

**Sanjiv Vs. State**

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**Court :** Delhi

**Decided On :** Sep-11-2009

**Reported in :** 164(2009)DLT459

**Judge :** Kailash Gambhir, J.

**Acts :** Evidence Act - Sections 113B; [Dowry Prohibition Act, 1961](#) - Sections 2; [Indian Penal Code \(IPC\), 1860](#) - Sections 30, 304, 304B and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161, 174, 176 and 374; Muslim Law

**Appeal No. :** Crl. A. No. 83/2003

**Appellant :** Sanjiv

**Respondent :** State

**Advocate for Def. :** Sanjay Lao, APP

**Advocate for Pet/Ap. :** Naresh Kaushik, Adv

**Disposition :** Appeal allowed

**Judgement :**

**Kailash Gambhir, J.**

1. The present appeal filed under Section 374 Cr PC has been directed against the judgment dated 30/1/2003 passed in Sessions Case No. 135/1997, whereby

the appellant husband of the deceased was convicted under Section 498A/304B Indian Penal Code, 1860 and order of sentence dated 30.01.2002 whereby the appellant has been sentenced to undergo rigorous imprisonment for 3 years and 7 years, respectively.

2. The factual matrix of the case, as set out in the appeal, is as follows:

In the afternoon of 18/10/1996 when the appellant was at his shop, he was informed about the incident of suicide having been committed by his deceased wife Shobhana. The appellant on hearing, rushed to his residence and the Doctor PW7 Dr. Jagdish Chander Pathak was immediately called, who found the deceased in an unconscious state but was still breathing. The appellant took her to Khetrpal Hospital, but despite the best efforts of Dr. Anil Khetrpal, PW 12, the deceased did not survive. The parents of the deceased were informed of the said mishap on 18.10.1996 and they arrived on 19.10.1996. The parents were quite normal in their behavior against the appellant and his family. But suddenly, after five days their behavior completely changed towards the appellant and his family and an FIR bearing No. 655/1996 was lodged on 23/10/1996 at P.S. Dabri on the direction of SDM, Hauz Khas, Mr. K.K. Dahiya, PW3 and proceedings were initiated pursuant to the said FIR. Vide judgment dated 30/1/2003, all other accused/family members of the appellant were acquitted by giving them benefit of doubt but the appellant was convicted under Sections 498-A and 304 Indian Penal Code, 1860 and was sentenced to RI for 7 years and fine. Aggrieved with the said judgment and order dated 30/1/2003, the present appeal has been preferred by the appellant.

3. Mr. Naresh Kaushik counsel for the appellant contended that the Ld. Additional and District Judge erroneously decided the case contrary to the evidence on record and the settled legal position. The counsel submitted that the Ld. Sessions Court did not take into consideration the unexplained delay in lodging the FIR. The counsel urged that clearly allegations leveled in the FIR and the statements given by the PW1 and PW 2 are not only afterthought but totally unbelievable. The counsel averred that the Court also erred in not considering that the SI J.P. Singh deposed that he did not think it proper to register the case against the accused

persons as there was nothing incriminating against the accused persons till then. The counsel urged that there are clear contradictions in the statements of PW1 Saroj, mother of the deceased and the PW 2 Ishwar Singh, father of the deceased, which was ignored by the trial court. The counsel contended that the deposition of DW1 Sonjana @ Sojna, sister of the deceased goes on to show that the exhibits DW1/A, DW1/1 and DW1/2 were written by the deceased Shobhana while infact as per the prosecution story Ex. DW1/1 and DW1/2 were written by none else but DW1 Sanjana herself. FSL report raise serious doubts in this regard and this deliberate falsehood clearly reflects that the appellant has been falsely implicated. The counsel urged that it is only the prosecution, who is basing their case on the notebook as well as the letter allegedly written by Shobhana but the trial court did not rely on them to convict the appellant. The counsel submitted that the Ld. Trial court erred in not considering the deposition of PW7 Dr. Jagdish Chander Pathak who deposed that he often treated the deceased but she never complained of physical or mental torture to him. The Trial Court also did not consider the deposition of Dr. Anil Khetrapal, PW 12, who deposed that the deceased was in unconscious state when she was examined by him. The counsel thus urged that all these efforts made by the appellant to save her would show that he had never maltreated her. The counsel also submitted that the letter purported to have been written by the deceased was not proved to have been written by her as the letter bore the stamp and pin code being 253606, which do not tally with the pin code of the place of residence of her parents at Barkata, the same being 251309. The counsel categorically denied that the appellant made any demand for dowry either at the time of birth of his child or even at the time of the marriage. The counsel pointed out that the Sessions court in its judgment has rejected the allegation of demand of Rs. 50,000/- by the appellant but still found credibility in the allegation of demand of dowry without there being any proof regarding the same. The counsel also averred that the statement of brother of the deceased, Sudarshan was recorded under Section 161 Code of Criminal Procedure, 1973 but he was not examined before the court, giving a clear impression that there is something suspicious about the prosecution story. The counsel also submitted that one of the essential ingredient to prove an offence under Section 304-B Indian Penal Code, 1860 is that 'soon before the death' there was a demand for dowry, which led to

the death of the deceased, i.e. the immediate nexus between the alleged demand and the death of the deceased was not proved by the prosecution. The counsel submitted that last demand for dowry was allegedly made more than three months from the death of the deceased and the same can in no circumstance be termed as having an immediate nexus between the alleged demand and the death of the deceased. The counsel also submitted that the SDM PW3 Mr. K.K. Dahiya was not present when the parents of the deceased made the statement and the same is manifest from the cross-examination of the mother of the deceased. The counsel also contended that neither the allegations made in the FIR, nor statements made by the mother and father of the deceased during inquest proceedings before SDM and also during trial disclose any offence having been committed by the appellant. The counsel relied on following judgments in support of his contentions:

- (a) Satvir Singh v. State of Punjab : (2001) 8 SCC 633;
- (b) Sunil Bajaj v. State of M.P. : (2001) 9 SCC 417;
- (c) State of A.P. v. Raj Gopalasawa and Anr. : (2004) 4 SCC 470;
- (d) Kaliyaperumal and Anr. v. State of T.N. : (2004) 9 SCC 157;
- (e) Kamesh Panjyar v. State of Bihar : (2005) 2 SCC 388; and
- (f) Harjit Singh v. State of Punjab : (2006) 1 SCC 463.

4. Per contra, Mr. Sanjay Lao, APP for the State contended that there was absolutely no delay on the part of the parents of the deceased in lodging the FIR as the incident took place on 18/10/1996 and then the parents of the deceased were informed, who came from Uttar Pradesh on 19/10/1996 and since they were in a state of shock being busy with the cremation ceremony and other last rites and rituals and therefore could only get the FIR registered on 23/10/1996 upon directions by SDM, Hauz Khas. The counsel submitted that the contention of the counsel for the appellant that there was no demand for dowry and there was contradiction in the testimony of PW1 mother of the deceased and PW2 father of the deceased is without any merits and is belied from the perusal of their

statements wherein it has been clearly mentioned that the appellant demanded Rs. 50,000/- and a Maruti car from the parents of the deceased and also used to physically and mentally torture her from time to time. The counsel submitted that in Para 4 of the impugned judgment the trial court held that Rs. 50,000/- were deposited in the account of the appellant and were withdrawn on the same day and the appellant did not bring on record any passbook or anything to show that the same is false. The counsel pointed out that the father of the deceased also stated that he told grand- father of the appellant regarding ill treatment of his daughter on which the father of the appellant assured that nothing would happen to his daughter. As regards the issue of letter dated 13/7/1996, purported to have been written by the deceased wherein she disclosed how she was being harassed by the appellant and his family tallying with the admitted handwriting of a notebook, written 5 years prior to the writing of the said letter dated 13/7/1996, the counsel contended that as per the observations in the CFSL report by the handwriting expert, the handwriting of said letter and the notebook tallied at certain points but also showed difference at some points. The expert also observed that the possibility of the handwriting pertaining to two different people cannot be ruled out and it cannot be said definitely who exactly wrote them, which fact clearly shows that there is an equal possibility of the same being written by the deceased. The counsel thus, submitted that the said letter dated 13/7/1996 goes on to show clear nexus between the alleged demand and the death of the deceased. Coming to the next contention, the counsel urged that it is for the prosecution to decide, to whom they want to examine and since in the case of brother of the deceased, there would have been a repetition of the statement of the parents of the deceased therefore the prosecution correctly dropped him. The counsel also submitted that PW3 SDM, K.K. Dahiya has explained in his testimony that he was present in the room when the statements of PW1 and 2 were recorded by his clerk on his dictation. The counsel also took support of Sections 174-176 of the Code of Criminal Procedure, 1973 and contended that nowhere it is the requirement of law that the SDM should have recorded the statement of PW1 and PW2 in his own handwriting. It was sufficient that SDM was present in the room when the statements of PW1 and PW2 were recorded on being dictated by him to his clerk. The counsel also urged that the presumption arising under Section 113-B

Evidence Act against the appellant has not been rebutted by him, which strengthens the prosecution case.

5. I have heard learned Counsel for the parties and perused the record.

6. The trial court convicted the appellant under Sections 498-A and 304-B Indian Penal Code, 1860, thus it would be worthwhile to reproduce the relevant provisions, which are as under:

Sections 304-B and 498-A read as follows:

304-B. 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.

Explanation.--For the purposes of this sub-section 'dowry' shall have same meaning as in Section 2 of the [Dowry Prohibition Act, 1961](#) (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

\* \* \*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 purpose 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.

The term 'dowry' has been defined in Section 2 of the [Dowry Prohibition Act, 1961](#) (in short 'the Dowry Act') as under:

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.--For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II.--The expression 'valuable security' has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).'

113-B. 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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. Explanation.--For the purposes of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).'

7. A bare reading of Section 498-A Indian Penal Code, 1860 shows that the term 'cruelty', which has been made punishable under Section 498-A IPC has been defined in the Explanation appended to the said section, to mean: (i) 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 her life, limb or health whether mental or physical; or (ii) harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of her own failure or failure of any person related to her to meet such demand. Therefore, the consequences of 'cruelty', which are either likely to drive a woman to commit suicide or to cause grave injury, danger to life, limb or health, whether mental or physical of the woman or the harassment of a woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand are required to be established in order to bring home an offence under Section 498-A IPC.

8. A perusal of the Section 304-B IPC, makes it clear that in order to attract Section 304-B IPC, the following ingredients are to be satisfied:

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

(ii) Such death must have occurred within seven years of the marriage;

(iii) The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) Such cruelty or harassment must be in connection with the demand of dowry; and

(v) Such cruelty or harassment must have been meted out to the woman soon before her death.

9. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection

with any demand of dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

10. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under 'dowry death' and there shall arise a presumption against the husband and the relatives.

11. The presumption under Section 113-B of the Evidence Act shall be raised only on proof of the following essentials:

(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.

12. It is for the prosecution to show that there was any cruelty or harassment for or in connection with the demand of dowry. In the absence of any evidence in this regard, this deficiency in evidence proves fatal for the prosecution case. Mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. Furthermore, the prosecution is obliged to show that soon before the occurrence of death there was cruelty or harassment and only in that case the aforesaid presumption, that the dowry death took place, would arise.

13. Coming to the rival contentions of the parties as regards delay in filing FIR, it is settled principle of law that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the court on guard to search if any plausible explanation has been offered and if offered whether it is satisfactory. In this regard, the Apex Court in *Sahebrao v. State of Maharashtra* : (2006) 9 SCC 794, observed as under:

7. At this juncture, we would like to quote the following passage from *State of H.P. v. Gian Chand*<sup>1</sup> wherein this Court observed: (SCC p. 79, para 12)

12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any [plausible] explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

14. In the instant case, the parents of the deceased got the information regarding death of their daughter on 18.10.1996 and thereafter reached at the matrimonial home on 19/10/1996. Obviously, they must be in an utter state of shock and they could not have thought of immediate registration of an FIR. The delay of one day in the above conditions cannot be considered as fatal to doubt the prosecution case.

15. Now coming to the core issue as to whether offence under Sections 498-A and 304-B Indian Penal Code, 1860 is made out or not. It is not disputed that the deceased had committed a suicide. Thus, clearly, the first ingredient that 'the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances'; is satisfied as the deceased died unnaturally. The second ingredient that 'such death must have occurred within seven years of the marriage' is also satisfied as admittedly, as the marriage of the deceased and the accused took place on 11/12/1994 and the deceased died on 18/10/1996.

16. Now what needs to be seen is, whether the other three ingredients as discussed above, viz. the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; such cruelty or harassment must be in connection with the demand of dowry; and such cruelty or harassment must have been meted out to the woman soon before her death, have been duly proved by the prosecution or not.

17. To see as to whether the prosecution successfully prove the aforesaid ingredients of the offence under Section 304-B Indian Penal Code, 1860, it would be worthwhile to refer to the relevant portions of FIR, statements of PW1 Ms. Saroj, mother of the deceased and PW2 Mr. Ishwar Singh, father of the deceased before the court and before the SDM during the inquest proceedings. The said relevant portions are reproduced as under:

#### FIR

At the time of marriage, demands were made for scooter, fridge, colour T.V., washing machine and furniture etc. and we gave all these things. After the marriage Shobhna told us that her in-laws were harassing her and they also beat her and say that they would have got a Maruti. I went to their house several times and tried to make them understand. They did not do anything in front of me but in my absence they harassed her. Once when I went to their house to bring my daughter, her mother-in-law and father-in-law refused to send the child aged 8 months at that time, along with us, I explained to them and brought the child along with us. Shobhna told us that her in-laws harassed her so I called the father of her father-in-law, Sh. Hari Singh told them about my problems. He assured me that nothing of this sort will happen and I will not allow your daughter to be troubled. On 4/8/1998, Sanjeev Kumar came to take back Shobhna, before that Shobhna had already told her mother that she will not go back to her in-laws house as to send her. First, I also refused to send her but then after explaining to both of them, I sent her saying that I will come to meet her next week and she should not worry. Nearly 6 months earlier Sanjeev had asked for Rs. 50,000/- and I gave him. On 19/10/1996, I learnt around 11 a.m. that Shobhna had been killed. As soon I reached Delhi those people told me that Shobhna had hung herself. I strongly

suspect that Shobhna has been killed by her in-laws for dowry.

PW 1 Ms. Saroj w/o Ishwar Singh

In her marriage, I had given dowry such as scooter, fridge, T.V., cooler etc., to her inlaws. This marriage was arranged with the intervention of the Anand s/o Lal Singh who is related to the accused persons. After two days my son Sudershan had brought my daughter Shobhna to our house and at that time my daughter told us that her in-laws were not happy with the dowry. She also told that a maruti car was being demanded by all the accused persons today present in the court in the dowry. All the accused persons used to taunt her and beat her for bringing insufficient dowry. After about months from the marriage when my daughter Shobhna visited us she told that her husband is demanding Rs. 50,000/- more for expanding the shop. However we could not give on that occasion and accused persons kept on harassing my daughter for not bringing Rs. 50,000/-. Finally in May 96 we paid this amount of Rs. 50,000/- to our daughter Shobhna for onward transmission to accused Sanjeev. Still my daughter was being taunted by accused Sunita and Manju the Nanad and accused Pheru Singh the father-in-law all today present in the court. Even my daughter was being regularly beaten up by both these Nanads, and accused Sanjeev her husband and accused Suresh Devi her mother-in-law. She was taunted by saying 'ki thumhare baap ne kya diya, na maruti diya hei na koye nakad rupeya'. In July 1996 we received a letter from my daughter Shobhna which is Ex. PW 1/A so I had sent my husband to her matrimonial house and brought my daughter Shobhna. On arrival my daughter Shobhna told me that she was regularly being beaten up by all the accused present in the court for demand of more money and a maruti car and the accused persons were even threatening her to kill that is why my husband had brought her back. After about 14-15 days i.e. on 4.8.96 accused Sanjeev today present in the court came to us. Then I discussed this issue with accused Sanjeev but he insisted either we should meet the demand of maruti and money or they should kill my daughter. At that time accused Sanjeev even exhorted that at the most by killing he might suffer custody of six months which he will not care. Somehow on the advise of my husband we sent my daughter back to her matrimonial house alongwith him. Again on the evening of Rakhi in 1996 accused Sanjeev came and

demanded Rs. 50,000/- but we showed our inability and he threatened again to kill my daughter. After the Rakhi festival he took my daughter back.

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There was no demand of dowry by the accused persons at the time of marriage of my daughter Shobhna with accused, Sanjeev. All the ceremonies such as engagement etc., were completed soon after the negotiations and in a quick succession of marriage. No demand was raised by the accused persons at the time of the engagement ceremony of my daughter Shobhna with accused Sanjeev. Marriage of Shobhna was performed after fifteen days of engagement ceremony. During these fifteen days transit period the accused is not ask for any dowry. No demand of dowry was raised by accused Sanjeev when he met Shobhna at Anand's house. My son Sudershan is not doing any service but he is engaged in agriculture till date. About four years back he started a finance business. My son Sudershan got the deposit of many persons but he could not returned the same as the business had to be left in between. No deposit was received from any relation. I do not know how much deposit was received by my son, only he might be know. Verbally I do not know how much deposit was given by a individual person but my son is in the possession of list which is lying at my house and which I can produce. I am fifth class passed. The list of deposits includes the name of Sanjeev, Shobhna and her miner son. Accused Sanjeev had made a demand of Rs. 50,000/- from me. On 8th May 1996 at my house in village Barkata and the same was paid by me to Sanjeev on the same day at my house. This sum of Rs. 50,000/- was withdrawn from the bank account of my husband on the same day. This fifty thousand rupees was demanded by accused Sanjeev for expansion of his shop and the same was paid by me for the happiness of my daughter. I did not demand the repayment of the said sum from the accused Sanjeev. It is wrong to suggest that I had not paid a sum of Rs. 50,000/- to accused Sanjeev at my house on 8.5.1996 at my village. First the maruti car was demanded by accused Suresh after the birth of son of Shobhna at the time when I and my husband visited Delhi to see my daughter Shobhna and her newly born son hereafter Maruti car was demanded by accused Sanjeev at my house in village Barkata in the year 1996 but I do not remember the date and month.

PW 2 Ishwar Singh s/o Ram Shanker Singh

It was a descent marriage as per the demand of accused persons because scooter, fridge, T.V., washing machine, furniture, ornaments etc., were given. After some time of the marriage Shobhna started complaining that her inlaws used to harass and beat her. I can not tell the reason as to what was the cause of harassment and beatings. After about one and half years of marriage I took my daughter with me. At that time my daughter Shobhna told her mother that she would be killed by her inlaws.

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We did not give even a single penny to my son at the time when he started finance business. I came to know about the death of my daughter on 19.10.96 through a newspaper thereafter I rushed to Delhi and went straight to the house of accused person.

18. A perusal of the statements of PW1 and PW2 shows that evidence led by the prosecution, viz. statements made by PWs 1 and 2 in their examination-in-chief and cross-examination, bristles with discrepancies and contradictions. On one side both in her examination-in-chief and in her cross-examination, PW1 stated that there was no demand of dowry by the appellant and his family at the time of marriage of the deceased and the appellant and even after the birth of their son but on the other hand PW2 in his examination-in-chief as well as in the cross-examination stated that the marriage of the deceased and the appellant was performed as per the demands of the appellant and his family and scooter, fridge, colour T.V. etc. was given in the marriage. PW1 in her cross-examination stated that they (PW1 and 2) had given Rs. 20,000/- to Sudarshan, brother of the deceased for starting a business but PW 2 denied it in his cross- examination and said that he did not give even a single penny to his son for business. PW 1 in her examination-in-chief stated that they got information of death of their daughter through their son on 18/10/1996 at night whereas PW 2 stated in his cross-examination that he got information regarding death of the deceased through newspaper on 19/10/1996. PW1 in her examination-in-chief stated that after two days of her marriage, when the deceased visited her maternal home, she

conveyed to her that her in-laws were unhappy because of the insufficient dowry but PW2 in his examination-in-chief stated that after some time of her marriage his daughter started claiming of beating and harassment at the hands of her in-laws but he did not know the reason behind such a behavior. Apart from these statements there are other glaring contradictions in the statements and cross-examinations of PW1 and PW2.

19. Furthermore, neither in the FIR nor in the statements and cross examination of PW1 and PW2 there has been any specific allegation against the accused as regards dowry demand. The only thing which has been said regarding the appellant is that he asked for Rs. 50,000/- for his business from the PW1 and PW2 and the same cannot be said to be in relation to dowry as it does not fall under the definition of dowry as defined under Section 2 of the [Dowry Prohibition Act, 1961](#) as the said demand is not made in relation to marriage of the deceased and the appellant. There has been no allegation against the accused beating the deceased or making any demands of dowry or otherwise harassing her.

20. From the above discussion, it is manifest that the ingredients, viz. the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and such cruelty or harassment must be in connection with the demand of dowry; has not been established by the prosecution. It is no more res integra that the case of the prosecution must stand or fall on its own legs and the prosecution cannot derive any strength from the weakness of the defence. The decision in *Sharad Birdhichand Sarda v. State of Maharashtra* : (1984) 4 SCC 116 supports this and the relevant para of the same is reproduced as under:

151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view.

21. From the above discussion, it is manifest that the prosecution has failed to show that there was any cruelty or harassment for or in connection with the demand of dowry and the same proves fatal for the prosecution case as regards offence under Section 304-B IPC. As regards offence under Section 498-A Indian Penal Code, 1860 having been committed by the appellant, again no specific

allegation in this regard has been made in the FIR or statements of PW1 and PW2 in this regard. Also, the only allegation against the appellant is viz-a-viz demand of Rs. 50,000/- for business of the appellant and the said demand of the appellant was admittedly met by the parents of the deceased on 8.5.1996, i.e. much prior to 18.10.1996, the date when the deceased died, thus it cannot be taken that appellant committed cruelty against the deceased even after getting Rs. 50,000/-. Therefore, the prosecution failed to prove the ingredients as against the appellant under Section 498-A Indian Penal Code, 1860.

22. In view of the above discussion, the order of conviction and sentence dated 30/1/2003 passed by the trial court are set aside and bail bonds and surety bonds of the appellant stand discharged.

23. With the aforesaid directions, the present appeal is allowed.

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