

**Elango Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/822557](http://sooperkanoon.com/822557)

**Court :** Chennai

**Decided On :** Jul-11-2000

**Reported in :** 2005CriLJ4343

**Judge :** R. Balasubramanian, J.

**Acts :** Evidence Act - Sections 113B; Dowry Prohibition Act - Sections 2; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A; Code of Criminal Procedure (CrPC) - Sections 161 and 313

**Appeal No. :** C.A. No. 140 of 1993

**Appellant :** Elango

**Respondent :** State

**Advocate for Def. :** R. Karthikeyan, Govt. Adv.

**Advocate for Pet/Ap. :** A. Pakiaraj, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**R. Balasubramanian, J.**

1. The appellant in this appeal is the convicted accused in S. C. No. 66 of 1992 on the file of the Fifth Additional Sessions Judge, Madras. The appellant/ accused

was charged and tried for offences falling under Sections 304-B and 498-A of the Indian Penal Code. The learned trial Judge found him guilty in respect of both the offences and sentenced him to undergo rigorous imprisonment for seven years for the former offence and to undergo rigorous imprisonment for two years together with a fine of Rs. 500/- for the latter offence, carrying a default sentence. Both the sentences were directed to run concurrently. It is the correctness of the said judgment that is being questioned in this appeal before this Court.

2. Heard Mr. A. Pakiaraj learned counsel appearing for the appellant as well as Mr. R. Karthikeyan learned Government Advocate appearing on the criminal side for the respondent/State. The argument of the learned counsel for the appellant is that, even admitting that the entire prosecution case is true, yet neither the offence of dowry death nor the offence falling under Section 498-A of the Indian Penal Code, is made out. The prosecution is heavily relying upon the evidence of P.Ws. 2 to 5 to bring home the guilt of the accused. The oral evidence before the Court below appears to be a highly exaggerated version and far away from truth. Their evidence, if tested in the background of the other materials available on record, which includes the enquiry conducted by the Tahasildar and the report arising there from as well as the several letters marked on the side of the accused namely, Exs. D2 to D7, would make it beyond doubt that their evidence is not trustworthy to warrant a conviction. According to the learned counsel for the appellant the death of the deceased was not accelerated due to the causes attributed to the accused, but it is more probable, as established from the records, due to frustration which was looming large in the mind of the deceased herself that had brought about her death. The sum and substance of the argument of the learned counsel for the appellant is that, no conviction at all can be based on the evidence let in by the prosecution and in any event, it cannot safely be said that the evidence establishes the case of the prosecution beyond all reasonable doubt. The learned counsel would also add that a A. Pakiaraj, for Appellant; R. Karthikeyan, portion of the amount stated to have been paid by P.W. 2, father of the deceased, was a voluntary payment made by him as 'Seer' i.e., a customary presentation provided to the bride at the time of her marriage, which is common in any system of life. The learned counsel for the appellant would also add that there is practically no material at all to support the oral evidence of P.W. 2 and others

that subsequent to those voluntary presentations in the form of cash covered by the demand drafts, the accused made any further demand, which had been met. Therefore in the absence of even the primary evidence showing the finger against the accused that he had committed the offence, the Statutory presumption is not available against him. The presumption would be available, according to the learned counsel for the appellant, only when the basic materials are made available by the prosecution. It is also contended by the learned counsel for the appellant that the enquiry report of the Tahasildar, who enquired into the death of the deceased in this case, is against the State.

3. Opposing these arguments Mr. R. Karthikeyan learned Government Advocate for the State would contend that there is no reason at all as to why the evidence of P.Ws. 2 to 5 should be disbelieved. He also vehemently contended that P.Ws. 2 to 5 had not been cross-examined with any specific purpose and their cross-examination is only general in nature. If their evidence is accepted, which really calls for acceptance, then there is really no difficulty at all in sustaining the findings of the learned trial Judge that the deceased was subjected to cruelty as well as harassment in the context of the demand for dowry. Therefore the learned Government Advocate would contend that inasmuch as it has been established that the death of the girl in this case had taken place within a few months after her marriage, the presumption always follows that it is a dowry death and the accused is responsible.

4. In the light of the arguments advanced by the learned counsel on either side, I perused the entire materials available on record. The brief facts, as placed by the prosecution before the Court below, are extracted hereunder :

(a) P.W. 2 is the father of the deceased girl in this case by name Vanitha. She was given in marriage on 22-10-90 to the accused in this case. On the day of the marriage itself the nuptial for the groom and the bride was arranged. That took place at Kodavasal. The marriage was at Mayavaram. P.W.4 and his wife had stayed at Kodavasal for that ceremony. On the early morning of the next day, following the nuptial's day, the deceased Vanitha is stated to have told P.W. 4 that even during the previous night, the accused demanded from her that she should

get money for buying a scooter and a television set. She had further stated that the accused told her that unless she gets money for that, there is no question of the deceased living with the accused at Madras in the matrimonial home. P.W.4 had passed on this information to P.W.2. P.W.2 agreed to manage the money and accordingly a sum of Rs. 30,000/- by way of a demand draft was given to the accused. Ex. P.3 is the counterfoil for the said demand draft. On 24-10-90 the accused and his wife namely, the deceased, had come to Madras. P.W. 4 handed over the demand draft for Rs. 30,000/- to the accused at his house in T. Nagar on 26-10-90. As the accused was not available at that time and on the request made by the deceased in this case, P.W. 4 came again to the house of the accused later and personally handed over the demand draft to the accused. During Pongal time the deceased in this case went to her father's house. At that time the deceased is stated to have told P.W. 2 that the accused is harassing her to get money. Again a sum of Rs. 7,000/- by way of a demand draft was purchased on 12-2-91 and sent to the accused by P.W. 2. Ex. P.4 is the counterfoil evidencing the purchase of the said demand draft. However the accused had not utilised the money for purchasing either the television set or the refrigerator or the scooter.

(b) During November, 1990 P.W. 3 had gone to the house of the accused. He claims to have asked the accused as to whether he had purchased all the articles for which he was given money and the accused did not answer at all. P.W. 3 saw the deceased weeping. During the month of December that year, P.W. 4 had gone to the house of the accused. At that time the deceased, who is none else than his cousin sister, is stated to have told him that the accused is often beating and treating her cruelly and she was told not to write any letters or go even outside the house. This message was passed on by P.W. 4 to P.W. 2. In February 1991, P.W.4 went to the house of the accused and enquired him as to why he was treating his wife badly. The accused admitted the receipt of the demand draft for Rs. 7,000/-. When questioned as to whether he had purchased the refrigerator from and out of the money already given to him, the accused did not give any answer at all. During March 1991 the deceased in this case told P.W. 2 over telephone that the accused demands payment of another sum of Rs. 10,000/-. P.W. 2, with the said cash, went to Madras on the next day. He met P.W. 4 and informed him that the deceased told him over phone to bring Rs. 10,000/- and that

he had brought it. P.W. 2 is also stated to have told P.W. 4 that he had come to know that the accused is demanding money often beating his wife and therefore P.W. 4 should visit the house of the accused at least once in a week and see them.

(c) P.W. 2 went to the house of the accused and paid him Rs. 10,000/-. At that time P.W. 2 asked the accused as to what he had done with reference to the sum of Rs. 37,000/- already given to him. Stating that he has some urgent work, the accused had left the house without stating anything else. At that time the deceased came weeping and she had told P.W. 2 that the accused is beating her; she was told not to write any letter about that to anybody and that is why she has chosen to call him over phone and tell. During May 1991 the deceased telephoned to P.W. 2 and asked him to bring another sum of Rs. 15,000/-. P.W. 2 had a sum of Rs. 7,000/- only in cash with him. With that amount he went to Chennai and handed over the same to the deceased. He also claims to have asked the accused stating that he is meeting all the demands of the accused and still why the accused is doing like that? The accused is stated to have told him that if P.W. 2 is inclined to take her daughter back, he can take her. Consoling the deceased in this case, P.W. 2 went back to Kodavasal and told the mother and sister of the accused about that happened. They assured P.W. 2 that they will take care of the situation. For the festival in the 'Aadi' month, P.W. 2 had gone to the house of the accused to bring his daughter. At that time the accused is stated to have told him that, unless he is given a gold wrist watch strap, he will not visit his house for the 'Aadi' festival. P.W. 2 is stated to have replied that he will give the gold wrist watch strap while bringing his daughter back to his house and so saying, he took his daughter. Even at that time the deceased is stated to have told P.W. 2 that the accused is often beating her and harassing her. The accused did not go to his in-laws place to take back his wife. However P.W.2, on his own, took his daughter and left her in the house of the accused at Madras.

(d) P.W.2 along with the deceased, went to the house of P.W. 4 in Chennai. At that time P.W. 4 enquired the deceased separately and in a discreet manner. The deceased is stated to have expressed her apprehension regarding her safety to P.W. 4 on account of the cruel acts of the accused. The deceased is also stated to

have told P.W. 4 , that the accused is not even getting milk for preparing coffee. 31-8-91 was the marriage anniversary day of P.W. 3. He claims to have gone to the house of the deceased on that day for a courtesy call. Even at that time the deceased is stated to have told P.W. 3 that since P.W. 2 had not given him the gold wrist watch chain as promised, he was beating her. P.W. 3 informed P.W. 2 about this over phone. P.W. 5 is a practising lawyer at Chidambaram. He is the brother-in-law of P.W. 2. When P.W. 2 had brought the deceased to his house in the month of August for 'Aadi' festival, P.W. 5 had gone to the house of P.W. 2 and met the deceased. At that time the deceased is stated to have told P.W. 5 that the accused is demanding again and again for more money and in that context, she has been beaten. The deceased also told P.W. 5 that when she had explained to her husband that it is not possible to give money, yet the accused continues to ill-treat her. P.W. 5 also states that he was told by the deceased that the accused is not even allowing the deceased to write letters and therefore, she was only contacting her father over phone. Ex. P. 6 dated 16-8-91 is the letter written by the deceased to P.W. 5. After the receipt of the letter, P.W. 5 went to Mayavaram and saw the deceased. At that time the deceased told him that she will not go to the house of the accused and if she goes there, there is danger to her life. Therefore P.W. 5 suggested to P.W. 2 not to take the deceased in a hurry to the house of the accused and it can be thought over. Yet P.W. 2 had chosen to take the deceased and left her at the house of the accused. The deceased and the accused were living in Rajabather Street, T. Nagar, Madras.

(e) P.W. 7 is a neighbour of the accused at Madras. The accused was living, both prior to the marriage and after the marriage, only in that place. P.W. 7 would state that she has not seen the accused and the deceased either moving cordially or going out together for any entertainment. Hearing about the death of the deceased, she went to the residential portion of the accused. P.W. 8 is an Assistant in the Tamil Nadu State Co-operative Bank having Branch at Kodambakkam. He speaks about the accused opening a joint account in his name and in the name of his wife in the Tamil Nadu State Co-operative Bank's Branch at Pandy Bazaar. Ex. P. 9 is the Pass Book relating to that account and Ex. P. 10 is the statement of account relating to that Pass Book. His evidence is that, it is only the accused, who was operating that account.

(f) P.W. 1 is the maid-servant working in the adjacent portion of the house where the accused was living with his wife. At about 5.30 p.m. on 6-9-91, the accused came home and called the deceased by her name. As there was no response, he knocked at the door and the door was not opened. Using force, he pushed the door and it opened. When he went inside, he saw the deceased hanging in the roof. He removed the rope and made the deceased lie down on the floor. The accused went to the police station. P.W. 1 lodged an information with the police, which is marked as Ex. P. 1 in this case.

(g) P. W. 11 is the Inspector of Police, who registered Ex. P. 1. Ex. P. 12 is the first information report. P.W. 12 is the Assistant Commissioner of Police, who took the case for investigation. He handed over the dead body of the deceased to P.W. 10 for safe custody and sent his communication to the Personal Assistant (General) to the District Collector, as the death had occurred within 10 months from the date of marriage. P.W. 9 is the Tahasildar during the relevant point of time and he received the intimation from the District Collector to conduct an enquiry in respect of that death. At about 11.45 a.m. on 7-9-91, he went to the house of the accused and conducted the inquest. Ex. P. 13 is the inquest report. The statement of the accused is Ex. P. 14. Ex. P. 2 is the statement of P.W. 1 and Ex. P. 5 is the statement of P.W. 2. Thereafter the dead body of the deceased was sent for post mortem by P.W. 9 along with the requisition Ex. P. 16. Ex. P. 15 is the post-mortem report. After P.W. 9 completed the inquest, the dead body was taken for post-mortem by P.W. 10 and it was handed over to the Doctor P.W. 13.

(h) The post-mortem Doctor, examined in this case as P.W. 13, had given the postmortem certificate Ex. P. 15. The cause of death is shown to be 'Died of Asphyxia as a result of hanging.' P.W. 12, the Investigating Officer, went to the spot at about 12.00 noon on 7-9-91 and prepared Ex. P. 7 observation mahazar. P.W. 6 had attested the observation mahazar along with another witness. M.O.I was recovered by P.W. 12 under Ex. P. 8, attested by witnesses namely, P.W. 6 and another. P.W. 11 arrested the accused as per the orders of P.W. 12. The accused was sent for remand to the Court on 16-10-91. P.W. 12 examined the witnesses and recorded their statements. After completing the investigation, a final report under Section 304-B of the I.P.C. was filed. Later on the learned trial Judge

framed an additional charge under Section 498-A of the I.P.C. as well.

5. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against him, he replied admitting his marriage as well as the receipt of the demand drafts. He also admitted the preparation of the observation mahazar as well as the recovery mahazar. He also admitted the opening of the joint account in his name and in the name of his wife. He also admitted the enquiry conducted by P.W. 9 over the death of his wife and he denied all the other versions of the prosecution. He had filed a written statement. He would add that he did not demand any money and that his marriage with his wife/deceased was not consummated due to his fault. Frustrated on account of that, his wife has committed suicide.

6. In the light of the arguments advanced by the learned counsel on either side, I went through the judgment of the learned trial Judge to find out whether the said judgement could be sustained or not. The learned trial Judge had placed heavy reliance on the oral evidence of P.Ws. 2 to 5. Since the prosecution case revolves around the evidence of P.Ws. 2 to 5, it has become necessary for me to look into their evidence in the context of the other materials available, to decide as to whether that evidence is trustworthy, on the basis of which a conviction can be safely rendered or are there any doubts in their evidence, the effect of which should go to the accused.

7. The marriage between the accused and the deceased is not disputed and that death is not due to natural cause, is also not disputed. The case of the prosecution is that, the deceased hastened her death, by hanging herself, solely on account of the cruelty and harassment to which she was subjected to, by the accused in the background of his demand for dowry. The case of the prosecution is that the demand for dowry came from the mouth of the accused even on the night of the first day of the marriage itself, when the nuptial of the groom and the bride was put through. Such a demand for dowry and the cruelty and harassment to which the deceased was subjected to in regard thereto, according to the prosecution, continued without any break. Therefore the prosecution would come forward to contend that it is that act of the accused, which is the direct result of the death of

the deceased in this case in a most unfortunate manner. The demand stated to have been made by the accused on the night of the first day of the marriage itself, is spoken to by P.W. 4. He is aged 37 years on the day when he gave evidence before the lower Court, which was in the year 1992. He claims to be present at Kodavasal along with his wife, when the nuptial was arranged.

8. Even at the outset, I would like to state that the evidence of P.W. 4 that in the early hours of the morning succeeding the nuptial day, the deceased met him and told him about the demand stated to have been made by the accused to her in the previous night, appears to be more artificial on the face of it. It is well known that on the early morning of the day following the nuptial day, the bride would not normally get into the midst of males but she would always be among the womenfolk in the house for a couple of hours at least. P.W. 4's wife was also with him on that day. P.W. 4's wife is not examined. The normal conduct of any bride, who was just married at that time, if any such illegal demand was made for dowry on the previous night, would be to tell her closest women relative about the demand made. In view of the presence of P.W. 4's wife at Kodavasal on that day, there is every possibility that the detenu would have definitely communicated only with her regarding the demand for dowry made by the accused on the previous night. Assuming for a moment without admitting that the deceased did not communicate with P.W. 4's wife but only told P.W. 4 about that demand, yet prudence and common sense demands that P.W. 4 would have definitely told his wife about the grievance of the deceased as told by her to him. P.W. 4 in his evidence had not whispered that he had informed his wife about what the deceased told him in the morning. The prosecution could have very well examined P.W. 4's wife in this regard. But however they have not chosen to examine her. This raises a serious suspicion in the mind of this Court as to whether the deceased could have told P.W. 4 about the demand for dowry made by the accused on the previous night as claimed by P.W. 4 before Court. P.Ws. 3 and 4 are close relatives of the deceased. Both of them are in Madras. The Tahasildar, P.W. 9 conducted the inquest over the dead body on the morning of 7-9-91. P.W. 3 was present in that house at that time. The probabilities are P.W. 4 also should have been present there. But however the records do not show that P.W. 4 was examined by P.W. 9 at that time. If really P.W. 4 had this information regarding the

demand made by the accused on the nuptial night itself, which demand had been communicated to him by the deceased, then he would not have failed to appear before P.W. 9 and tell that fact. The evidence of P.W. 4 is that, he conveyed that demand to P.W. 2. However P.W. 2 in his statement Ex. P. 5 recorded by the Tahasildar, had not whispered anything about that. Therefore I am not inclined to attach much importance to the evidence of P.W. 4 that he came to know about the demand for dowry on the morning itself from the deceased. But the fact remains that, two or three days after the marriage day, a sum of Rs. 30,000/- was paid by way of a demand draft by P.W. 2 to his daughter. The demand draft was purchased in the name of P.W. 2's daughter namely, Vanitha/deceased in this case. However the fact also remains established, as could be seen from Ex. P. 9, that the said demand draft was put into the joint account of the accused and his wife. Therefore in the context of the sum of Rs. 30,000/- having been established to be paid by way of a demand draft within three days after the marriage, the question that falls for consideration is whether, this payment was made pursuant to the demand for dowry stated to have been made by the accused, as spoken to by P.W. 4 or was it a voluntary, traditional and customary presentation, which every parents offer to their daughter at the time of the marriage.

9. The earliest material available in this context is Ex. P. 5. It would be noticed that the death was on 6-9-91 and P.W. 9, the Tahasildar conducted an enquiry over the death of the deceased at 11.45 a.m. on 7-9-91. Ex. P. 5 is the statement of P.W. 2. At the foot of the statement, P.W. 2's wife had made an endorsement that the statement given by her husband and reflected therein, is correct. Rajammal, wife of P.W. 2 is not examined. Below her endorsement, P.W. 3 had also made an endorsement. That endorsement contains a statement as follows :

I admit the truthfulness and correctness of the statement made by my junior paternal uncle namely, P.W. 2 and his wife namely, Rajammal.

In other words, the truthfulness of the statement of P.W. 2 as reflected in Ex. P. 5 is not only admitted by P.W. 2 in his oral evidence but also by P.W. 2's wife as well as by P.W. 3. Therefore Ex. P. 5 will be the basis, in my considered opinion, to decide the case of the prosecution about the demand for dowry i.e., for the

payment of Rs. 30,000/- stated to have been made on the nuptial night i.e., the first day of the marriage itself.

10. On a perusal of Ex. P. 5, it is definitely seen that the sum of Rs. 30,000/- was paid only as a customary presentation. There is no statement in Ex. P. 5 that the said payment was made to meet any demand for dowry. Ex. P.5 refers to the following facts:

At the time of marriage, the girl was given 33 sovereigns of jewels and a cash of Rs. 25,000/-, besides a sum of Rs. 30,000/- and another sum of Rs. 7,000/- for buying the luxury items namely, television, motorcycle and a refrigerator as 'Seer' and two kilos of silver vessels were also given.

The statement referred to above clearly indicates that P.W. 2 provided to his daughter, at the time of her marriage, 33 sovereigns of jewels and a cash of Rs. 25,000/- together with a sum of Rs. 30,000/-; Rs. 7,000/- and two kilos of silver vessels only as 'Seer' for the marriage. 'Seer' means customary, traditional and voluntary presentations given to the bride out of love and affection. There is no mention in Ex. P. 5 that these things were given by P.W. 2 to the accused pursuant to the demand or to satisfy the demand for dowry made by the accused. Therefore it is clear, according to me, that Ex. P. 5 does not establish the fact that the accused made a demand for the payment of Rs. 30,000/-, on the first day of marriage itself, as dowry.

11. The entire prosecution case revolves around five demands stated to have been made by the accused. The first demand is for the payment of Rs. 30,000/-; the second demand is for the payment of Rs. 7,000/-; the third demand is for the payment of Rs. 10,000/-; the fourth demand is for the payment of Rs. 15,000/- and the last demand is for a gold wrist watch strap. Only in the context of the above demands, either having been met partially or not met at all, the accused is stated to have subjected the deceased to cruelty and harassment. The case of the prosecution is that, only two payments namely, Rs. 30,000/- and Rs. 7,000/- alone were met by demand drafts. These two payments have been accepted by the accused himself. These payments are credited into the joint account of the accused and the deceased. The other payments of Rs. 30,000/- and Rs. 7,000/-,

according to the prosecution, are only by way of cash. The accused had denied having made any demand for the said amounts and the receipt of the same. Inasmuch as Ex. P. 5 positively discloses that the payment of the two sums referred to above were only towards 'Seer', it stands established that the accused had not demanded for the said amounts as dowry. In fact it may be noticed here that these two demand drafts, though shown to be in the name of the deceased, yet they were credited into the joint account of the deceased as well as the accused. This conduct of the accused putting these two demand drafts in the joint account of himself and his wife go a long way to show that these two payments could not have been made to satisfy the dowry demand but only they were customary presentations made by the father to his daughter immediately after the marriage and during Pongal festival.

12. This takes us to the next stage as to whether the prosecution had established the subsequent three demands namely, the demand for Rs. 10,000/-; the demand for Rs. 15,000/- and the demand for a wrist watch gold strap. In Ex. P. 5 there is practically no reference to the demand for the payment of Rs. 10,000/ and Rs. 15,000/-. When P.W. 2 would depose that the demands were met by paying Rs. 10,000/- and Rs. 7,000/- respectively, he would not have failed to mention about it in Ex. P. 5. P.W. 5 a lawyer and a close relative of P.W. 2, was also at Madras on the date of enquiry by P.W. 9. P.W. 2 gave Ex. P. 5 to P.W. 9 Ex. P.5 is the earliest statement and P.W. 2 is a person, who is in the know of things. Therefore, in the absence of reference to these two demands in Ex. P. 5, it is not safe to accept the oral evidence of the prosecution in that regard. The oral evidence is in the form of P.Ws. 2 and 3. Therefore I analysed the oral evidence of P.Ws. 2 and 3 to find out whether the subsequent demands have at least been established. The evidence of P.W. 2 in this , regard is as follows :

During the end of March 1991, my daughter telephoned and wanted Rs. 10,000/-; when I asked as to why she wants that amount, she replied, come with the money; he went to the house of the accused with the money the next day and he found the accused and his wife; his daughter took the sum of Rs. 10,000/- from him and gave it to the accused.

The above evidence is in the chief examination. As far as this aspect is concerned, the line of cross-examination is that he had not made any payment at all.

P.W. 3 in his oral evidence in regard to the payment of Rs. 10,000/- referred to earlier, would state as follows :

In March 1991, P.W. 2 came to Chennai; I asked him as to why he had come suddenly; P.W. 2 told him that his daughter telephoned stating that the accused is often beating her and wanting her to bring money and therefore he had brought the sum of Rs. 10,000/-.

This evidence of P.W. 3 is based on the information stated to have been given by P.W. 2 when he went to the house of P.W. 3 along with the money at the end of March 1991. P.W. 2 in his oral evidence had not stated anywhere that he went to the house of P.W. 3 along with the sum of Rs. 10,000/- and told him the circumstances under which he had brought that money. Under these circumstances, it is not safe to accept the evidence of P.W. 3 as noticed above, as a corroborative evidence to that of P.W. 2 on this aspect.

13. Again the evidence of P.Ws. 2 and 3 regarding the demand stated to have been made by the accused for the sum of Rs. 10,000/-, which according to them had been paid, can be tested on the basis of the statement contained in Ex. P. 5. It is on record that Ex. P. 5 is the statement, given by P.W. 2. Nowhere he states in that statement that such a demand for a further sum of Rs. 10,000/- was made and that he had given it to the accused through his daughter. P.W. 3 had acknowledged at the foot of Ex. P. 5 that the statement of P.W. 2 contained therein is correct. If that is so, it will be very difficult for this Court to believe the oral evidence of P.Ws. 2 and 3 for the first time before the trial Court that such a demand was made, which was conveyed by his daughter to P.W. 2 and that P.W. 2 took the money and paid it to the accused with the knowledge of P.W. 3. Having failed to come forward with such a statement at the earliest point of time namely, in Ex. P. 5, which came into existence on 7-9-91, their evidence let in before the lower Court almost one year after, cannot be accepted safely at their face value. Under these circumstances, I am of the considered opinion that in the absence of any statement in Ex. P. 5 that a demand for a further sum of Rs. 10,000/- was

made by the end of March 1991, the oral evidence of P.Ws. 2 and 3, who are closely related to the deceased, is not free from doubt and according to me it is not safe for this Court to accept and act on that evidence to hold that the demand for a further sum of Rs. 10,000/- was made and in fact, it was paid.

14. The other demand is stated to have been made during the month of May 1991 for a sum of Rs. 15,000/-. P.W. 2 in his evidence would state that he had only Rs. 7,000/- with him at that time; he met his daughter with that cash and handed over the same to her. The cross-examination of this witness is on the same lines as regards the demand for Rs. 10,000/-. P.W. 3 does not speak in his evidence anything about the payment of Rs. 7,000/- in cash stated to have been made by P.W. 2 to the accused in the month of May 1991. It may be noticed here that the last two payments namely, Rs. 10,000/- and Rs. 7,000/- are claimed to be cash payments. Again for the very same reason that in Ex. P. 5 there is no mention about the accused having made a demand for payment of Rs. 15,000/- in May 1991, the oral evidence of P.W. 2 on that point, appears to be an exaggerated version. Therefore I hold that the prosecution had established two traditional, customary and voluntary payments of Rs. 30,000/- and Rs. 7,000/- (by demand drafts) out of love and affection as 'Seer' to the deceased and had not established any demand made by the accused for the same as 'dowry'. Likewise the prosecution had also not established that the accused demanded for payment of the other two amounts also as 'dowry' and it was paid. In : 1996 CriLJ3237 (S. Gopal Reddy v. State of Andhra Pradesh) it has been held as follows :

However dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Act.

15. The last of the demand brought to the notice of this Court, is the demand made by the accused for a gold wrist watch strap. I scanned the materials very carefully to find out whether at least this demand is established. The earliest material

available, which the prosecution may rely upon, is Ex. P. 5. This statement came to be recorded by the Tahasildar on 7-9-91 when he conducted the inquest over the dead body of the deceased in this case. In this statement it is found stated as follows :

(Vernacular matter is omitted...Ed.)

The sum and substance of the above statement in English is as follows :

As both the husband and wife are not living happily, I have declined not to give cash and jewels to my daughter as 'Seer' for 'Aadi' festival, which demand was instigated by my son-in-law; I came to know that in this regard my daughter was beaten and harassed; therefore I have decided to give cash and jewels to my daughter during the ensuing Deepavali.

As far as Hindus are concerned, whether they are rich or poor, it is a known practice prevailing in this State that for one full year commencing from the date of marriage, whenever an important Hindu festival occurs during that time, the parents of the bride will always give the traditional and conventional presentations out of love and affection to the bride as well as to the groom. Such functions are,

(a) 'Pongal' festival occurring in the month of January;

(b) 'Aadi' festival occurring in the month of July-August; and

(c) 'Deepavali' festival occurring in the month of October-November.

Without any exception, the family of every bride will give some presentation in all these three functions, according to their might. It is also a known practice that when the bride gives birth to the first child, her parents will present the grand child with jewels and other presentations, according to their might. In some families, during the life time of the parents, they continue to give some presentations on the Deepavali day to the daughter as well as to the son-in-law. There are some families, where this practice is continued, even after the life time of the parents of the bride, by the brothers of the bride, if they are alive. In the context of the above known practice widely prevalent among the Hindus in this State, the case of the

prosecution has to be tested. The marriage in the prosecution case had taken place on 22-10-90 and the wife died on 6-9-91. Therefore hardly one full year had elapsed since the date of the marriage. The demand for gold wrist watch strap, according to the prosecution, is stated to have been made during this first one year period after marriage and that too, in the context of 'Aadi' month festival.

16. In Ex. P. 5, as already noticed, there is no specific reference to the accused demanding a gold wrist watch strap for himself. The demand reflected in Ex. P. 5 appears to be a demand for giving cash and jewels to the daughter. Apart from Ex. P. 5 there is the oral evidence of P.Ws. 2 and 3 alone on this aspect. I carefully perused the oral evidence of P.Ws. 2 and 3 in this regard. Before analysing the evidence of P.Ws. 2 and 3 in this regard, I perused the evidence of P.W. 4 to find out whether the oral evidence of P.Ws. 2 and 3 could be acted upon. P.Ws. 3 and 4 are brothers, P.W. 3 being younger. P.W. 2 and the father of P.Ws. 3 and 4 are brothers, P.W. 2 being elder. In the chief examination of P.W. 4, he would state that P.W. 2 took his daughter Vanitha/deceased to his house for the 'Aadi' festival. His evidence further shows that when he saw Vanitha in the house of P.W. 2, she told him that the accused was often demanding money. If really the accused had made a demand for a gold wrist watch strap, then the deceased/Vanitha would not have failed to mention him about that. Inasmuch as the evidence of P.W. 4 is totally silent on that aspect, especially when he is also closely related to the deceased, it makes this Court to be more cautious and prudent in analysing the evidence of P.Ws. 2 and 3 in that regard. It may also be noticed here that in the evidence of P. W. 5, who is the maternal uncle of the deceased, there is no reference at all regarding the demand made by the accused for a gold wrist watch strap. As already stated, 'Aadi' festival comes to an end some time in the third week of August of a year. P.W. 5 in his evidence would state that he went to the house of P.W. 2 on 10-8-91 and he saw Vanitha there. He would also state that Vanitha told him that the accused was demanding money. There is also conspicuous omission in this evidence regarding the demand made by the accused for a gold wrist watch strap. On top of this, there is a letter Ex. P. 6 dated 16-8-91 written by the deceased and addressed to P.W. 5. That letter was written by the deceased from her father's house at Mayavaram to P.W. 5 at Chidambaram. Even in that letter Vanitha/ deceased had not referred to about the

accused demanding cash or jewel. Therefore the evidence of P.Ws. 4 and 5 as noticed above and Ex. P. 6 make this Court think as to whether the accused would have demanded either cash or a gold wrist watch strap as projected by the prosecution before the Court now through the evidence of P.Ws. 2 and 3. The evidence of P.W. 3 is that, on his marriage anniversary day, which fell on 31-8-91, he made a courtesy call on Vanitha/ deceased in this case. He claims that at that time Vanitha wept before him stating that since the gold wrist watch strap was not given to the accused, he was beating and harassing her. P.W. 3 further states that he assured Vanitha that he would inform her father about it and in fact told P.W. 2 over phone. But in cross-examination he had categorically admitted that in his statement recorded under Section 161 of the Code of Criminal Procedure, he had not stated that he had visited Vanitha on 31-8-91. Therefore it is possible to visualise that P.W. 3 appears to be over enthusiastic. This leaves the Court only with the evidence of P.W. 2 alone to believe or not to believe the demand for a gold wrist watch strap stated to have been made by the accused for the 'Aadi Seer'.

17. Therefore I have taken great care and caution in analysing the evidence of P.W. 2, when the fate of the prosecution case clicks or falls on that evidence only as far as the last referred to demand is concerned. In chief examination P.W. 2 would state that he went to the house of the accused to bring his daughter to his house for the 'Aadi' festival. It was the first 'Aadi' festival after the marriage of the accused and the deceased. P.W. 2 would further state that at that time the accused wanted a gold wrist watch strap and stated that only if it is given, the accused would visit the house of his in-law. His evidence further shows that he told the accused that he would give it when he brings his daughter back. P.W. 2's evidence would also show that P.W. 3 told him over phone that Vanitha told him of being ill-treated by the accused on account of the delay in giving the gold wrist watch strap. While discussing the evidence of P.W. 3, I have already found that he could not have gone to the house of the deceased in this case on 31-8-91 and therefore his evidence in this regard is not trustworthy. In view of that, the evidence of P.W. 2 that P.W. 3 told him as stated earlier, also loses its evidentiary value. The truth or otherwise of the evidence of P.W. 2, in the context of the accused demanding a gold wrist watch strap, can also be tested by reading Ex. P.

5 as well as the oral evidence of P.W. 2 himself about the time fixed by him for giving it. In Ex. P. 5 P.W. 2 would state that he was not initially inclined to give the cash and jewels demanded during the month of 'Aadi', since the couple were not living happily and coming to know that his daughter was being ill-treated, he decided to give cash and jewels during the ensuing 'Deepavali'. 'Deepavali' should have occurred in the month of October-November 1991. But in his oral evidence P.W. 2 would state that he assured the accused that he would give the gold wrist watch strap asked for by the accused, when he brings back his daughter after the 'Aadi' festival. All the facts noticed and discussed above by this Court regarding the demand of the accused for the gold wrist watch strap individually and collectively raises a suspicion regarding the truth or otherwise of the said demand. On a careful consideration of the materials noticed above and in view of my discussions as reflected earlier, I am of the considered opinion that the prosecution had not established even the last demand namely, the demand for a gold wrist watch strap. Under Section 304-B of the I.P.C. the wife should have been subjected to cruelty or harassment in connection with any demand for dowry. Therefore the basic requirement is that there must be a demand for dowry. If that is not established, any amount of cruelty or harassment, assuming it is there, would not bring the act of the accused as an offence under Section 304-B of the I.P.C. I have found that the act of demand for dowry attributed to the accused is not established at all. Therefore I am of the considered opinion that there is really no necessity to go into the question of cruelty or harassment to decide whether an offence under Section 304-B of the I.P.C. is made out or not. The essential ingredients of the offence under Section 304-B of the Indian Penal Code is that, the prosecution must show that a woman, before her death, was subjected to cruelty or harassment by her husband in connection with any demand for dowry. Unless the harassment or cruelty, to which the woman/wife is stated to have been subjected to, is in connection with a demand for dowry, the offence under Section 304-B of the Indian Penal Code, in my opinion, cannot be made out at all. Therefore the conviction of the accused for the offence punishable under Section 304-B of the Indian Penal Code, appears to be not made out on the materials noticed above by me.

18. In this context it would be useful to refer to some of the judgments brought to my notice by the learned counsel for the appellant. In (Ranganathan v. Veerapandian), a learned Judge of this Court held that when the basic element of 'demand of dowry' is totally absent, the presumption under Section 113-B of the Evidence Act would not arise at all. The learned Judge had found in that case that there was no evidence for demand for dowry by the accused/husband and therefore except the serious bickerings between the husband and wife, there was no material. Only in that context, the learned Judge held that unless the basic element of demand for dowry is shown to be present, there is no question of drawing the presumption under Section 113-B of the Indian Evidence Act. In 1995 SCC (Cri) 817 (Rajnesh Tandon v. State of Punjab) it was held that in the absence of necessary ingredients of the offence under Section 304-B of the Indian Penal Code, the presumption of dowry death, as envisaged under Section 113-B of the Evidence Act, was not attracted and consequently conviction under Section 304-B of the Indian Penal Code imposed by the Courts below was set aside. A similar decision was rendered in the judgment of this Court in the case, reported in (1999) 1 MLW (Cri) 127 (Ramaiah v. State by Karambakudi Police Station). Recently the Hon'ble Supreme Court of India in another judgment reported in : 1997 CriLJ1927 (Sham Lal v. State of Haryana) held that it is imperative for the prosecution to prove that, soon before the death, the wife was subjected to cruelty and harassment for or in connection with the demand for dowry and if on facts, there was no such proof, a conviction under Section 304-B of the Indian Penal Code cannot be sustained. The inquest report in this case is marked as Ex. P. 13. In column 9 of the inquest report it is stated 'that the death may be due to frustration developed in the married life.' In column 14 of the same report it is stated as follows :

On the basis of the enquiry conducted, the panchayatdars have unanimously decided that Vanitha, out of sheer frustration experienced by her in her married life, would have committed suicide.

This totally rules out the deceased being subjected to any cruelty or harassment for or in connection with the demand for dowry. In the face of the facts noticed above; in the light of my discussions and on the principles of law laid down in the

above referred to judgments, I have no doubt in my mind that the prosecution had not established that the accused is guilty of the offence punishable under Section 304-B of the Indian Penal Code and therefore the judgment of the learned trial Judge on this count is definitely liable to be set aside.

19. The next question that still survives for consideration is, whether the conviction under Section 498-A of the I.P.C. could be sustained. I perused the materials once again in the above context. The Investigating Agency filed the final report only for the offence punishable under Section 304-B of the I.P.C. The learned trial Judge also initially framed the charge only for that offence on 16-4-92. The trial went on only on that basis. The prosecution was closed on 20-1-93 by examining P.W. 13, who did the postmortem on the dead body of the deceased in this case. Thereafter on 27-1 -93 the learned trial Judge framed an additional charge under Section 498-A of the I.P.C. The questioning of the accused under Section 313 of the Code of Criminal Procedure was on 8-2-93. The learned trial Judge appears to have proceeded on the basis that the materials already available on record may constitute an offence under Section 498-A of the I.P.C. and he might have been of the opinion that no prejudice at all would be caused to the accused by framing the additional charge and continuing the case as such without a further trial. The accused was also questioned for both the charges. To that extent I find that there is no illegality at all.

20. Before proceeding further, I would like to remind myself of the duty of the Court in trying offences like the one on hand as laid down in the judgment reported in 1996 SCC (Cri) 792 : 1996 Cri LJ 3237. In that judgment it is stated as follows :

There is an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. Awakening of the collective consciousness is the need of the day. For this a wider social movement is necessary. The role of the Courts, under the circumstances, assumes a great importance. The Courts are expected to deal with such cases in a realistic manner so as to further the object of the legislation. However, the Courts must not lose sight of the fact that the Act, though a piece of social legislation, is a penal statute. One of the cardinal rules of interpretation in such cases is that a penal statute

must be strictly construed. The Courts have, thus, to be watchful to see that emotions or sentiments are not allowed to influence their judgment, one way or the other and that they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty and that the guilt of an accused must be established beyond a reasonable doubt. They must carefully assess the evidence and not allow either suspicion or surmise or conjectures to take the place of proof in their zeal to stamp out the evil from the society while at the same time not adopting the easy course of letting technicalities or minor discrepancies in the evidence result in acquitting an accused. They must critically analyse the evidence and decide the case in a realistic manner.

Cruelty' is an overlapping element, both for the offence punishable under Section 304-B of the I.P.C. and for the offence punishable under Section 498-A of the very same Code. However there is an apparent distinction between the said element when it occurs in the two sections. Under Section 304-B of the I.P.C. 'cruelty' or 'harassment' must be for, or in connection with, any demand for dowry. Dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act. Under the Dowry Prohibition Act 'dowry' must be given or agreed to be given at or before or at any time after marriage in connection with the marriage of the said parties. In other words, the demand for dowry must have a direct nexus with the marriage. Under Section 304-B of the I.P.C. 'cruelty' or 'harassment' for, or in connection with any demand for dowry is enough.

21. The word 'cruelty' occurring in Section 498-A of the I.P.C. is explained to be

(a) any wilful conduct, which is of such nature as is likely to drive a woman to commit suicide, etc., etc.; or

(b) harassment of a woman, where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand, etc., etc.

Therefore the concept of cruelty is twofold under Section 498-A of the I.P.C. Two types of cruelty are explained in the said section. Both the types can severally as well as jointly may constitute cruelty. In the above context I perused the additional

charge framed on 27-1-93 for the offence punishable under Section 498-A of the I.P.C. The charge refers to the demands of Rs. 30,000/-; Rs. 7,000/- and Rs. 10,000/- (having been met according to the prosecution) and the demand for the gold wrist watch strap (admittedly not met by the prosecution) as the instances in respect of which the deceased is shown to have been subjected to cruelty. Even the charge under Section 304-B of the I.P.C. refers only to the four demands referred to above. Both the charges do not take into account the demand made in the month of May 1991 for a sum of Rs. 15,000/-, out of which Rs. 7,000/- is stated to have been paid by P. W. 2. Even if the demand for dowry is not established, yet the prosecution can succeed, if they establish that the accused is guilty of such acts of cruelty as defined in Section 498-A of the I.P.C. With that view in mind, I perused the materials available on record. The oral evidence of P.Ws. 2 to 5, if viewed in the broad probabilities of this case, do not inspire the confidence of the Court at all that the deceased would have been subjected to any cruelty. In this context, the judgment of the Hon'ble Supreme Court of India in the judgment reported in Sharad Birdhichand Sarada v. State of Maharashtra : 1984 CriLJ1738 may be taken note of usefully, wherein it was held thus :

Before discussing the evidence of the witnesses, we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

22. The evidence of the prosecution witnesses that the deceased was not even allowed to write letters to her relatives and therefore she was compelled to communicate with others only through telephone, appears to be far-fetched. The deceased as well as the accused are B.A. degree holders. The accused is an employee of a Bank and every one knows what banking office hours are. It is not the case of the prosecution that whenever the accused left the house, he kept the deceased in the house under his lock and key. P. W. 1 is the servant-maid working in the next portion of the same building adjoining the portion in the occupation of the deceased. She nowhere states so. There is no evidence to show that there is a telephone in the house of the accused. That means, the deceased had access to the outside world. It is not as though the deceased was living in a secluded area. But on the other hand she and her husband were co-tenants, among others, in one building. Exs. D2 to D7 are marked on the side of the accused. Ex. D.2 is the letter dated 23-7-91 written by the deceased to her husband at Mayavaram. Ex. D. 3 is the letter dated 8-8-91 written by the deceased from Mayavaram to the sister of the accused. Ex. D. 4 is the letter dated 6-8-91 written by the deceased to her mother-in-law. Ex. D. 7 is the letter from the elder brother of P.W. 2 to the accused. At the end of that letter, it is seen that the elder brother of P.W. 2 had also written to the deceased. The contents of Exs. D. 2 to D. 7 were carefully analysed by me. Even by the remotest possibility, it cannot be gathered from any of these letters, that the deceased was subjected to any type of cruelty as projected by the prosecution now before Court. The letters reflect a cordial atmosphere. The contents of these letters totally displace the prosecution case that the deceased was subjected to any type of cruelty, which would bring the act of the accused within the four corners of Section 498-A of the I.P.C. Therefore I am of the considered and firm opinion that it would be unsafe to act upon the evidence of P.Ws. 2 to 5 and sustain the conviction even in respect of the offence punishable under Section 498-A of the I.P.C. The cause of death, as noticed in Ex. P. 13 referred to above, again displaces the case of the prosecution that the accused is guilty of the offence punishable under Section 498-A of the I.P.C.

23. Before parting with this case, I also applied my mind as to why the said young girl aged about 21 years should die in an unnatural manner within a short span of her married life. According to me, there is some light available in the materials on

record itself. I just summarise those materials here-under:

Ex. P. 6 is the letter dated 12-8-91 written by the deceased to P.W. 5. This letter had come into existence prior to her death. I carefully read this letter. My reading of the same shows as follows :There is a reference to an unusual problem, which a woman should not have; her father would have explained to P.W. 5 about her problems and however much she could console herself and pick up courage and determination, yet whenever she thinks about her future, she is afraid. It further shows that there is a serious concern in the mind of the deceased as to why God has created her in this world; she has not done knowingly any harm or sin and probably she is suffering for her karma; never in their caste and in their family, a thing which had not happened till then was likely to happen; her mind is worried and confused as to whether the image of her family would be tarnished because of her; she had never asked P.W. 5 anything but still she is asking him then; she requested P.W. 5 and his wife to pray for her good life for the sake of saving the family honour; the letter is very urgent and do not show it to anybody or tell anybody.

P.W. 5 would admit in his evidence in cross as follows :

In Ex. P. 6 there is no reference about any dowry demand; there is a reference to a horrendous/night-marish experience in her married life, which cannot be disclosed to others.

Demanding dowry and subjecting women to cruelty in regard thereto is not uncommon these days. Therefore that conduct of the accused as alleged by the prosecution, even assuming it was there, in my considered opinion, would not have made the deceased to write Ex. P. 6 containing such references of a horrendous/night-marish experience. Ex. P. 14 is the statement of the accused before P.W. 9.1 perused the said statement and in that it is stated as follows :

There is a difference between me and my wife on the matrimonial obligations to be performed by one against other; I used to come home from the office at 6.30 p.m., during day time there will be no difference of opinion; we differ with each other about the need to have sexual intercourse and we used to sleep separately; this

was happening every day and his failure on that part of the matrimonial obligation, had led his wife to commit suicide.

Therefore it is clear that there is something more than what the eye meets on the record. In paragraph 18 of the judgment of the lower Court, the learned trial Judge refers to a written statement filed by the accused when he was questioned under Section 313 of the Code of Criminal Procedure. The records do not contain such a written statement. However since the contents of the said written statement are summarised in Paragraph 18 of the judgment under challenge. I am extracting hereunder as to what it contains :

He never had the desire to have sexual intercourse and therefore he was postponing his marriage; under the pressure of his mother, he got married to Vanitha at his old age; he was not able to have intercourse with Vanitha and even there was no consummation of marriage on the first day itself; Vanitha was having excessive desire to have sexual intercourse; he used to eject prematurely and therefore he was not able to have intercourse at all; this failure has driven his wife to the extreme end of frustration and dejection in life, which was the cause for her death.

24. The facts noticed above speak for themselves and it is better I do not add anything more. Therefore I find that the prosecution had not made out its case against the accused on both the grounds and the judgment of the learned trial Judge is definitely erroneous both on law and facts. Accordingly the judgment challenged in this appeal is set aside and the accused is acquitted forthwith of all the charges levelled against him. The bail bond, if any, executed by him will stand cancelled and the fine amount, if any, paid shall be refunded to him. The Criminal Appeal is allowed. No costs.

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