence punishable under Section 498A makes any difference. The submission of the learned counsel is that the acquittal under Section 498A I.P.C. would lead to the effect that the cruelty on the part of the accused is not established. We see no force in this submission. The High Court only held that Section 304B and Section 498A I.P.C. are mutually exclusive and that when once the cruelty envisaged in Section 498A I.P.C. culminates in dowry death of the victim, Section 304B alone is attracted and in that view of the matter the appellants were acquitted under Section 498A I.P.C. It can therefore be seen that the High Court did not hold that the prosecution has not established cruelty on the part of the appellants but on the other hand the High Court considered the entire evidence and held that the element of cruelty which is also an essential of Section 304B I.P.C. has been established. Therefore the mere acquittal of the appellants under Section 498A I.P.C. in these circumstances makes no difference for the purpose of this case. However, we want to point out that this view of the High Court is not correct and Sections 304B and 498A cannot be held to be mutually exclusive. These provisions deal with two distinct offences. It is true that "cruelty" is a common essential to both the sections and that has to be proved. The Explanation to Section 498A gives the meaning of "cruelty". In Section 304B there is no such explanation about the meaning of "cruelty" but having regard to the common background to these offences we have to take that the meaning of "cruelty or harassment" will be the same as we find in the explanation to Section

> **498A under which "cruelty" by itself amounts to an offence and is punishable. Under Section 304B as already noted, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. Further, it must also be borne in mind that a person charged and acquitted under Section 304B can be convicted under Section 498A without charge being there, if such a case is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under Section 498A in view of the substantive sentence being awarded for the major offence under Section 304B."**
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> **[Emphasis added]**

[12] A decision of this court in **Subrata Majumder vs. State of Tripura** reported in **(2019) 1 TLR 386** has been relied by Mr. Datta to refer the principle of law for invoking the provisions of Section 113B of the Evidence Act as regards the statutory presumption,. It has been in **Subrata Majumder** (supra) ingredients of Section 304B of the IPC must be established e.g. soon before the death under no normal circumstances the woman was subjected to harassment in connection with the demand of dowry. In **Jagjit Singh Vs. State of Punjab** reported in **(2018) 10 SCC 593**, the apex court had restated the same principle in the following terms:

> **"34. We may also notice the statement of law contained in the decision of this Court in the case of Ashok Kumar v. State of Haryana reported in 2010 (12)SCC 350 which reads as under:**
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> **"24. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. While referring to raising of presumption under**

> **Section 304-B of the Code, this Court, in Kaliyaperumal v. State of T.N.;(2004) 9 SCC 157: 2004 SCC (Cri) 1417, stated the following ingredients which should be satisfied:**
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> **"(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).**
>
> **(2) The woman was subjected to cruelty or harassment by her husband or his relatives.**
>
> **(3) Such cruelty or harassment was for, or in connection with any demand for dowry.**
>
> **(4) Such cruelty or harassment was soon before her death."**
>
> **[Emphasis added]**

[13] In another decision of this court, in **Babul Ghosh vs. State of Tripura** reported in **(2015) 1 TLR 212,** this court has referred both **Appasaheb** (supra) and **Vipin Jaiswal vs. State of Andhra Pradesh** reported in **2013 CRL.A. J 2095**. In Vipin Jaiswal (supra) the apex court approved the law stated by **Appasaheb** (supra) in the following terms:

> **"In our view, both the trial court and the High Court failed to appreciate that the demand, if at all made by the Appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. This Court has held in Appasaheb & Anr. Vs. State of Maharashtra (2007) 9 SCC 721: (AIR) 2007 SC 763 : 2007 AIR SCW 456.**
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> **In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with**

> **reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 : AIR 1996 SCW 3570 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558 : AIR 1997 SCW 485").**

[14] Finally, Mr. Datta, learned counsel has relied on a decision of the apex court in **State of West Bengal vs. Orilal Jaiswal and Another** reported in **(1994) 1 SCC 73** where it has been held that in a criminal trial the degree of proof is stricter than what is required in a civil proceeding. In a criminal trial however, intriguing may be fact and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubt and the requirement of proof cannot stay in the realm of surmise and conjuncture. The requirement of proof beyond reasonable doubt does not stand altered. Even after the introduction of section 498A of the IPC and Section 113A of the Indian Evidence Act, the court's concerns must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged. It should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been beyond all reasonable doubts must depend upon the facts and circumstances of the case and also on the quality of the evidence adduced in the

case and the materials placed on record. The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the relevant context. Even though Mr. Datta, learned counsel has not referred to **Better vs. Better** reported in **(1950) 2 All ER 458** but we should. In that case, Lord Dening J espoused the concept of the reasonable doubt as the doubt of a reasonable man and the standard for that purpose be adopted that of a reasonable and just man. In **Orilal Jaiswal** (supra) it has been further observed as follows:

> **"16. In Gurbachan Singh v. Satpal Singh : (1990) 1 SCC 445, Mr. Justice Sabyasachi Mukharji (as he then was) has very rightly indicated that the conscience of the Court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated. *Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.***
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> **(Emphasis added)**

[15] Mr. S. Debnath, learned Addl. PP has submitted that the combination of evidence introduced by PWs 2, 3 ,4, 7, 9, and 11 makes it abundantly clear that appellant had tortured his wife, Rahima both physically and mentally on demand of TV. The evidence of those witnesses are so natural, those outweigh the defence evidence as introduced through DWs 1 and 2. Mr.

Debnath, learned counsel has particularly pointed out that three days prior to her death, Rahima came to the house of her father and told him that her husband (the appellant) was demanding TV and fridge. It is also clear from the evidence that her mother-in-law taunted Rahima as the necklace given by her parents was "thin". The appellant and his parents used to taunt her on the demand of TV as the TV was not given at the time of marriage. One week before the death of Rhiama, her brother PW-4 went to the maternal home of the victim. At that time, the victim had shown PW-4, marks of injury inflicted by the appellant on her person.

[16] According to Mr. Debnath, learned Addl. PP, the evidence of PW-2 occupies of paramount importance in respect of proof of dowry death punishable under Section 304B of the IPC. PW-2 has testified in the trial stating that she heard hue and cry from the house of the accused and could realize that Marzina Bibi was crying and shortly thereafter, the news of Rahima's hanging broke out. PW-2 has however stated while deposing in the trial that she had no knowledge about the marital life of the victim, but her version that she saw Rahima crying soon before her hanging has indicated to "the torturous and unbearable atmosphere in the matrimonial home". PW-9 had also corroborated the torture by the appellant on the victim (Rahima) aided by his parents. PW-9 has

categorically testified that Rahima told her that they tortured her on demand of a TV.

[17] Mr. Debnath, learned Addl.PP, thereafter, has submitted that it stands out clearly from the prosecution's evidence that being unable to cope with torture and harassment, the victim chose the extreme step and she committed suicide by hanging. Soon before her death, she was subjected to harassment on demand of dowry. She had shown to PW-4, the marks of injury inflicted by the appellant. Few minutes before the hanging, Rahima (the victim) was found crying. It is thus sufficiently established by the prosecution that soon before the death of the victim she was ill treated, harassed and obviously tortured on demand of dowry by the appellant.

[18] Mr. Debnath, learned Addl. PP has submitted that the evidence as placed by the prosecution, if taken together, could show that the prosecution has successfully brought home the charge under Section 498A and 304B of the IPC beyond reasonable doubt and as such the statutory presumption under Section 113B of the Indian Evidence Act can unhesitatingly be drawn. Mr. Debnath, learned Addl. PP has referred a passage from **Orilal Jaiswal** (supra) where in respect of the probative value of testimonies of the interested witnesses has been discussed. It has been held in Orilal Jaiwsal as under:

> **"It was therefore not necessary to examine neighbour or tenants to prove the prosecution case. In the instant case, the evidence about physical and mental torture of the deceased has come from the mother, elder brother and other close relations. <u>Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on the score of the absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case. In our view, the acts of cruelty by the accused were expected to be known by the very close relations like mother, brother, sister, etc. The evidence of the mother has been accepted by the learned Session Judge as worthy of credence and we do not think that same should be discarded, in the facts of the case."</u>**
>
> **[Emphasis added]**

[19] Even in **Balwinder Singh Vs. State of Punjab** reported in **1996 CRI.L.J 883 SC**, the apex court had sounded caution to the trial courts that they should not get swayed *by emotional considerations and allowed suspicion, surmise and conjecture to take the place of legal proof.* Mr. Debnath, Addl. PP has further submitted that the principle of "beyond reasonable doubt" cannot be applied casualty. It must be applied to further the ends of justice, but not to defeat it. According to Mr. Debnath, learned Addl. PP, there is no infirmity in the finding of conviction and therefore no interference is called for.

[20] A short survey of the evidence requires to be taken for appreciating the rival contentions as advanced by the counsel for the parties. As stated earlier, the prosecution has candidly admitted that testimonies of PWs 2, 5, 6, 8, 10, 12 are mostly undisputed. At the outset this court will take note of the testimonies of those witnesses.

[21] PW-2, Mst. Saleha Begum is a witness from neigbourhood and she has stated that she heard hue and cry in the house of the appellant. She found Marjina Bibi (the victim) was crying and thereafter, she entered in a room of their house. After sometimes, her daughter told her that Marjina died by hanging. She has denied to have any knowledge about the affairs of the family of the appellant or why Marjina died of hanging. In the cross-examination, she had denied to have been interrogated by the police and stated further that she did not say to the police that she saw Marjina crying or she heard hue and cry in the house of the appellant. The defence did not try to bring out any omission or contradiction of her said statement, perhaps for the reason that she had denied to have made any statement to the police.

[22] PW-5, Sri Bijoy Sarkar, a constable of Kakarabn Police Station was the witness of the seizure of vicera of the deceased from Dr. Gayatri Debnath (PW-12). He has identified the seizure list (Exbt-3) and his signature thereon in the trial.

[23] PW-6, Sri Rahul Amin is a witness to the inquest report. He has stated that he heard hue and cry from the house of the appellant. He had rushed to the house of the appellant and he found the wife of Babul Miah lying dead on the cot and "a gamcha tied in her neck' and in the fan of the room a piece of gamcha was found tied. The dead body was brought down by cutting the

gamcha and that was the reason why a part of the gamcha was around the neck and the other part was hanging from the fan. He has denied any knowledge whether that was murder or suicide. Since PW 6 did not support the prosecution case by deviating from his statement as recorded under Section 161 of the CrPC (Exbt-4), he was cross examined by the prosecution, but denied to have made any statement to the police officer. In the cross-examination carried out the defence, he has stated that Rahima's mother did never complain about ill treatment by her in-laws.

[24] PW-8, Sri Anju Miah Kazi is the Moulvi who conducted the marriage between Rahima and the appellant. He could not state anything when the marriage was conducted.

[25] PW-10, Smt. Manika Debbarma, the Senior Scientific Officer from the State Forensic Science Laboratory (SFSL). She has stated that from examination of various bodily parts of Marjina Bibi @ Rahima as collected by PW 12, presence of organo phosphorous, organo chloro, carbamates, pyrethroids group of pesticides and venzodiazetimepimes varbituratus group drugs or ethyl alcohol was not found.

[26] PW-12, Dr. Gayatri Debnath had conducted the post-mortem examination as the medical officer in Kakraban PHC on 03.06.2016, though the dead body was received in the said PHC on 02.06.2016. She has categorically stated that the mouth was

partly open with dribbling of salivation mark in the right side of angel of mouth upto the right side of chest. No injury mark was present over the whole body. A single ligature mark, not continuous, encircling the neck was directed upward, towards the left 3-4 cm in width with knot present over the left side of neck touching the tip of the left mastoid process. The ligature mark was present above the thyroid process and cartilage. On dissection the underline subcutaneous tissues, muscles were pale, glysterine and there was no bruising. PW12 collected the viscera namely stomach with its contents part of liver and part of lung. According to PW-12, the time of death was 20-25 hours before from the post mortem examination. She admitted in the evidence her report (Exbt-6). It may be noted at this juncture that according to the report post mortem had commenced on 03.06.2016 at 11 am. PW-12 has clearly opined that the cause of death was 'asphyxia as a result of hanging'. It appears that the defence did not cross examine PW-12 on the relevant point.

[27] PWs-13, 14, 15 are the investigating officers in different stages. PW15, Shri Ratan Chakraborty being an SI of polie was the first investigating officer who visited the place of occurrence immediately after he was endorsed with the charge of investigation. On such visit, he did come to know from the place of occurrence that the victim committed suicide by hanging and her

husband brought down the body. He prepared the inquest report (Exbt-1) on the place of occurrence. Thereafter, he examined the witnesses namely Rajjak Miah (PW3), Manohara Begam [not examined in the trial], Malek Miah (PW-1), and Ruhul Amin (PW-6). PW-15 had seized the viscera by preparing the seizure list (Exbt-3) from PW12. He confirmed the statement of Malek Miah (PW-1) from which statement the said witness deviated from. The said statement was admitted in the evidence as Exbt-10. Even the relevant statement of PW-6 as recorded by him has been admitted in the evidence as Exbt-11. In the cross-examination, he has categorically stated that it is not mentioned in the statement of Mohar Miah (PW4) that he told him that Babul Miah had illicit relation with a woman. It is also not mentioned in the statement (under Section 161 of the Cr.PC) PW4 had stated him that mother in law of the victim taunted her as her necklace was thin or that seven days before her death Rahima showed him the marks of injury and told that the injuries were caused due to beating by her husband after consuming alcohol, or that three days her death Rahima was sent to her father's house by the in-laws commanding her to bring TV from the house of her father or that on the previous day of her death, he took her to the house of her in laws or that her mother in law and husband were not present in the house after the death of Rahima. PW-15 has categorically

stated that during the investigation he did not find any material about illicit relation of Babul Miah with any woman or that accused assaulted Rahima on demand of TV. He has denied the suggestions that his investigation is perfunctory.

[28] After PW-15 investigation was taken up by PW13 Smt. Mina Kumari Debbarma who was a Dy.SP at that time. She verified the action of the previous investigation office and found that the investigation was carried out meticulously. When she went on maternity leave, the investigation was handed over to PW-14, Robert Darlong another Dy.SP. He had arrested the accused Anwara Begam and examined or re-examined witnesses namely Rajjak Miah, Saleha Begam, Jakir Hossein, Rinku Begam, Mohar Miah, Anju Miah Kazi and Rashid Miah. He had collected the SFSL report and thereafter filed the charge sheet under Section 498A, 304B/34 of IPC. In the cross examination, he has stated inter alia as under:

> **"PW9 Rinku Begam did not state to me that after Rahima's death she rushed to their house and found Rahima was found lying dead on the cot and a gamcha was tied around her neck. PW 11 Rashid Miah did not state to me that before 7 days of her death he took Rahima and her father by his auto to her father's house. PW 11 also did not state to me that Marjina alias Rahima told him that her husband was torturing her as she wanted to marry another woman, or Marjina and her father told him that she was being tortured by her husband and in-laws. PW 11 did not state to me that he went to the matrimonial house of Rahima. I did not get any input about illicit relation of Babul Miah with other woman."**

[29] PW-1, Malek Miah was witness to the inquest procedure and he put his signature in the report (Exbt-1). In the trial, he has admitted the said report. On 02.06.2016, he got the information that Rahima died in her matrimonial house. He went there and found her lying dead on the cot. There was a gamcha (napkin) tied on her neck. He has stated that when he went there Rahima's husband (the appellant) namely Babul Miah and other inmates were not present. PW-1 was declared hostile when he did not support the substantive part of the previous statement as recorded under Section 161 of the CrPC. In the cross-examination carried out by the prosecution, he denied to have made any statement that Rahima's father told him that after one and half year of marriage, Rahima was subjected to torture on demand of television. Even, he has denied to have made the statement that on 24.05.2016, Rahima was beaten in the evening beaten up by her parents in laws or having information her father went to bring her back, but the accused persons did not allow her to go with her father. Even he has denied to have made a statement that on seeing the dead body of Rahima, he had impression that Rahima was beaten by her in laws and thereafter put a napkin around her neck. As stated earlier, this part of the statement as denied by PW-1 has been confirmed by the investigating officer.

[30] PW-3, Sri Rajjak Miah is the unfortunate father of the deceased and he had lodged the complaint (Exbt-2). In the trial, he has stated that in the year 2010 as per Sharia laws marriage between her daughter and the appellant was contracted. His daughter was happy for some times but afterwards her father-in-law, Karam Ali and her husband, Babul Miah started demanding TV and asked her to watch TV only if she got it from her father. Rahima used to tell him about the said demand. Thereafter, she has stated her husband used to assault her and he used to go their 2-3 times in a month to settle the issue. Three days before her death, Rahima came to his house and returned to the matrimonial one day before the death. PW-3 has reiterated that the husband was demanding TV and fridge. One day after Rahima returned to her matrimonial house, he got one phone from Rubel Miah (not examined in the trial) that his daughter had been killed by the appellant and his father. Her dead body was laid in the cot. PW-3 rushed to the house of the appellant and found the appellant's father, Karam Ali only present in the house and the others were absent. Rahima was lying dead on the cot. A gamcha was tied around her neck. Thereafter, PW-3 has stated that he "learned that she was killed by strangulation" by napkin. Some were saying that she had committed suicide by hanging. When he had visited that place, the police were present there, but he did

not talk to Karam Ali. He had narrated the incident to the police officer, who recorded the same and he had signed over that writing. Thereafter, the dead body was sent for the post mortem examination. But, in the cross-examination, he has made the following statement:

> **"Three days before her death Rahima came to my house and she returned back on the previous day of her death. I did not state to police u/s 161, CrPC and ejahar that Karam Ali and Babul Miah asked her to bring TV and fridge. I did not state in the ejahar and in 161, CrPC statement that a napkin was tied on her neck. I did not state in the ejahar and in 161, CrPC statement that Rubel Miah tole me on the phone that Rahima was killed by her in-laws. There are many houses near the matrimonial house of Rahima."**

[31] PW-3 has, however, denied the suggestions that his daughter was not taunted by the accused persons not to watch TV unless she brought one from her father. He has further admitted that it had not been mentioned in his statement recorded under section 161 CrPC or in the ejahar that 2-3 times in a month, he went to Rahima's matrimonial home to settle the issues. However, he has denied the suggestion that no meeting for amicable settlement was convened or the accused person did not assault Rahima. He has denied the suggestion that he did not find the appellant and his mother in their house. He has admitted that such statement is not available in the statement as recorded under Section 161 of the CrPC.

[32] PW-4, Sri Mohar Miah is a brother of the deceased. According to him, marriage between the appellant and Rahima, his

younger sister, was contracted on 29.06.2010. After 5-6 months of her marriage, her husband and father-in-law started torturing Rahima *"as Babul Miah has illicit relation with one woman in Sonamura, Sephijala. Babul used to torture and send her to our house".* He has stated in the trial that she had a daughter of three years of age at the time of her death. According to him, a dowry of Rs.50,000/-, 1 and 1/2 bhari (the local unit of measuring valuable metal) necklace were given away. Rahima's mother-in-law used to taunt her saying that her necklace was too thin. But the appellant and his father and parents-in-law mostly taunted her in relation to demand of TV as they did not give TV at the time of marriage. Often, they used to assault her. One week before Rahima's death, PW-4 claimed to have visited Rahima's matrimonial home. At that time, Rahima showed marks of injuries on her body and those were claimed to have caused by her husband by beating her, after consuming alcohol. Three days before her death, Rahima was sent to her paternal house by her in-laws by stating that she should bring TV from their house. On the previous day of her death, he took her to in-laws house. It was Thursday. Next day, when he was selling fish at Santirbazaar, he got the information by mobile phone at 10 am that Rahima was killed by her husband and in-laws. Immediately, he had rushed to their house along with his parents and some neighbours. On

appearing in Rahima's matrimonial house, they found Rahima lying dead on a cot and there was a small piece of gamcha tied with neck with loose knot. Her father-in-law told them she had committed suicide by hanging. No other inmates were found present in the house. But the narrative of the suicide was not acceptable, as the ceiling fan was set in low height, it would reach her chest if she stood on the bed. He had also put his signature on the inquest report after the inquest was carried out by the police officer.

[33] In the cross-examination, he has stated that he did not know with whom the appellant had the extra marital affairs. Rahima did not say the name of that woman but after Rahima's death, the appellant married that woman. But he did not know the name of that woman. He had seen her with the appellant. He had seen that woman in a ceremony in Sonamura. He has asserted that he told police that the appellant had illicit relation with a woman. But when was confronted with his previous statement recorded under Section 161 of the CrPC, the statement that her mother-in-law taunted about the necklace being thin was not found. Even the statements that he told the investigation officer one week before Rahima's death, he went to their house and Rahima showed him marks of injury and said that those were caused by her husband by beating her after consuming alcohol,

were not found in the statement of PW4 as recorded under Section 161 of the CrPC. The concerned investigating officer had admitted that no such statement was made to him. Similarly, his statements that he told the investigating officer that three days before her death, Rahima was sent to their house by in laws by force commanding her to bring TV from their house and on previous day of her death, he took her to the in-laws house were also not found when PW-4 was confronted by the defence in this regard. PW-4 has stated that the investigating officer did not record his statement properly. He has denied the defence suggestion that no dowry was given during the marriage or that the victim was not being taunted in her matrimonial house for the gold necklace being thin or she did not bring the TV etc. Even his statement that he had stated to the police officer that her mother-in-law and husband were not present in the house, when they visited their house after the death of Rahima. When his attention was drawn to the previous statement recorded under Section 161 of CrPC, no such statement was found.

[34] PW-7, Sri Jakir Hossain is a witness from the neighbourhood of the appellant. He has stated in the trial that he came to learn from his wife that the appellant's wife hanged herself. He has stated in the trial when he tried to talk to the appellant's mother, she did not talk to him. He found on reaching

the place of occurrence that Rahima was lying dead on the cot and a gamcha was tied around her neck. He has denied that he has no knowledge about any affairs of the house of the appellant.

In the cross-examination, he has categorically stated that *"I did not hear anything bad in their family affairs. Rahima or her father never told me about any assault or torture by the accused persons."*

[35] PW-9, Smt. Rinku Begum stated that the victim is her niece. The appellant married her. She has stated that after marriage, Rahima used to be tortured by her husband and her parents-in-law. Rahima had told her that they tortured on demand of TV. Even she had stated that her mother-in-law used to scold and assault her. She had a daughter aged about 3 years at the time of her death. One month before her death, Rahima came to her father's house. She visited the place of occurrence on getting the information and found Rahima lying dead on the cot. A gamcha was tied around her neck. Her in-laws were not present in the house. After about an hour after she had reached the place of occurrence, her father-in-law came and the dead body was shifted to the hospital. During the cross-examination, she was confronted with her statement that after Rahima's death, she had rushed to their house and found Rahima lying dead on the cot and a gamcha was tied around her neck. She could not show her statement in

the previous statement as recorded under section 161 of the CrPC by the investigating officer, she denied the suggestion that she did not state the said fact to the police. She has denied that she had made that incriminating statement being the relative of the victim. Even she has denied the suggestion that the accused persons did not torture Rahima on demand of TV or her mother-in-law did not assault or torture her.

[36] PW-11, Sri Rashid Miah has stated that one week before the death of the victim, referred by him as Marjina Bibi, he went to Rajjak Miah's house by his auto rickshaw. He took Marjina and her father to his house from the matrimonial house of Marjina following a dispute in her matrimonial home by his auto rickshaw. Thereafter, he has stated in the trial as follows:

> **They told me that Marjina's husband was demanding Rs.50,000/- from her father for purchasing an auto rickshaw. Her father was unable to meet the demand. Marjina was being tortured by her in-laws and husband as she told to her father in my presence. Marjina also told that her husband was torturing her as he wanted to marry another woman. After three days of that journey Marjina died. On the day of her death I went to her matrimonial house and found her dead body lying on the cot."**

[37] He has also stated in the trial that Rahima's nick name was Marjina. When his attention was drawn in the course of cross-examination as regards his statement that seven days before her death, he took Marjina and her father to her father's house, PW-11 could not find out such statement in his previous statement as recorded under Section 161 of the CrPC. There is no mention of

demanding an amount of Rs.50,000/- in the said previous statement. Further, when his attention was drawn as regards his statement that Marjina told him that her husband was torturing as he wanted to marry another woman, PW-11 could not find out such statement in his previous statement as recorded under section 161 of the CrPC. Even his statement that he went to the house of Marjina on the day of her death, when was confronted he could not find the said statement in his previous statement as recorded under Section 161 of the CrPC. He has also stated that his statement was recorded after one month of the occurrence, though he was at his house all through. The suggestions, contrary to the statement he made in the examination-in-chief, has been squarely denied by PW-11.

In the examination carried out under Section 313 of the CrPC, the appellant denied all the incriminatory statements as recorded in the trial against him and reiterated his plea of innocence.

[38] To buttress his plea as well as to prove his story of innocence, the appellant adduced two witnesses.

[39] DW-1 Smt. Hazerra Bibi is a witness from the neighbourhood. According to her, the relation of the appellant with the deceased (referred as Marjina) was cordial and she heard

nothing about their domestic trouble. Thereafter, she made the following statement in the trial:

> **"On the day of death of Marjina I was in my house. Suddenly I heard hue and cry of Marjina's father in law Karam Ali. <u>At that time the room of Marjina was closed from inside</u>. Then nearby people came and broke open the door and found Marjina hanging and they thought that she was alive and so brought her down. At that time Marjina's mother in law and husband were not present in the house."**

In the cross-examination, she denied the all suggestion contrary to statement she made in examination-in-chief.

[40] DW-2, Shri Abul Hossain is a witness from the neighbourhood. He has also testified in the trial that the appellant's relation with Marjina was good. But Marjina never told him of any ill treatment to her by her husband or by in-laws. During time of death of Marjina, he was in Gazi bazaar. After coming to home, he came to learn that Marjina was found hanged in her room and she was brought down by people, "by breaking open the door". The suggestion as made contrary to what he had stated in the examination-in-chief was denied by DW-2.

[41] Having perused the entire record of evidence, the following questions have surfaced as material for determining the appeal:

> **(1) Whether Rahima Begam @ Marjina Bibi was subjected to cruelty or harassment on demand of dowry soon before her death which occurred otherwise than under normal circumstances within seven years of her marriage?**

(2) Whether Rahima Begam @ Marjina Bibi was subjected to cruelty within the meaning of Section 498A of the IPC?

[42] Before we proceed to evaluate the evidence afresh in the perspective of the questions as noted above, it would be appropriate to scrutinize the opinion of the doctor (PW-12) as regards the cause and how the death occurred. In the post mortem report, which has been admitted by PW-12, PW-12 has opined that the death was due to asphyxia, as a result of hanging. From the Forensic Science Laboratory Report (Exbt-5) we have noticed that the death did not occur from consumption of any common poison. Death by hanging has got support from the injuries, ante mortem in nature found, on the body of Rahima. On the entire body, there was no mark of injury barring a single ligature mark, not continuous but encircling the neck, description of which has been given earlier. PW-12 has clearly stated that the ligature mark was present above the thyoid process and cartilage. In the cross-examination, PW-12 has categorically stated that that was not a case of strangulation as in the case of strangulation the ligature mark would be continuous and circular and in the case of hanging the direction of ligature mark would be upward and continues. Thus, it will be very difficult to infer a case of murder and after murder, the body was hanged. According to the expert

opinion, it is a case of suicidal hanging. In this regard, the finding of the trial court requires no interference.

[43] In **Rajinder Singh vs. State of Punjab** reported in **(2015) 6 SCC 477** the apex court has elaborately discussed the meaning and nature of 'dowry' under Dowry Prohibition Act, 1961 and purport of the expression "soon before death" appearing in section 113B of Indian Evidence Act 1872 and Section 304B of the IPC. The apex court has held *inter alia* as under:

> **7. The primary ingredient to attract the offence under Section 304B IPC is that the death of a woman must be a "dowry death". "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:**
>
> **"2. Definition of "dowry".-In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-**
>
> **(a) by one party to a marriage to the other party to the marriage; or**
>
> **(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.**
>
> **Explanation I.- [***]**
> **Explanation II.-The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."**
>
> **8. A perusal of this Section shows that this definition can be broken into six distinct parts.**
> **1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.**
>
> **2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.**
>
> **3) Such property or security can be given or agreed to be given either directly or indirectly.**

4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

9. The ingredients of the offence under Section 304B have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

10. This has been the law stated in the following judgments: Ashok Kumar v. State of Haryana, (2010) 12 SCC 350 Bachni Devi & Anr. v. State of Haryana, (2011) 4 SCC 427, Pathan Hussain Basha v. State of A.P., (2012) 8 SCC 594, Kulwant Singh & Ors. v. State of Punjab, (2013) 4 SCC 177, Surinder Singh v. State of Haryana, (2014) 4 SCC 129, Raminder Singh v. State of Punjab, (2014) 12 SCC 582, Suresh Singh v. State of Haryana, (2013) 16 SCC 353, Sher Singh v. State of Haryana, (2015) 3 SCC 721.

11. This Court has spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death". In Appasaheb v. State of Maharashtra, (2007) 9 SCC 721, this Court construed the definition of dowry strictly, as it forms part of Section 304B which is part of a penal statute. The court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said:

"11……A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure."

12. This judgment was distinguished in at least four other judgments (see: Bachni Devi v. State of Haryana (2011) 4 SCC 427, Kulwant Singh & Ors. v. State of Punjab, (2013) 4 SCC 177, Surinder Singh v. State of Haryana (2014) 4 SCC 129 and Raminder Singh v. State of Punjab (2014) 12 SCC 582. The judgment was, however, followed in Vipin Jaiswal v. State of Andhra Pradesh, (2013) 3 SCC 684.

13. In order to arrive at the true construction of the definition of dowry and consequently the ingredients of the offence under Section 304B, we first need to determine how a statute of this kind needs to be interpreted. It is obvious that Section 304B is a stringent provision, meant to combat a social evil of alarming proportions. Can it be argued that it is a penal statute and, should, therefore, in case of ambiguity in its language, be construed strictly?

14. The answer is to be found in two path-breaking judgments of this Court. In M. Narayanan Nambiar v. State of Kerala, 1963 Supp. (2) SCR 724, a Constitution Bench of this Court was asked to construe Section 5(1)(d) of the Prevention of Corruption Act, 1947. In construing the said Act, a penal statute, Subba Rao,J. stated:

"9. The preamble indicates that the Act was passed as it was expedient to make more effective provisions for the prevention of bribery and Corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant. Bribery is form of corruption. The fact that in addition to the word "Bribery" the word "corruption" is used shows that the legislation was intended to combat also other evil in addition to bribery. The existing law i.e. Penal Code was found insufficient to eradicate or even to control the growing evil of bribery and corruption corroding the public service of our country. The provisions broadly include the existing offences under Sections 161 and 165 of the Indian Penal Code committed by public servants and enact a new rule of presumptive evidence against the accused. The Act also creates a new offence of criminal misconduct by public servants though to some extent it overlaps on the pre-existing offences and enacts a rebuttable presumption contrary to the well known principles of Criminal Jurisprudence. It also aims to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other

> **appropriate officer a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, i.e. to prevent corruption among public servants and to prevent harassment of the honest among them.**
>
> **10. A decision of the Judicial Committee in Dyke v. Elliott, cited by the Learned Counsel as an aid for construction neatly states the principle and therefore may be extracted: Lord Justice James speaking for the Board observes at page 191:**
>
> **"No-doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."**
>
> **In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective."**
>
> **[Emphasis added]**

[44] It is quite apparent that **Rajinder Singh** (supra) and four other judgments viz, **Bachni Devi** (supra) **Qulban Singh** (supra) **Surinder Singh** (supra) and **Ravinder Singh** (supra) have distinguished the propositions of law in **Appasaheb** (supra) where the apex court had observed that demand for money on account of financial stringency or for meeting some urgent domestic expense or for purchasing manure cannot be termed as demand for dowry. The same principle has been followed in **Vipin Jaiswal** (supra). Both **Appasaheb** (supra) and **Vipin Jaiwasl** (supra) were

followed in **Babul Ghosh** (supra) inasmuch as **Babul Ghosh** (supra) was decided on 05.12.2013 much before **Rajinder Singh** (supra) and other four decisions as referred above. Meaning and purport of 'dowry' as laid down in **Appasaheb** (supra), **Vipin Jaiswal** (supra) and **Babul Ghosh** (supra) have been distinguished and the proposition as have overruled the expansive interpretation by following the strict interpretation of the penal enactment. Hence, the argument as advanced on definition of dowry having referred to **Appasaheb** (supra) etc. cannot be any more acceptable for purpose of defining dowry. **Rajinder Singh** (supra) would hold the field considering that the same judgment has been delivered by a larger bench of the apex court.

[45] There cannot be any amount of doubt that death of Rahima has occurred not under normal circumstances within seven years of her marriage. The trial judge has correctly observed that the 'marriage' between the appellant and Rahima Bibi has been conclusively proved by the prosecution. By the medical evidence (see PW 12), it has been established that there was ligature mark over the left side of the neck but that was not continuous. But traces of encirclement was found. PW 12 has, unhesitatingly and in distinct terms, opined that death was due to asphyxia as a result of hanging (see the post mortem report-Exbt-6). That apart, PW 12 has further observed in the cross-

examination that it was not a case of strangulation as in the case of strangulation, the ligature mark would be continuous and circular and in the case of hanging, the direction of the ligature mark would be upward and non-continuous. Signs for hanging was manifest. That helped PW 12 to come to a categorical observation as stated above. The trial judge therefore correctly observed that the charge under Section 302 has not been proved.

[46] Now, the question that surfaces whether the prosecution did place the materials to show that soon before her death, Rahima has been subjected to cruelty or harassment for or in connection with any demand for dowry. According to the trial judge, the prosecution has successfully proved those pre-requisites to presume the dowry death.

[47] PW3, Rajjak Miah is the sterling witness for the prosecution. He has stated that Rahima used to tell him that her husband demanded a TV from the Rahima's parents. Three days before her death, Rahima came to his house and returned to her matrimonial home one day before her death. On the following day of her return, the said occurrence did occur. PW3 complained that Rahima had been killed but that has been disproved by the medical evidence. Not only that, allegation of cruelty was against Karam Ali and Anwara Begum as well. The role of the co-accused was not believed by the trial court relying on the same set of

evidence. The allegation was that Rahima was taunted and told not to watch TV unless she brought one from her father. Another witness, Mohar Miah, elder brother of PW3, also stated that there was demand of TV from the appellant's family. That apart, they used to assault her. Last time, one week before her death, she visited him and shown her the marks of injury. Rahima's mother-in-law Anwara Begam used to taunt for the necklace being thin. Her allegation was also, that her husband used to beat her after consuming alcohol.

[48] PW 7, Jakir Hossain, a co-villager, has contrary to the prosecution backbone of evidence, stated that Rahima hanged herself. PW 9, Rinku Begam, an aunt of the deceased, stated in the trial that Rahima was subjected to torture on demand of TV. The witnesses those visited immediately after hanging, they all stated similarly that they saw Rahima lying dead on her bed (cot). The streak of exaggeration hugely emerged from the deposition of PW11 Rashid Miah who stated that there was demand of cash. While assessing the evidence, the defence evidence was completely brushed aside by the trial judge. DW 1, Hajara Bibi has categorically stated that she did not hear any hue and cry from the house of the appellant, contrary of what PW 2 (Saleha Begum) has stated that she heard hue and cry in the house of the appellant and she realized that Rahima alias Marjina was crying.

After some time, she got the information that Rahima died by hanging. The trial judge has in this regard observed that *but the facts the she found Rahima crying soon before her death is testimony of death of her being ill treated in the matrimonial home.* That was taken to the extent of considering the same as meeting the requirement of cruelty or harassment soon before death of Rahima. Fragilities of the said observation has been gaping. Someone's crying does not mean that, that person was subjected to cruelty, if considered the said testimony of PW2 is trustworthy. The improvement by way of exaggeration by the prosecution witnesses has been acceded to by the investigating officer in respect of the appellant's being engaged with another woman in an illicit relation. The investigating officer has completely discarded the said narrative as no evidence could be collected. PW14 has categorically stated he did not get any input about illicit relation of Babul Miah with other woman. Even in respect of testimony of PW 9, PW14 has stated that PW9 did not state to him that after Rahima's death, she rushed to her house and found Rahima lying dead on the cot and a gamcha was tied around her neck. Even PW 11 did not state that seven day before her death, he took Rahima and her father by his auto to her father's house.

[49] PW 15, Ratan Chakraborty, the other investigating officer, has testified in the trial that he had not recorded any statement including the statement of Mohan Miah (PW4) that the appellant had an illicit relation with a woman. Even no such statement has been recorded by him that the mother-in-law of the victim taunted her for her necklace gifted in the marriage being thin or that Rahima had shown her injuries to PW4 seven days before her death. PW 15 has further stated that in the statement as recorded under section 161 of the CrPC, no statement was made to him that the injuries were caused due to beating by her husband after consuming alcohol or that three days before her death Rahima was sent to her father's house by in-laws, commanding her to bring TV from the house of her father. Similarly, the other statement as exaggerated by the witness was not recorded by any of the investigating officers. These were all improved in the trial.

[50] DW 2, Abul Hussain has clearly stated in the trial tha there was no ill treatment to Rahima. According to DW2, though she was very close to Rahima alias Marjina but she did never tell anything about ill treatment to her by her husband or in-laws. She heard from the villagers that body of Rahima was brought down by the people by breaking the door. DW2 has also stated in the

similar line for illustration. The relevant part of DW 2's testimony is extracted below.

> **Suddenly I heard a cry of Marjina's father-in-law, Karam Ali. At that time, the room of Marjina was closed from inside then, nearby people came and broke open the door and found Marjina hanging and they thought she was alive and so brought her down. At that time, Marjina's mother-in-law and husband were not present in the house."**

She stood by the cross-examination.

[51] Whether any statement which is not directly related to death made by the deceased before her death to the persons who had no occasion to see the action alleged of, can be saved under Section 32(1) of the Evidence Act. Thus, the answer should be in the negative. There is no evidence that there had been any initiative from the parents of Rahima to bring the fact of so-called cruelty in the public. Even there was no dialogue between two families. In such circumstances, it is difficult to believe the cruelty as alleged did really happen. Moreover, it has surfaced that all the important witnesses have exaggerated the story. The evidentiary value of defence witness stands at par with that of the prosecution witnesses, it is neither inferior nor superior. If the evidence of the prosecution and the defence are juxtaposed, it would be apparent that Rahima Bibi alias Marjina hanged herself. The appellant also did not shed any light why her wife committed suicide by hanging. At the beginning, the prosecution case was that the appellant killed Rahima. But later on, the evidence was designed in such a

manner so that the appellant can be convicted under Section 304B and under Section 498A of the IPC. The allegations those are made in the complaint are as follows:

1. The ornament given in marriage was not good.

2. The inmates of the appellant used to taunt her by saying, if she wanted to watch television than she would bring it from her father's house.

3. On 25.04.2016 the appellant had beaten the victim severely.

[52] Almost after ten days, PW3's daughter committed suicide. There is no evidence in respect of beating on 25.04.2016. As such, we do not have hesitation to hold there is no evidence that the victim was meted out with cruelty or she was harassed on demand of dowry. Therefore, no presumption can also be drawn under Section 113B of the IPC. As regards, beating by the appellant, the investigating officer has stated that those statements were not made to them. Even the allegation of appellant's illicit relation was not revealed to the investigating officers. The allegations are general in nature and to some extent was not beyond insignificant tear of the marital life. Even no witness has stated that the alleged physical assault by the appellant has got any connection with the demand of TV or fridge. The allegation is clear that under the influence of liquor the

appellant used to beat Rahima. As stated earlier, there is no evidence that such cruelty did take place soon before the death of the victim.

[53] We have seriously scanned the evidence of the close relatives and relied their consistent statements which got corroborated by the other witnesses. But credibility of those witnesses has been judged in the light of the statement of two investigating officers and in that test, their testimonies got seriously shakened. We have failed to find that any particular event has been highlighted by the prosecution to show the impact which drove the victim to hang herself. Thus, we do not find any evidence to connect the death with harassment for dowry demand or cruelty meted to her. Even the post mortem doctor did not support the testimony of PW4 who had stated that he found the injury marks over the person of Rahima Bibi. PW 12, the post mortem doctor, has clearly made the statement as follows:

"No injury mark was present over whole body."

[54] The finding of the trial judge that crying out by Rahima Bibi on the morning as stated by PW2 is extension of the fact without material support. Moreover, that statement was contradicted by one defence witness. Hence, it cannot be by means inferred that the crying out was for torture. Thus, we are of the view that the prosecution evidence has gone haywire. Thus,

we are unable to affirm the conviction of the appellant under Section 304B of the IPC. Even for want of any reliable evidence which instills confidence in the court, we are unable to uphold the conviction as returned under Section 498A of the IPC.

As consequence of the finding as recorded above, the impugned judgment of conviction and the order of sentence dated 21.09.2019 are set aside. The appellant be set at liberty forthwith, if not wanted in any other case.

In the result, the appeal stands allowed.

Send down the LCRs forthwith.

JUDGE **JUDGE**

Dipak