

Sachin Vs. The State of Karnataka

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Court : Karnataka Dharwad

Decided On : Jun-02-2014

Judge : A.S. Bopanna & B. Sreenivase Gowda

Appeal No. : Criminal Appeal No. 2911 of 2011

Appellant : Sachin

Respondent : The State of Karnataka

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, praying to call for the records in S.C. No.132/2009 and set aside the judgment of conviction and order of sentence dated 28.11.2011 passed by the VI Addl. Sessions Judge, Belgaum, in S.C. No.132/2009 for the offence P/U/S.498 (A), 306 and 304 (B) of IPC and u/s 3, 4 and 6 of Dowry Prohibition Act.

1. The appellant is assailing the legality of the judgment and order dated 28.11.2011 passed by the V Addl. Sessions Judge, Belgaum (I/C VI Addl. Sessions Judge, Belgaum) in SC No.132/2009. By the said judgment, the appellant who was arraigned as the first accused is convicted for commission of the offences punishable under Sections 498A, 306, 304-B read with Section 34 Indian Penal Code ('IPC' for short) and under Sections 3, 4 and 6 of Dowry Prohibition Act ('D.P. Act for short).

2. The sentence imposed for the offence under the different provisions is as follows:

(i) Section 304-B of I.P.C. - Life imprisonment

(ii) Section 306 of I.P.C. - Simple imprisonment for 5 years and fine of Rs.10,000/-; in default simple imprisonment for 2 years.

(iii) Section 498-A of I.P.C.- Simple imprisonment for 3 years and fine of Rs.5,000/-; in default simple imprisonment for 2 years.

(iv) Section 3 of DP Act - Simple imprisonment for 5 years and fine of Rs.15,000/-; in default simple imprisonment for 3 years.

(v) Section 4 of DP Act - Simple imprisonment for 1 year and fine of Rs.2,000/-; in default simple imprisonment for 1 year.

(vi) Section 6 of DP Act - Simple imprisonment for 1 year and fine of Rs.5,000/-; in default simple imprisonment for 2 years.

3. All the sentences of imprisonment are ordered to run concurrently and period of imprisonment already undergone is ordered to be set off.

4. The appellant (first accused) is the son of Sri Prakash Pattanshetty and Smt.Rekha Pattanshetty (second Accused). His marriage was performed on 05.02.2006 with the deceased Deepa who was the daughter of Sri Sangamesh Naik and Smt.Suma Naik. The allegation against the appellant is that, he along with his mother had demanded gold articles of 25 Tolas and 2 k.g. of silver. Further, the gold articles of 25 Tolas were given to Deepa during the wedding. In addition, as per the demand, the marriage was performed by spending Rupees 10 lakhs. The said articles given and the amount spent were all in the form of dowry. Even after the marriage, the appellant and his mother, who was arraigned as the second accused but has been acquitted, had continued to make illegal demand. The further allegation relating to the present consequence is that a sum of Rs.10,00,000/- was demanded from Sri Sangamesh Naik i.e., the father of the deceased so as to enable the appellant to open a hospital and a Honda city car

was also demanded. Towards the same, a sum of Rs.2,50,000/- was transferred to the account of the appellant in Axis Bank on 05.06.2008. The demand for the remaining Rs.7,50,000/- and the Honda city car was persistently made and the deceased was harassed to secure the same from her parents. On 04.11.2008 the parents of the deceased had visited their daughter and the appellant in their apartment at Belgaum. On that day, the appellant had once again raised the demand and was vociferous to threaten that if the same is not paid, he would seek for dissolution of the marriage. The parents of the deceased pleaded for some time to meet the demand and thereafter departed to Bijapur which is their native. On the very next day i.e., 05.11.2008 the deceased is stated to have called her sister Smt. Roopa at 9.00 a.m. and stated about the harassment and the torture being meted out to her by the appellant seeking fulfillment of his demands. The said conversation was also heard by the parents as the mobile phone was put on speaker mode wherein she was pleading to be spared and the appellant was shouting at her, but the call got disconnected. About 15 minutes thereafter, Sri Prakash Pattan Shetty, i.e., the father of the appellant called the father of the deceased to inform that his daughter Deepa had committed suicide by hanging herself. The parents and the sister of the deceased along with other relatives left Bijapur, reached Belgaum in the afternoon and a complaint was lodged. Pursuant thereto, the FIR was registered, investigation was carried out and a charge sheet was filed against the appellant as also against his mother who were arraigned as first and second accused.

5. The prosecution in its attempt to establish the charge against the accused has examined the witnesses at PWs.1 to 25, marked documents at Exhs.P1 to P30 and produced the articles at M.Os.1 to 14. On behalf of the accused, relevant portion of the statement of PW.6 was marked as Ex.D1. The trial Court on consideration of the said evidence and material on record has arrived at the conclusion that the appellant who was arraigned as accused No.1 is guilty of the charges alleged against him. Insofar as the second accused i.e., the mother of the appellant, the trial Court was of the view that the illtreatment meted out as alleged against her cannot be accepted since the deceased had hardly lived for about four to five months in the family house at Sankeshwar. In arriving at the conclusion that the appellant is guilty of the charges alleged against him, the trial Court has relied

on the evidence tendered by PWs.1, 2, 4 and 6 which is corroborated by the evidence of PW-3 i.e., the sister of the deceased who was in constant touch with her.

6. The learned counsel for the appellant while assailing the impugned judgment has at the outset contended that the entire investigation is vitiated as it offends the provision contained in Section 162 of the Cr.P.C. In that regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of State of Andhra Pradesh vs. Punati Ramulu and others (AIR 1993 SC 2644) and in the case of Ganesh Gogoi vs. State of Assam (AIR 2009 SC 2955). It is also contended that there is delay in lodging the FIR and to that effect, the decision in the case of Thulia Kali vs. The State of Tamil Nadu [(1972)3 SCC 393] is relied. In that direction, it is contended that Sri Yallappa Shinthre (PW.11) had informed Sri Rajiv Siddaram Banahatti (PW.19) who was residing opposite to the apartment wherein the deceased and the appellant were residing and PW.19 who had knowledge of the incident at about 9.50 to 9.55 a.m. had visited the spot and immediately informed the Tilakwadi Police Station of which Sri Jumma Gouli (PW.21) was the Station House Officer being the Sub-Inspector of Police. Thereafter PW.21 had visited the spot and had also posted a constable. Despite the same, the FIR had not been registered and was done only at 6.00 p.m. after receiving the complaint from Sri Sangamesh Naik (PW.1). It is therefore contended that the complaint of PW.1 was received after the investigation had commenced and that too after due deliberations and as such is hit by Section 162 of Cr.P.C.

7. In the light of the contention raised, on the legal aspect, the decisions relied upon no doubt will indicate that on the facts considered therein, the Hon'ble Supreme Court has arrived at the conclusion that the FIR had not been recorded despite receipt of information of cognizable offence and the registration of the complaint as FIR after reaching the spot and after due deliberations, consultations and discussion cannot be treated as an FIR. To arrive at such conclusion, the Hon'ble Supreme Court has referred to the fact situation in the said cases where in the first case, the Police constable at the police Station refused to record the complaint on the ground that the Police Station had no territorial jurisdiction. In the second case referred supra, reference was made to the evidence of PW.7 of that

case and from the statement, a conclusion was reached that the investigation in the said case had already commenced. Further in the case of Thulia Kali (supra) the fact about the allegation that the accused was seen at 2.00 p.m. committing the murder and a large number of villagers had been told about it, yet no report was made for more than 20 hours was noticed and therefore, a doubt had been raised.

8. Having taken note of the above cited decisions, it would also be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of Tapinder Singh vs. State of Punjab and another (AIR 1970 SC 1566) wherein while considering the issue as to what constitutes an FIR and as to whether a telephone message to the Police Station would be sufficient, it has been held that the question whether or not a particular document constitutes an FIR, broadly speaking is to be determined on the relevant facts and circumstances of each case. The fact situation of the Police authorities having proceeded to the spot pursuant to the information and the FIR being recorded subsequently was also noticed in that case. In the case of Dhananjay Chattarjee @ Dhana vs. State of West Bengal (1995 AIR SCW 510) the Hon'ble Supreme Court has observed that the cryptic telephonic message with object of informing the Police to rush to the scene of occurrence could not be treated as FIR under Section 154 of Cr.P.C. and the fact that the investigation in the case started only after the statement of PW.3- Yashomathi was recorded is the view taken therein. That apart, the manner of treating the information received by the Police Station on telephone for the purpose of visiting the scene of occurrence and the manner in which the detailed FIR came to be recorded after visiting the place of occurrence was also considered but no exception was taken by the Hon'ble Supreme Court while considering those aspects in the case of Vikram and others vs. State of Maharashtra (AIR 2007 SC 1893). Further, the Hon'ble Supreme Court in the case of Animireddy Venkataramana and others vs. Public Prosecutor, HC of A.P. (2008 AIR SCW 1777) while considering the scope of Section 154 and 162 of Cr.P.C. has held, when the information is received in regard to the commission of cognizable offence over telephone, the Police Officer is duty bound to reach the place of occurrence. The visit is not required to be preceded by FIR and the non recording of FIR would not violate Section 162 Cr.P.C.

9. In the light of the different circumstances noticed by the Hon'ble Supreme Court and the position of law declared being that the manner of recording the FIR and the time factor would depend on the facts of each case, the instant facts will be relevant to be noticed. The evidence recorded herein would no doubt disclose that PW.11 who is stated to be employed under the father of the appellant had informed PW.19 who is a resident of the vicinity where the incident occurred. In order to controvert the evidence of PW.21 i.e., the Sub- Inspector of Police wherein he has stated that he had received one unknown call at 1.00 p.m. on 05.11.2008, the learned counsel for the appellant has referred to the evidence of PW.11 and PW.19 and has sought to contend that the information had been conveyed by PW.19 to the Tilakwadi Police Station at about 10 am on the said day. A perusal of the evidence of PW.19 would no doubt disclose that he has stated about PW.11 having informed him about the incident and that he had immediately informed the Tilakwadi Police Station. He has not stated the specific time at which he had informed the Police station. He has however stated that PW.11 had informed him of the incident at about 9.50 to 9.55 a.m. and he had thereafter gone to Emerald Apartment where the incident had occurred and had subsequently informed the Police Station over the telephone. There is no clear details as to the time he had taken to go to the spot after receiving the information and the time spent at the spot before informing the Police Station and the nature of information given by him.

10. In that background, the evidence of PW.21 is to be relied upon about the manner in which he had knowledge, he having proceeded to the spot along with constable and having left the constable at the spot and returned to the Police Station as there was no one at the spot to complain about the incident, but he made entry in the Station diary. At 3.10 p.m. the father of the deceased i.e., PW.1 went to the Station and the complaint was recorded and FIR was registered. The fact that the appellant who is the husband of the deceased was neither available at the spot nor made attempt to register the complaint though he was in Belgaum, coupled with the fact that PW.1 along with his family members had to travel more than 200 kms from Bijapur to Belgaum on receiving the information on the same day at about 9.15 a.m., visited the spot and thereafter went to the Police Station, will indicate the order in which the entire sequence has occurred, the time that had

lapsed. The FIR has been registered immediately thereafter and the investigation has commenced thereafter which is in the natural course and is not a result of deliberations or discussions as an afterthought to implicate the innocent so as to create any suspicion on that aspect. Further, there is no delay in lodging the FIR as Sri Rajeev Phakira Gharani (PW.18) who carried the FIR to the Court has stated that the FIR (Ex.P25) was given to him at 4.00 p.m. and was delivered at 6.00 p.m. since the Presiding Officer was holding Court when he reached the Court premises.

11. Hence, we are of the view that the FIR registered in the instant case is neither contrary to Section 154, nor is it hit by Section 162 of Cr.P.C. There was no delay either in lodging the FIR. As such we are unable to accept the contention raised in that regard.

12. The next contention urged by the learned counsel for the appellant is that the charge alleged against the first and second accused is that they have jointly committed the offence under Section 498A, 304- B, 306 IPC and Section 3, 4 and 6 of DP Act read with Section 34 of IPC as the allegation was of common intention in committing the offence. It is contended that the charge framed is common and the evidence tendered against both the accused is the same and in such event when the trial Court has found the evidence to be lacking for the purpose of conviction of the second accused, the same evidence cannot be held to be sufficient for convicting the first accused when the charge was that such offence was committed with the common intention. It is contended that unlike Section 149 of IPC which by itself constitutes an offence, Section 34 IPC is not to that effect and in such situation, if one accused is acquitted, it would indicate that there was no common intention and as such the other accused would also have to be acquitted. The decisions in the case of Prabhu Babaji Navle vs. State of Bombay (AIR 1956 SC 51) and in the case of Krishna Govinda Patil vs. State of Maharashtra (AIR 1963 SC 1413) are relied upon.

13. The learned Government Advocate on the other hand has contended that the accused though are charged of having committed the offence with the common intention, one of the accused can be convicted for the substantive offence based

on the evidence that is available on record. Reliance is placed on the decision of the Hon'ble Supreme Court in the case Hemraj vs. The State (Delhi Administration) (AIR 1990 SC 2252) wherein it is held that when the constructive charge is under Section 302 read with Section 34 IPC against the accused persons, the accused inflicting injuries on the deceased alone can be convicted under Section 302 IPC simplicitor. The decision in the case of Rajalal singh vs. State of Jharkand (AIR 2007 SC 2154) is also relied upon wherein, the crime registered under Section 304-B read with Section 34 of IPC against the husband, brother-in-law and co-sister of the deceased came up for consideration and it was held that based on the evidence, the husband alone is to be convicted though Section 34 IPC was also invoked in that case. The decision in the case of Kahan singh and ors vs. the State of Haryana (AIR 1971 SC 983) wherein it is held that the defect of framing alternative charges in circumstances when it was not needed at all does not by itself vitiate the proceedings and that prejudice to the accused by framing alternative charges must be proved is also relied upon. In that view, it is contended that merely because the charge of committing the substantive offence read with Section 34 IPC is included and on the evidence tendered, if the substantive charge is proved against the first accused alone and he is convicted, the same does not cause prejudice to the first accused.

14. In the case of Prabhu Babaji Navle (supra) relied by the learned counsel for appellant herein, the accused therein was not charged for having committed the murder himself, but the charge against him was for having shared the common intention. It is in that circumstance when the persons on whom the substantive charge was framed were acquitted, it was held that such accused who was the appellant therein is also to be acquitted since the element of sharing a common intention will disappear when the substantive charge was not proved. In the case of Krishna Govind Patil (supra), the Hon'ble Supreme Court has referred to three illustrations and with reference to the said illustration, has in fact held that among the four accused even if three accused were acquitted, the fourth can be convicted. However, in the facts of that case, it was found that the situation falls outside the illustrations indicated therein and therefore held that when three accused were acquitted, the conviction of the fourth accused cannot be made on a new charge of having committed the offence jointly with the acquitted persons.

15. As against the said position in the above cases cited by the learned counsel for the appellant, in the instant facts, both the accused were charged of having committed the substantive offences with common intention. What cannot be ignored is also that one of the substantive offences charged was under Section 304-B of IPC regarding which a presumption is also available under Section 113B of the Evidence Act. To raise such presumption one of the ingredients is also that it should be shown that cruelty or harassment was meted out soon before her death which becomes more relevant in the case of appellant as the appellant and deceased were residing together prior to the incident. Notwithstanding the fact as to whether such conclusion could be reached against the appellant (first accused) based on the evidence that we would refer to hereafter, the second accused in any case is given the benefit of the same since admittedly the second accused was not residing at Belgaum along with the first accused and the deceased immediately prior to the death. It is in that context the trial Court has noticed that the deceased and the second accused had lived together hardly for four or five months. Therefore, such benefit given to the second accused cannot be made automatically applicable to the first accused nor can it lead to a conclusion that there is no evidence against the appellant only because they were charged under Section 34 of IPC in addition to the charge under the substantive provisions, without reappreciating the evidence to come to a conclusion whether the charge against the first accused has been established or not. If the evidence establishes that the substantive charge against the appellant is proved, he cannot get away merely because Section 34 IPC is also invoked. In that view, the decisions relied on by the learned counsel for the appellant would not be of assistance. On the other hand the decisions relied upon by the learned Government Advocate and noticed above would be more apposite to the present facts.

16. In the above background, the case of the prosecution and the evidence tendered thereto is necessary to be noticed so as to arrive at the conclusion whether the same would establish the charges against the appellant or would it raise a presumption in terms of Section 113-B of the Evidence Act. The father of the deceased, Sri Sangamesh Naik (PW.1) in his deposition has stated with regard to his deceased daughter having acquired BAMS degree and that the appellant is a dentist who was working in the hospital of PW.1's uncle at that point.

The marriage proposal having been considered during April 2006 and the presence of PW.6 along with the other family members is stated. Sri Sanekoppa (PW.16) who is an elderly advocate by profession and known to the father of PW.1 who is also an advocate at Bangalore and related to the appellant being instrumental is stated by him. Thereafter the negotiations were held wherein it was demanded that 25 Tolas of Jewellery, Rs.25,000/- for clothing and 2 K.g. Silver be given to the groom and further 25 Tolas jewellery be given to the daughter. The marriage was also required to be performed at Gandhi Bhavan, Belgaum by spending Rs.10,00,000/-. It was consented to and the marriage was fixed on 05.06.2006. The engagement was held and the said articles were handed over to the appellant and his mother.

17. He has stated that thereafter the married life was cordial for about three to four months. PW.1 has further stated that subsequently at the instigation of the second accused, the appellant was harassing the deceased and these facts were being conveyed by the deceased over the phone. The deceased had also conceived in the meanwhile but, the accused were harassing her to undergo abortion. However, at that point, the deceased was taken to her parental home at Bijapur. At that stage, the daughter also disclosed the demand being made for Rs.10,00,000/- to purchase a premises for the clinic and a Honda city car. PW.1 has further stated that after delivery of the child, when the in-laws of the deceased had visited, they had requested them to look after their daughter with care. After nine months their daughter was taken back to Sankeshwar, the marital home and at that time also, a request was made to take care of her. Subsequently his daughter and the appellant moved to Belgaum to start their practice. At that stage, to acquire the premises for their professional practice, the appellant demanded Rs.10,00,000/-. PW.1 transferred Rs.2,50,000/- from his account in Axis Bank to the account of the appellant through online transaction. The second accused was instructing the appellant to ask for the balance Rs.7,50,000/- and a Honda city car and as such the second accused was harassing his daughter to meet the demand.

18. PW-1 has further stated that on 04.11.2008 when PW.1 and his wife visited the appellant and their daughter in their apartment, she was looking very weak and as such they brought some refreshments for her. Even at that stage, the appellant

demanded for Rs.7,50,000/- and Honda city car to be given to him. Though he tried to pacify the appellant, the appellant threatened that he would seek for dissolution of the marriage if the same is not given. PW.1 therefore contacted the father of the appellant, who was at Sankeshwar. He therefore came to the apartment in Belgaum at 4.00 p.m. Despite the same, the appellant made the demand and even though his father attempted to pacify him, it was to no avail. In that situation, the father of the appellant advised PW.1 to take his daughter along to Bijapur and the grand child was taken by the deceased's father-in-law to Sankeshwar. The daughter however did not accompany PW.1 and his wife but stated that she would go to Sankeshwar on the next day, fetch the child and thereafter go over to Bijapur. PW.1 and his wife accordingly went back to Bijapur. On 05.11.2008 at about 9.00 a.m. Roopa (PW.4), the sister of the deceased received a call from the deceased. She stated that the appellant was assaulting her and they could also hear her pleading not to assault her. The line however got disconnected. They were therefore preparing to go over to Belgaum. In the next fifteen minutes, Sri Prakash Pattan Shetty, the father of the appellant informed over the phone that his daughter has committed suicide. He therefore left Bijapur at 10.00 a.m. along with his wife, daughter Roopa, Aunts Shantakka and Sharanamma. They reached around 3.00 p.m. and went to the apartment. The bed-room was locked and they saw the deceased hanging from the fan through the window. Thereafter, they went to the Police station, lodged the complaint and the door was broken-open with the intervention of the Police.

19. PW.1 has been cross-examined at length. The custom prevailing in their caste is referred to and it is suggested that when such negotiations regarding marriage is made, the presence of elders and the Swamiji would be secured and the document would be prepared relating to the negotiation. On that aspect, the cross examination has been directed to suggest that the articles as claimed have not been given and as such, it has not been mentioned in the document ('Yaadi') and also that the articles that are stated to have been given are not seen in the photographs that were taken during the marriage function. It is suggested to him that though the document relating to marriage had been prepared, since the details of gold has not been indicated therein, the document has not been given to the Police. The further suggestion has been with regard to the financial and social

status of the family, that the appellant and his father are owning cars and to imply that the need for making such demand did not arise. A suggestion is also put to indicate that the birthday of the child was celebrated on 16.03.2008 and the relationship was cordial. In an attempt to explain the transfer of Rs.2,50,000/-, suggestion is made with regard to the maturity of Insurance policy which stood in the name of the deceased. It is further suggested that the transferred amount has been utilized for purchase of the building in her name wherein the deceased was also running her clinic. It was further suggested that on the previous evening i.e. on 04.11.2008 before they left to Bijapur, the deceased was dropped at the clinic and at that stage, the deceased was shouting at the receptionist in the clinic. In that direction, it was further suggested that the deceased had suspected that the appellant was flirting with the receptionist and therefore the deceased was upset and has committed suicide. It is also suggested that the complaint given against the appellant is false and is a result of the deliberations along with Ravi, who is an advocate. Though certain inconsistent statements were made with regard to the manner of detailing the articles that were given at the time of marriage and the process in which it was handed over, all other suggestions have been denied and certain explanations are also given. The cross examination has not discredited the evidence of PW-1 as no definite admissions contrary to the case of the prosecution were extracted.

20. Smt.Suma Sangamesh Naik, the mother of the deceased was examined as PW.2 and she has also testified in similar terms as stated by PW.1. The cross examination is also in similar terms. Smt. Roopa Santhosh Peerashetty, the sister of the deceased was examined as PW.4 who has also testified with regard to the manner in which the marriage proposals were held and the articles were exchanged. With regard to the demand for Rs.10,00,000/- and Honda city car, she has referred to the same and the telephone conversation between her and her sister is stated and her phone number is given as 9880541424 and her deceased sister's phone number as 9886195958. The instances when her deceased sister had complained about the ill- treatment and harasssment has also been referred to. The cross examination in similar line has been made and it has also been suggested that her sister had suspicion that the appellant had an affair with the receptionist in the clinic and therefore the deceased had an altercation with the

receptionist on the previous evening. It is further suggested that keeping this in mind the deceased has committed suicide and there is no other reason. The suggestions made to that effect have been denied.

21. Sri Yallappa Makkennavar is examined as PW.3. He is stated to be the driver of PW.1. He has deposed with regard to the visit to Belagum on 04.11.2008 and that while he was sitting in the car, outside the house of the appellant, he heard the shouting noise in the house. He has also stated with regard to the message being received on 05.11.2008 and they having come to Belgaum. Sri Vivekanand Balaganur is examined as PW.6. He is a friend of PW.1 who is stated to have participated in all the formalities relating to the marriage. He has in that view deposed with regard to the gold jewellery and the amount being paid at the time of the marriage. He has stated that the deceased had told him about certain problems but, not in specific terms. The father of the deceased had however told him about the demand for car and Rs.10,00,000/- and that the appellant is not satisfied with whatever is given. The suggestions made in the cross examination have been denied.

22. PWs.5, 7, 9 and 14 are the neighbours of the appellant in the apartment block but, they have not supported the case of the prosecution. Similarly PW.10 who is working as a security guard in the apartment block has not supported the case of the prosecution. However, all of them have stated that they are aware that the appellant and the deceased were residing therein, but have pleaded ignorance about their relationship as they did not have much contact. One other witness who has been examined is, Sri Thotappa Nagappa Sanekoppa (P.W.16). The said witness is the acquaintance of the father of PW.1 and is also related to the appellant as the sister of the appellant is married to his son. He did not choose to support the case of prosecution though he was instrumental in arranging the match and was in the know of things including about the subsequent demand. Hence, he has been treated as 'hostile' and is cross examined both on behalf of the prosecution and on behalf of the accused. In the cross-examination by the State Public Prosecutor, though he has denied the suggestion that PW.1 had informed him about the demand for Rs.10,00,000/- and a car, he has stated that the father of PW.1 and his son i.e., the brother of PW.1 had told him that higher

demand is being made by the appellant and his family and that they be advised to desist in that regard. He therefore told the father of the appellant not to make such demand. The said statement was sought to be negated by a suggestion put on behalf of the accused about its falsity by cross examining him but, PW.16 has denied the suggestion.

23. From the evidence tendered on behalf of the prosecution, two aspects of the matter have been sought to be brought out. Firstly with regard to the demand of gold and silver articles at the time of marriage and the same having been fulfilled by the parents of the deceased. The second aspect of the case is the continued demand after the marriage, more specifically the demand for Rs.10,00,000/- and a Honda city car. Towards the subsequent demand, it was partially met by transferring a sum of Rs.2,50,000/- to the account of the appellant which is established by the document at Ex.P3. The harassment alleged thereafter was to seek payment of the balance of Rs.7,50,000/- and the Honda city car. In the instant case, the marriage had taken place on 05.06.2006 and the death of the wife of the appellant occurred on 05.11.2008. Since the death had taken place within seven years of marriage, in addition to the charge framed under Section 498A, 306 IPC and Sections 3, 4 and 6 of DP Act, the most relevant aspect is the charge under Section 304-B of IPC as it amounts to dowry death.

24. In that view, what would also be relevant is the presumption that would arise under Section 113B of the Evidence Act. If the said aspect is kept in view, the essential ingredients to be satisfied as held by the Hon'ble Supreme Court in the case of Kamesh Panjiyar @ Kamalesh Panjiyar vs. State of Bihar [(2005)2 SCC 388] are as follows:

- i The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- ii Such a death should have occurred within seven years of her marriage.
- iii She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

iv Such cruelty or harassment should be for or in connection with demand of dowry.

v Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

The presumption under Section 113B of Evidence Act is a presumption of law and on proof of the essentials mentioned therein, it becomes obligatory for the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials;

i 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) ii The woman was subjected to cruelty or harassment by her husband or his relatives. iii Such cruelty or harassment was for, or in connection with, any demand for dowry. iv Such cruelty or harassment was soon before her death.

25. In the instant case, the evidence of Dr.Gurudatta (PW.17) i.e., the doctor who had conducted the post-mortem would establish that the death was by hanging. The documents at Exhs.P22 and P23 viz., the post-mortem report and the opinion of articles also referred to this aspect. The Tahsildar Sri Shivappa Lamani, who was examined as PW.23 has stated with regard to the inquest conducted due to the unnatural death within seven years of marriage. From the said evidence, the first ingredient that the death was otherwise than under a normal circumstance is established.

26. As already noticed above, undisputedly, the marriage was performed on 05.06.2006 and the wedding invitation is also marked at Ex.P2 and the photographs are at Exhs.P4 and P5. In view of the post mortem report (Ex.P22) and the other evidence, the fact that the death occurred on 05.11.2008 is clear; neither has it been disputed. Hence, the death has occurred after about 2 years and 5 months from the date of the marriage i.e., earlier to completion of seven years. As such, the second ingredient contemplated under Section 304-B IPC noticed above, is also established. The question therefore is as to whether the

evidence available on record is sufficient to establish the third, fourth and fifth ingredients of Section 304-B IPC so as to raise a presumption as contemplated under Section 113-B of the Evidence Act.

27. The learned counsel for the appellant has contended that the neighbours of the appellant and the deceased have not supported the case of the prosecution and the other evidence available on record is the interested testimony of the parents and sister. He contends that PWs.3 and 6 also should be considered as interested witnesses. By placing reliance on the decision of the Hon'ble Supreme Court in the case of Narayana Murthy vs. State of Karnataka and another (AIR 2008 SC 2377), he has contended that it has been held therein that when the neighbours had not supported the case of the prosecution the accused- husband is liable to be acquitted. The said case arose from the facts where the dead body of the wife of the first accused therein was found with burn injuries and the fact of the complicity of the accused was also to be proved. In that context, when the issue relating to the allegation of ill-treatment or harassment was being considered, the evidence of the neighbours who were examined as PWs.5, 6 and 10 was noticed and the denial made by them with regard to the statement made to the Police has been taken into consideration. In the instant case, the neighbours and the security guard of the apartment who were examined as PWs.5, 7, 9, 10 and 14 though have not given any incriminating testimony against the appellant, from the deposition, it is seen that they have stated about the appellant and the deceased being residents of the apartment and that they were always keeping to themselves and they had only seen them while they were going out together. There is no positive statement about they having knowledge about their cordial relationship so as to defeat the case of prosecution. The decision relied therefore cannot be of assistance to the present facts when there is other evidence on record to be analysed.

28. On the other hand, when the allegation is of dowry death and in that regard the conduct of the party is to be considered while examining the evidence, the view expressed by the Hon'ble Supreme Court in the case of State of Punjab vs. Iqbal Singh and others [(1991)3 SCC 1] relied on by the learned Government Advocate is to be kept in perspective. In the said case, it is held as hereunder:

"7. The law underwent a further change with the introduction of Section 304-B in the Penal Code and Section 113-B in the Evidence Act by the Dowry Prohibition (Amendment) Act, 1986. Where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that soon before her death she was subjected to cruelty or harassment by her husband or any of his relatives for or in connection with any demand for dowry, such death is described as dowry death under Section 304-B for which the punishment extends to imprisonment for life but not less than imprisonment for seven years. By Section 113-B, Evidence Act the court has to raise a presumption of dowry death if the same has taken place within seven years of marriage and there is evidence of the woman having been subjected to cruelty and/or harassment.

8. The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113-A and 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members Section 498-A, I.P.C. would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304-B, I.P.C. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113-B, Evidence Act provides that the court shall presume that such person had caused the dowry death."

(emphasis supplied)

29. Similar is the view of the Hon'ble Supreme Court in the case of State of Karnataka vs. M.V. Manjunathgowda and another (AIR 2003 SC 809) with regard to the intendment of the amendment and the totality of the evidence that is to be taken into consideration and not to take out the minor discrepancies here and there as a ground for impeaching the credibility of the witnesses and commit miscarriage of justice.

30. The learned counsel for the appellant has relied on the decision in the case of State of Karnataka vs. H.A.Ramaswamy (1996(2) Kar.L.J.1) wherein the husband was accused in respect of an offence under Section 304-B and 498A of IPC but was acquitted. A perusal of the said judgment would indicate that the facts therein was not sufficient even to raise a presumption. The deceased had in fact left behind a diary and detailed reference was made to the contents therein where she had recorded about her frustration in life as she could not realise her dreams after marriage, which related to her aspirations in career etc. Hence, the decision therein is not relatable to the instant case as a precedent as it was rendered on its own facts. The decision in the case of Appa Saheb and another vs. State of Maharashtra (AIR 2007 SC

763) is a case where the demand for money on account of financial stringency or for meeting urgent domestic expenses is held as not being a demand for dowry. The said case relied on by the learned counsel for the appellant is also not of assistance since there is no such defence set up in the instant case and even to the extent of contending that the amount of Rs.2,50,000/- received has been utilized for purchase of building in the name of the deceased alone is not sufficient since the aspect relating to the further demand subsisting also would arise for consideration. The decision in the case of Kundula Balasubramaniam and another vs. State of Andhra Pradesh [(1993)2 SCC 684] though relied on, it is a case where the conviction of the accused has been upheld and is not of assistance.

31. On the other hand, before taking note of the evidence in the instant case relating to the last three ingredients to satisfy invoking Section 304-B IPC, it would

also be beneficial to notice the decision of the Hon'ble Supreme Court in the case of G.V.Sidda Ramesh vs. State of Karnataka [(2010)3 SCC 152] wherein cruelty has been held to be either mental or physical and that it cannot be put in a straight jacket. Further the scope of Section 304-B IPC and presumption under Section 113B of Evidence Act has been considered and due weightage has been given to the evidence of the father, brother and sister of the deceased with regard to the case put forth relating to demand of dowry. It is held that it is difficult to know how different people react to different situations. It is observed that the threats by the husband in the matrimonial home might be enough for the wife who was in a fragile state of mind to reach breaking point and end her life.

32. In the above background, the complaint in the instant case no doubt refers to the articles and the money given and spent at the time of the marriage and PW.1, 2 and 4 i.e., the father, mother and sister of the deceased have referred to that aspect in their deposition and the learned counsel for the appellant has made detailed reference to their cross-examination to pick out discrepancies wherein according to the learned counsel, they have shifted their stand when the photographs relating to the wedding were confronted. The learned counsel for the appellant in that regard has relied on the decision in the case of Suraj Mal -vs- The State - Delhi Administration (AIR 1979 SC 1408) wherein it is held that where witnesses make inconsistent statements in their evidence, the testimony becomes unreliable. It was held so in a case where the integral part of the evidence which was held not reliable for one aspect was relied for the other, which was disapproved. However in the instant case, the said discrepancies cannot be blown out of proportion. That is so because from the very tenor of cross examination, the emphasis has been on the said articles not finding a place in the document ('Yaadi') that was drawn out at the time of the engagement and the articles were not being displayed as it is not seen in the photographs. The very nature of the case is with regard to the dowry being given and when there is consistent statement with regard to the quantum, the manner in which it was given or the same not being displayed, it would not make any difference, as to the knowledge of all, dowry being illegal, it would not be recorded for the purpose of evidence even if it is a customary marriage document and what is to be assessed is the credibility of the testimony.

33. Be that as it may, it is neither the case of the complainant nor that of the prosecution that the subsequent harassment driving the deceased to commit suicide was either for the shortfall in giving what was promised at the time of marriage or that the same was not given though promised. What was given at the time of the wedding is one among the circumstance. The complaint and the further case made out is that subsequently there was a demand for Rs.10,00,000/- and Honda city car which was not fulfilled in entirety except parting with Rs.2,50,000/- and that resulted in harassment which was unbearable and culminated in the deceased resorting to the extreme step which resulted in dowry death. The cross examination on the aspect to show that the demand for car is not true, is that the father of the appellant owned a car and it has been extracted in the cross examination of PWs.1, 2 and 4 that the appellant also owned an Alto Car. The possession of the car even if true cannot raise a presumption that the demand was not made, since the car as stated to have been demanded is a better car than what was possessed by the appellant and in any event, the limit of a person is only with regard to the need and not with regard to greed. Hence, what one possessed is immaterial and that alone is no reason to assume that nothing was demanded. In that light, what is necessary to be noticed is, whether the evidence on record is sufficient to indicate that there was demand regarding which there was harassment and whether it is sufficient to draw a presumption.

34. In that regard, the fact that a sum of Rs.2,50,000/- was transferred on 05.06.2008 to the account of the appellant is established from Ex.P3. Though the sale deed dated 09.06.2008 was produced by the accused to indicate that the purchase of the shop premises was made in the name of the deceased and photograph of the clinic indicating the board of the appellant as well as the deceased was produced, it cannot take away the fact that the appellant in order to establish his clinic required a premises and the same was purchased from the money which had been extracted from PW.1. The amount was being demanded for that purpose is the testimony of PWs-1, 2 and 4 and the building alone would not have been sufficient for the dental clinic as much expensive accessories are also required. When the appellant himself had relied on the pass book to indicate that the deceased held a savings bank account in Corporation Bank, the amount would have been transferred to her account if it was a simple case of the father

providing financial assistance to the daughter to purchase the property or even if it was the insurance amount as contended. Further, what is also to be taken into consideration is the case of PW.1, 2 and 4 that the harassment was continued even thereafter by demanding for the remaining amount of Rs.7,50,000/- and the Honda city car.

35. In that regard, one of the ingredients to be satisfied under Section 304B IPC is also as to whether the harassment was meted out soon before death. The expression 'soon before death' does not mean minutes or hours before death or such other definite time slot but should be proximate to the date of death which will depend on the facts of each case. Our opinion in this regard is also supported by the view expressed by the Hon'ble Supreme Court in the case of Tummala Venkateswar Rao vs. State of Andhra Pradesh (2014 AIR SCW 361). Though in the instant case, much is made about the mobile phone of PW.4 who is stated to have received the call from the deceased not being seized and there being discrepancy with regard to the production of the call-list, the call having been made cannot be doubted in the circumstance and from the details given by PW.25. Even otherwise, the incident stated by PW.1 to have occurred on 04.11.2008 itself is immediately prior and proximate to the death since the death has occurred on 05.11.2008 at about 9.15 a.m. and the entire sequence on 04.11.2008 was till late evening. Hence, the evidence of PW.1 in that regard would be relevant. The same reads as hereunder:

(Language)

(emphasis supplied)

36. From the extracted portion, two aspects emerge, first, with regard to the demand that was made, the mental cruelty and the harassment that was being heaped by threatening to divorce the deceased if the demand was not fulfilled. The other aspect is that in view of such demand and threat, even on 04.11.2008 when PW.1 had visited his daughter and son-in-law, PW.1 had contacted the father of the appellant over phone and the father of the appellant had also come to the apartment at around 4.00 p.m. from Sankeshwar.

PW.1 in fact has stated that the father of the appellant had also attempted to persuade the appellant, but to no avail and the father of the appellant in fact had advised PW.1 to take his daughter along to Bijapur, while the father of the appellant had taken the grand child to Sankeshwar while returning on 04.11.2008. In the entire cross examination of PW.1 the presence of the father of the appellant on 04.11.2008 when the incident of demand and harassment by threat of divorce had occurred nor the fact that he had thereafter taken the child and left to Sankeshwar has been disputed. This in our view lends credibility to the testimony of PWs.1, 2 and 4 since the statement made by them with regard to the demand and harassment immediate prior to the death being made was stated to have been made in the presence of the father of the appellant and the presence not being disputed will indicate that it is neither a created story nor a concocted interested testimony to implicate the appellant without basis.

37. Further, if not for the demand made factually, the need or the motive for the complainant to implicate the accused without there being truth has also not been projected by the accused. The fact that no allegation has been made against the father of the appellant and other family members show that the complaint is genuine and not out of bias, ill will or ulterior motive. Therefore, even if the evidence of PW.3 who had stated that he had heard the altercation on 04.11.2008 is not taken into consideration, the incident on 04.11.2008 would stand established due to the above stated circumstance and the factum of demand for dowry and the harassment caused in that regard is also established. The other aspect is also that PW.1 in his evidence had stated that the relationship was cordial for about three to four months after the marriage. Thereafter the demand and the pinpricks had started. The fact that the deceased went back to the marital home only after nine months subsequent to the delivery of the child would also point to the fact that all was not well.

38. In this context, though PW.16 resiled from his statement and has not supported the case of the prosecution, the relevant portion of the answer given in the cross examination made after treating him as 'hostile' needs to be noticed. It is as hereunder:

As stated in the cross examination of the Government Pleader:

(Language)

As stated in the cross examination of the counsel for the accused:

(Language)

(emphasis supplied)

39. Though the suggestion of the learned Government Advocate that the father of the deceased had informed him about the demand for Rs.10,00,000/- and a car was denied by PW.16, he has proceeded further to admit that B.G.Naik, Advocate and his son Ravi Naik had informed him from Bangalore about such demand and he had brought this to the notice of the father of the accused, but not to the accused. The learned counsel for the appellant though sought to negative the said admission in his cross examination, PW.16 has denied the suggestion that B.G.Naik and Ravi Naik had not informed him. In fact he has clarified that the demand was made even after 6 months and after they had moved to Belgaum. From the said admissions of PW.16 in the cross examination, it would be clear that there was demand for dowry after five to six months of marriage and continued even after the appellant shifted to Belgaum which gives credence to the testimony of PWs-1, 2 and 4 as also PW-6 and the fact of demand for dowry stands established. The fact that the demand and harassment continued immediate prior to the death is also clear. From what is noticed above, the incident on the previous day i.e. 04.11.2008 was in fact in the presence of the father of the accused. The said evidence is sufficient to indicate that the prosecution has not only proved, but in any event, it has discharged the initial burden in showing the existence of all the ingredients as contemplated under Section 304-B of IPC and Section 113B of the Evidence Act. If such presumption was to be rebutted, there ought to have been rebuttal defense evidence to establish that there was any other cause for the death and it was for the accused to put forth such defence.

40. The learned counsel for the appellant by relying on the decision in the case of Dharmanand Pant -vs- State of Uttar Pradesh (AIR 1957 SC 594) made a feeble

attempt to contend that there was infirmity in examining PW-16 through commission without administering oath and as such his evidence cannot be relied. In the cited case, infirmity was noticed from the records and therefore the said decision. In the instant facts, it is seen that PW-16 was aged 80 years. The record/order sheet would disclose that when the case was listed on 13.10.2010, the Public Prosecutor sought for examination by commission as the witness was unable to climb the stairs. Accordingly, Chief Judicial Magistrate was appointed as Commissioner and the date for examination was fixed as 23.10.2010, which was done and report was received by the trial Court on 25.10.2010. The examination through commission was validly done in terms of Sections 284 to 289 of Cr.P.C. No contention was put forth at that stage or when the report was received by the trial Court nor does such contention merit acceptance herein.

41. The only attempt made on behalf of the accused to project a different case is the suggestion put to PWs.1, 2 and 4 in the cross examination that there was a lady receptionist in the clinic run by the accused and the deceased had suspected that the accused had an affair with her which had led to misunderstanding and an altercation on 04.11.2008 had taken place in the clinic when the deceased had admonished the receptionist. About the incident on 04.11.2008 we have already noticed the presence of the father of the accused himself in the house, which has gone unchallenged. Further, except for putting forth such suggestion in the cross examination, neither was such case put forth while Section 313 Cr.P.C. statement of the accused was recorded nor was any defence evidence put forth. Though the learned counsel for the appellant has used the legal jargon relating to right to silence by the accused and the establishment of the case beyond reasonable doubt by the prosecution as per the criminal jurisprudence, in the instant case when the prosecution was also under Section 304-B of IPC and the ingredients thereto had been satisfied and presumption under Section 113-B of Evidence Act was available, the accused cannot still plead to remain silent without making an attempt to rebut the presumption. On the other hand, Section 313 Cr.P.C statement has been one of total denial and no effort was made to rebut the presumptions. The scope and purport of recording Section 313 Cr.P.C. statement has been reiterated by the Hon'ble Supreme Court in the case of Rajkumar vs. State of M.P. (2014 AIR SCW 1795) as hereunder:

"The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide Ramnaresh and Ors vs. State of Chhattisgarh AIR 2012 SC 1357 : (2012 AIR SCW 1917); Munish Mubar vs. State of Haryana, AIR 2013 SC 912 (2012 AIR SCW 5454) and Raj Kumar Singh alias Raju alias Batya vs. State of Rajasthan, AIR 2013 SC 3150: (2013 AIR SCW 3449).

In the instant case, the appellant did not take any defence or furnish any explanation as to any of the incriminating material placed by the trial Court, the Courts below have rightly drawn an adverse inference against him.

13. The appellant has not denied his presence in the house on that night. When the children were left in the custody of the appellant, he was bound to explain as under what circumstances Gounjhi died."

In such circumstance, the grievance about Sri Sashidhar Hakka Pakki, the co-brother of PW.1 or the Swamiji who were present at the engagement not being examined on behalf of the prosecution is not of much relevance and is also not acceptable.

42. Further, the learned counsel for the appellant has also relied on the decision in the case of State of Madhya Pradesh vs. Ram Prakash and others (1989 CrL. L.J.1585) with regard to there being infirmity in posing the same set of questions to different accused. In the said decision, it was a case where the seizures were made from the different accused in different circumstances and the validity of such seizures was also contended as doubtful. The incriminating circumstances were different in respect of each of the accused therein. It is in that circumstance the conclusion was reached that same set of questions cannot be put. Whereas in the instant case, the incriminating circumstance stated is similar to both the accused.

As such the questions were posed in the similar fashion though such incrimination did not ultimately hold good against the second accused. Hence, we see no infirmity in this regard. The further contention with regard to the infirmity in drawing up of the Mahazar and the 'Badige' not being seized, being fatal is also liable to be rejected. The fact that the deceased had locked the door of the bed room and had hung herself is evident and it has been stated by PW.19 who was the first to visit the spot. It is in that circumstance, the door was broken open in the presence of panch witness and until such time, it was the appellant and his relatives, who were around. There was no scope for implanting. The relevant materials have been seized. It is not the case of the prosecution that the 'Badige' had been used by the accused to assault nor is the case that she was beaten to death. Hence, in the present facts, it is inconsequential. The panch witness Sri Gopal Basavanneppa Patil, an independent witness who is a resident of Mazgaon, an area at about 5 km away was examined as PW-8 and the panchanama is marked as Ex.P-11 and he has identified the Material objects that were recovered at the spot. The testimony of PW.22 is also sufficient in this regard.

43. In the light of the above, a perusal of the judgment passed by the trial Court would indicate that the learned Sessions Judge has appreciated the evidence in its correct perspective and has arrived at the appropriate conclusion to hold that the appellant be convicted for commission of the offences punishable under Sections 498A, 306, 304-B and Section 3, 4 and 6 of the DP Act, though the reference to Section 34 of IPC was not necessary. In our assessment, we have also found the evidence to be sufficient to hold the appellant guilty with regard to the demand for dowry and the cruelty and harassment meted out. We have also indicated that in any event, the presumption has arisen under Section 113-B of Evidence Act. Hence, the trial Court has not committed any error in holding the appellant guilty so as to call for interference.

44. Though the learned counsel for the appellant has not contended with regard to the quantum of sentence, we feel it appropriate to consider that aspect as well. In respect of the sentence awarded under Section 498A, 306 IPC and Section 3, 4 and 6 of DP Act, we see no reason to alter the same. However, the punishment imposed for the offence punishable under Section 304-B IPC needs consideration.

The maximum punishment provided under the said provision is life imprisonment and in the instant case, the maximum that is provided has been imposed. In this regard, it would be germane to refer to the decision in the case of Hemchand vs. State of Haryana [(1994)6 SCC 727] wherein the Hon'ble Supreme Court while considering the nature of punishment to be imposed in the case of dowry death under Section 304-B of IPC has held that the extreme punishment of life imprisonment should be awarded in rare cases and not in every case. The Hon'ble Supreme Court therefore reduced the punishment in the said case directing the accused to undergo Rigorous imprisonment for 10 years. On referring to the said case, the Hon'ble Supreme Court in the case of G.V.Sidda Ramesh (supra) considered the young age of the accused as a mitigating circumstance and modified the punishment to undergo Rigorous imprisonment for ten years.

45. In the instant case, the accused was aged about 30 years and notwithstanding the fact that the appellant had indulged in such crime which is certainly unconscionable, the fact that the couple had a child also cannot be lost sight. Hence, we deem it appropriate to modify the life sentence imposed under Section 304-B IPC to that of Rigorous Imprisonment for a period of ten years including the period of sentence already undergone.

46. In the result, the following:

ORDER

i) The conclusion reached by the trial Court convicting the appellant and the sentence imposed for the offences punishable under Sections 498A, 306 of IPC and Sections 3, 4 and 6 of DP Act is confirmed.

ii) The conviction recorded by the trial Court insofar as the offence punishable under Section 304-B of IPC is confirmed, however, the sentence stands modified holding that the appellant shall undergo Rigorous imprisonment for a period of ten years instead of life imprisonment.

iii) The sentences of imprisonment shall run concurrently and the period of imprisonment already undergone by the appellant shall be set off as already

ordered by the trial Court.

iv) The appeal is accordingly allowed in part.

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