

State of Karnataka Vs. K.S. Manjunathachari and Others

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Court : Karnataka

Decided On : Feb-14-1995

Judge : B.K. Sangalad and ;Kumar Rajarathnam, JJ.

Appeal No. : Criminal Appeal Nos. 868 and 125 of 1995

Appellant : State of Karnataka

Respondent : K.S. Manjunathachari and Others

Advocate for Def. : Smt. Manjula N. Tejeswini, Adv. Amicas Curiae

Advocate for Pet/Ap. : G.M. Srinivasan Reddy, Govt. Pleader;N.S. Venugopal, Adv.

Judgement :

Kumar Rajaratnam, J.

1. This case is poignant (sic) with tragedy. It is a sad saga of a young girl who met her cruel fate within hardly six months of her marriage.

2. A-1 was married to a young lady by name Bharathi. A-2 and A-3 are the parents of A-1. All the accused were charge-sheeted for the offences under sections 302, 201, 203, 498-A, 304-B read with Section 34, IPC and under section 3, 4 and 6 of the Dowry Prohibition Act read with Section 34, IPC. The Trial Court acquitted A-2 and A-3 the parents of A-1 of all the charges. While acquitting A-1 of the serious

charges under sections 302 and 304-B, IPC the Trial Court convicted A-1 for an offence punishable under section 498-A, IPC and sentenced A-1 for a period of three years R.I. and to pay a fine of Rs. 2000/- in default to undergo R.I. for three months.

3. The State has preferred Criminal Appeal No. 868/1995 against the acquittal of the accused. The accused No. 1 has preferred Criminal Appeal No. 125/1995 against his conviction. Both the appeals are heard together and a common order is passed.

4. The prosecution case, briefly, is as follows :-

The deceased Bharathi was the niece of P.W. 1, P.W. 1 Theja Murthy looked after Bharathi like his own daughter. P.W. 1 was in fact the step father of Bharathi. According to P.W. 1, on 27-5-1990 P.W. 1 performed the marriage of Bharathi with A-1. About 9 days prior to the marriage negotiations took place in the house of A-2 father of A-1. It is stated that A-2 demanded dowry of Rs. 20,000/-, a gold chain and a kapali ring for the bridegroom and a mangalya chain and a ring to the bride along with a 'golusu'. Apart from this, there was demand for clothes for both. P.W. 1 pleaded his inability to give all these items that were demanded by A-2. Thereafter, the demand was reduced to Rs. 10,000/- and a Kapali ring to the bridegroom and a mangalya chain to the bride. After the negotiations were over, the marriage was celebrated on 27-5-1990 at Panduranga Complex, Chikmagalur. On 30-5-1990 A-1 took the deceased Bharathi to Bukkudibyle the place where A-1 was working.

5. The marriage had hardly been consummated when the deceased wrote to her step father P.W. 1 stating that at the time of intercourse no blood came from her private parts and hence A-1 suspected her virginity. A month later, in July 1990 P.W. 1 wrote a letter to A-1 asking both of them to come to his house. A-1 and the deceased came to the house of P.W. 1. In the night P.W. 1's wife woke up P.W. 1 and told P.W. 1 that A-1 still suspected the virginity of the deceased. In the middle of the night P.W. 1 called the deceased and A-1 and asked them to sleep quietly and the matter was to be sorted out on the next day. On the next morning after pooja, A-1 wrote a letter to be signed by the deceased. The letter is marked as Ex.

P-1. The English translation of Ex. P-1 reads as follows :-

'I swear on the feet of my parents, on the feet of my husband who has married me in customs, and on the feet of my religious deity Bhadra Kalamma, and on the feet of Shri Guru Raghavendra,

that according to the words of my husband, I have failed to give the pleasure of first experience of conjugal life to my husband. At that time I was a puppet in the hands of time, and can only say that I have no fault. Still if I have done any mistake, I am the unfortunate woman and pray for excuse at the feet of my husband. Here afterwards, my husband is everything to me in my conjugal life and if I disobey this, I am prepared to accept any punishment from my husband and I swear before god and you.

Bharathi, second daughter Aradathi Gangadharachar.'

This letter written by the A-1 and signed by the deceased reveals the deep suspicion entertained by A-1 about the character of the deceased. It was the starting point of a suspicion against the deceased which ultimately devoured the accused No. 1 and made him to lose his sanity. A-1 became diabolical on the basis of this suspicion which ultimately led to the tragic death of the deceased. It reminds us the words of Shakespeare in Othello, III 3 :-

'O, beware, my lord, of jealousy;

It is the green-eyed monster which doth mock;

The meat it feeds on.'

6. The tragedy continues unabated. P.W. 1 and his wife went to the house of A-1 in September, 1990. Once again A-1 made a scene stating that the deceased was not a virgin when she was married. P.W. 1 pacified them and returned home with his wife. The conduct of A-1 became more and more oppressive. A-1 went on harassing the deceased and taunting her stating that she was not a virgin at the time of her marriage. The deceased was compelled to write to her step father some of them fortunately were preserved by P.W. 1.

6-A. The letters written by the deceased to her step-father are deeply disturbing. We would like to extract these letters since they touch upon this case. The three letters written by the deceased to her step father are Exs. P-2, P-3 and P-4. The English translation of Exs. P-2, P-3 and P-4 reads as follows :-

Ex. P-2

'Bharathi's pranams to beloved uncle and sister. I am healthy here, and hope you are healthy there.

Uncle, I am writing this letter expressing my heart grief to you and hope you will excuse me. Uncle, I don't know due to my bad luck, one small matter became big and carried to some where. It is such an issue that either myself or yourself or nobody can imagine that my life would turn like that. Totally to say, I am an unfortunate woman. If the things were correct, my life would have been heaven, and we could have been happy. But god has cut the pleasures in my family, which was to float in happiness. I don't know, whether these are all my misfortune, bad luck or my bad time. Totally uncle, my family is an ocean without any shore. Having tied to me, he cannot leave me or he cannot lead family happily and if I continue, my challenge, the quarrel which is stopped now, becomes big issue. So knowing that, I believe in god and let them abuse me as long as they want. God will open his eyes one day.

Totally he feels that before marriage, we are unknown to each other, but after marriage, I am his self and often he says that,

Uncle, Honnakka might have told you, everything on that day. I hope you will excuse me in that matter. But I am helpless. They have spread a suspicion net each foot. He mistook all the words and they became reasons for him. It is my bad luck. What can I do. Our position was so much reduced, which I cannot express. At that time death was welcoming both of us. He threatened that he will die. (He does not know about this letter) Time will decide everything. I believe god will do everything good one day.

Bharathi.'

Ex P-3

'Dt : 14-9-1990

Pranams to fatherly uncle and motherly sister. He himself came and took me on Wednesday night at 12.00 clock. Mother and father were waiting for us in Sringeri. He had come to Sringeri to take me, in case I did not return on Wednesday. Since I was not with him on that day, he scolded his mother and father. So they quarrelled with their son and returned to Chickmagalur.

I am not against their feelings, I cannot confess, I told them take me to any place of belief and I am prepared to swear. (But he does not want to go to any Doctor)

Because of this argument in the bus stand, he snatched my Thali from my neck stating that, that was his everything and he will die with that. Seeing his decision father and mother advised him and then we climbed the bus. He asked 'will you answer to my question correctly See tomorrow by 5-30 what I will be. Then asked him to kill me first and then let him die. He was not ready even for this. Then he only came to a decision. That is to swear from your mouth. (That is on uncle and sister) I agreed even for this. But his mind is inconsistent. (That is I have no proof and so I must admit) Even if I agree, I am peaceful, because you will swear. I request only this much. Please you mean both of you come along with Shama and Chethu and that gives me so much peace. I know that he cannot live without me. I request you all only this, whatever I say, that is only for his sake. I am satisfied because you will swear. Come very early.

Bharathi.'

Ex. P-4

'Do not write letter about this. You know that he is of short tempered nature. One time, our quarrel, was dangerous to our life. At that time, it was at my control to console him. He also says that. He did not believe me inspite of my swearing. What I could do. Then, I relied on god and I spoke according to his imaginations and then he was satisfied. As promised he took me to Gowri festival. He says 'inspite of your revealing things from your mouth, you are courageous, because I

have not seen the things from eyes'. He has mad imaginations in his mind. Some time he asks for excuse. I want to go to doctor, but he would not come. Inspite of my control, some things in my heart come out. I leave all this to god. But what to do, it is my ill fate.

No more I can write to knowing persons. Pray for your blessings.

Bharathi.'

These letters give expression to the deep sense of anguish suffered by the deceased. In Ex. P-2 the deceased writes 'If the things were correct, my life would have been heaven and we could have been happy. But god has cut the pleasures in my family, which was to float in happiness. I don't know, whether these are all my misfortune, bad luck or my bad time.' In Ex. P-3 she states that she is prepared to see a doctor to prove her innocence. She states that I cannot confess. I told them take me to any place of belief and I am prepared to swear. But he does not want to go to any doctor. In Ex. P-4 she states that her husband had 'mad imagination in his mind.' She again offers to go to a doctor to prove her innocence. She says 'sometime he asks me for excuse. I want to go to a doctor but he would not come.' Exs. P-2 to P-4 are telling reminders of the sufferings of the deceased. They speak for themselves. They manifest the desire of the deceased to prove her innocence notwithstanding the torment suffered by her.

7. We shall now deal with rest of the prosecution case. As stated earlier the marriage took place on 27-5-1990. On 4-10-1990 P.W. 1 received a telegram stating that his daughter Bharathi was dead. The parents of the deceased went to the house of A-1 and saw the dead body of the deceased. There were injuries on the right side of the face of the deceased. On 11-10-1990 P.W. 1 gave a complaint to the S.P., Chikmagalur suspecting that the deceased was murdered by A-1. The complaint is at Ex. P-5.

8. P.W. 2 is the cousin of the deceased. She speaks about the demand of dowry. She stated that A-1 to A-3 participated in the negotiations before marriage and A-2 demanded dowry of Rs. 20,000/-. P.W. 1 was not able to pay the entire amount and agreed to pay Rs. 10,000/- as dowry. P.W. 2 also stated that three days after

the negotiations P.W. 1 paid Rs. 10,000/- to A-2 as dowry. P.W. 2 also stated that the deceased had told her that A-1 was ill-treating her. She corroborates in entirety the evidence of P.W. 1 with regard to the demand of dowry and the ill-treatment meted to the deceased. P.W. 3 is the Tahsildar who found the dead body of the deceased in a ditch containing water.

9. P.W. 4 is a close relation of P.W. 1. He stated that A-2 the father of A-1 demanded Rs. 20,000/- as dowry and other gold ornaments. He also corroborated P.W. 1's evidence that P.W. 1 was unable to pay Rs. 20,000/- but agreed to pay Rs. 10,000/-. He also learnt about the death of the deceased on 4-10-1990.

10. P.W. 5 is the doctor who conducted the post mortem examination on 5-10-1990. He conducted the post mortem in the presence of the Tahsildar P.W. 3. He found the following injuries :-

'1. Five irregular contusion injuries present on the left shoulder, each measuring 1 1/2 cm x 2 cm.

2. Contusion injury measuring 3' x 2' on the right hypochondriac region.

3. Haematoma measuring 1' x 2' on the right frontal area present.'

The doctor found the following internal injuries :

'1. Sub dural haematoma measuring 2' x 1' on the right frontal area of brain.

2. Intra-cerebral haemorrhage on the right frontal lobe.

3. Haemorrhagic area found on the lower part of anterior part of liver.'

The doctor opined that the death was due to shock and haemorrhage as a result of injury to brain and haemorrhage. Ex. P-7 is the post-mortem report. In the cross-examination the doctor stated that all the injuries found on different sides could not have been caused by jumping into a river. The doctor, however, says that if a person falls with head down and takes a turn after the head hits the surface in a river, these injuries are caused.

11. P.W. 6 was the Tahsildar. He received a requisition from Sringeri Police requesting him to conduct inquest proceedings on the dead body of the deceased. The body was kept by the side of the 'halla'. During inquest P.W. 6 found injuries on the left shoulder, back side below the neck, on stomach and forehead of the deceased.

12. P.W. 7 is the niece of P.W. 1. She knew P.W. 1 and the deceased intimately. She attended the marriage negotiations of the deceased. She corroborates the evidence of the other witnesses P.Ws. 1, 2 and 4 that there was a demand for dowry for Rs. 20,000/- and ultimately a sum of Rs. 10,000/- was given as dowry along with gold ornaments.

13. P.W. 8 is the close friend of P.W. 1. He speaks about the demand of Rs. 1000/- by A-1 from P.W. 1. However, P.W. 8 states that P.W. 1 did not have the money.

14. P.W. 12 is the Head Constable at Sringeri police station. He stated before the Court that on 4-10-1990 at about 10 a.m. A-1 appeared in the police station and filed a complaint as per Ex. P-10. In the complaint given by A-1 it was stated that the deceased committed suicide. The complaint was registered and U.D.E. case under section 174, Cr.P.C. The complaint was marked as Ex. P-10.

15. P.W. 13 speaks about the complaint given on 11-10-1990 by the step father P.W. 1, P.W. 17 after completing the investigation handed over the matter to C.O.D.

16. The case of the prosecution is quite easy to understand and the case of the accused also does not admit of any doubt. Whether the case of the accused can be believed or not is the question. The case of the accused is that the deceased committed suicide. In Ex. P-10 the accused No. 1 in his complaint before the police stated that he was married to Bharathi the deceased and that the deceased was troubling him requiring him to take her to her parents house, the accused stating that after getting his salary he will take the deceased to her parents house. One day prior to the date of the complaint the deceased quarrelled with A-1 and went to wash the vessels and she did not return home. The accused searched for

the deceased. On 4-10-1990 A-1 and his mother went in search of the deceased. They found the deceased floating in the pond. According to A-1 in his complaint the deceased committed suicide because he had not taken her to her parents house. This complaint appears to be a palpable lie when we peruse the postmortem certificate.

17. By no stretch of imagination can it be said that the deceased committed suicide by jumping into a pond. The deceased suffered five irregular contusions on the left shoulder, one contusion 3' x 2' on the right hypochondriac region and another injury on the frontal area. The opinion of the doctor was that death was due to shock and haemorrhage. The doctor in the cross-examination has stated that all the injuries found on the deceased could not have been caused by jumping into the river. Obviously the deceased was done to death. This was also the finding of the trial Court. The trial Court held that the death of the deceased was homicidal and not suicidal. We have no hesitation in confirming the finding of the trial Court that the death was as a result of the injuries sustained by the deceased. We also have no hesitation in holding that the complaint given by the accused No. 1 (Ex. P-10) was only to screen the evidence.

18. Where does this leave us There is no material on record to show that it was the accused who inflicted the injuries on the deceased. The complaint Ex. P-10 was given by A-1 on the very day stating that the deceased committed suicide. The post-mortem was conducted on 5-10-1990. The police had the post-mortem report on the very next day indicating that the injuries are homicidal. The police had also the opinion of the doctor in ruling out that the deceased committed suicide. What was the nature of the investigation conducted by the police after the post-mortem report was received by the Investigating Officer There was hardly any investigation done to find out who caused injuries on the deceased. Even after the complaint was given by P.W. 1 on 11-10-1990 stating that he suspected the involvement of the accused in the alleged murder of the deceased, nothing was done to collect any materials by the prosecution. Ultimately we are left with the following materials on record :-

(i) The death of the deceased on 4-10-1990;

(ii) The post-mortem report Ex. P-7 to indicate that the death was as a result of injuries sustained by the deceased;

(iii) The complaint of P.W. 1 Ex. P-5 suspecting the involvement of the accused in the murder of the deceased.

Apart from this, there was hardly any material before the Court in a case of this gravity. It is only after the complaint was given by P.W. 1 on 11-10-1990 the accused were arrested. A lot of valuable time was lost by the investigation agency either deliberately or by sheer negligence in not collecting materials that would have connected the accused with the crime. It is with a sense of anguish we state that even after the post-mortem report was available the Investigating Officer did not proceed any further in the investigation. If there was prompt and able investigation in this case, materials could have been collected which would have thrown some light on how the occurrence occurred and who the accused were. This not having been done, there was no case made out against any of the accused for an offence under section 302, IPC. Even if there was some materials to show that any of the accused was last seen with the deceased prior to her death it would have been permissible for us to draw an inference in the facts and circumstances of this case. Even if there was some recovery from the accused on the basis of the voluntary statement by the accused, it would have been possible for us to come also to unravelling the mystery. In our opinion there is hardly any material to connect any of the accused for an offence under Section 302, IPC.

19. We are now left with the materials on record with regard to (i) Offences under the Dowry Prohibition Act; (ii) Offence under Section 304-B, IPC; (iii) Offence under section 498A, IPC. We shall now deal with the offences under sections 3, 4 and 6 of the Dowry Prohibition Act.

20. The trial Court on the materials available before the Court rightly came to the conclusion that the death was not a suicidal but homicidal. The trial Court unfortunately came to the conclusion that there was no materials against the accused with respect to the demand for dowry. The trial Court however concluded that there was cruelty meted-out by accused-1 to the deceased and found him guilty u/S. 498-A, IPC.

21. Let us proceed to deal with the relevant portion of the evidence P.W. 1. P.W. 1 step-father of the deceased had stated that about five days prior to the marriage accused-2, the father of accused 1, demanded a dowry of Rs. 20,000/- and a gold chain and Kapali ring for the bridegroom. P.W. 1. pleaded his inability to give such big amount. Thereafter, the demand was reduced to Rs. 10,000/- and a Kapali ring. It is only on P.W. 1 agreeing to give sum of Rs. 10,000/- and Kapali ring the marriage was celebrated on 27-5-90.

22. P.W. 2 is a close relative of P.W. 1. She was also present during the negotiations. She stated that negotiations took place in the house of accused-2. She stated that accused-2 demanded dowry of Rs. 20,000/- along with a ring. P.W. 1 was not able to pay such a huge amount and accused-2 agreed to receive sum of Rs. 10,000/- as dowry. P.W. 2 also stated three days after the negotiations P.W. 1 gave Rs. 10,000/- to P.W. 2 as dowry to pay the amount to Accused-2. Accordingly, the P.W. 2 brought the amount to accused-2. It is only after that the marriage took place on 27-5-90.

23. P.W. 4 who is also a close relative of P.W. 1 in his evidence stated that accused-2 demanded Rs. 20000/- as dowry. P.W. 1 was unable to pay the sum and agreed to pay Rs. 10000/-.

24. P.W. 7 is also a close relative of P.W. 1. In his evidence P.W. 7 also stated that accused-2 demanded Rs. 20000/- as dowry, ultimately P.W. 1 agreed to pay Rs. 10000/- as dowry.

25. From the evidence of P.Ws. 1, 2, 4 and 7 it is abundantly clear that there was a demand for dowry and that demand was met by P.W. 1 before the marriage was celebrated. It is also abundantly clear that the death of the deceased was homicidal and not suicidal. The death took place within five months of the marriage. There is nothing in the cross-examination of P.Ws. 1, 2, 4 and 7 to hold that they are not reliable witnesses. There appears to be a ring of truth in their evidence. All of them consistently stated without any exaggeration that the demand by accused-2 was for Rs. 20,000/-. However, it was settled for Rs. 10,000/-.

26. We shall deal with the definition of dowry as pronounced by the Supreme Court. The Supreme Court has stated that the definition of dowry in the Dowry Prohibition Act not only includes receiving of dowry but also the very demand of dowry before or at the time or after the marriage where such demand is referable to the consideration of the marriage. The Supreme Court in : 1996 CriLJ3237 in S. Gopal Reddy v. State of Andh. Pra. has pronounced at paragraphs Nos. 9 and 10 as follows :

'9. The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security 'made at or after the performance of marriage' as is urged by Mr. Rao. The Legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, 'before, at or after' the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' as commonly used and understood is different than the peculiar definition thereof under the Act. U/Sec. 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfillment of the 'demand of dowry' leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the statute wishes to attribute to it. Mr. P. P. Rao, learned senior counsel referred to various dictionaries for the meaning of 'dowry', 'bride' and 'bridegroom' and on the basis of those meanings submitted that 'dowry' must be construed only as such property, goods or valuable security which is given to a husband by and on behalf of the wife at marriage and any demand made prior to marriage would not amount to dowry. We cannot agree. Where definition has been given in a statute itself, it is neither proper nor desirable to look to the dictionaries etc., to find out the meaning of the expression. The definition given in the statute is the determinative

factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. 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.'

'10. It is a well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The Courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary. We are unable to persuade ourselves to agree with Mr. Rao that it is only the property or valuable security given at the time of marriage which would bring the same within the definition of 'dowry' punishable under the Act, as such an interpretation would be defeating the very object for which the Act was enacted. Keeping in view the object of the Act, 'demand of dowry' as a consideration for a proposed marriage would also come within the meaning of the expression 'dowry' under the Act. If we were to agree with Mr. Rao that it is only the 'demand' made at or after marriage which is punishable under section 4 of the Act, some serious consequences, which the Legislature wanted to avoid, are bound to follow. Take for example a case where the bridegroom or his parents or other relatives make a 'demand' of dowry during marriage negotiations and later on after bringing the bridal party to the bride's house find that the bride or her parents or relatives have not met the earlier 'demand' and call off the marriage and leave the brides' house should they escape the punishment under the Act. The answer has to be emphatic 'no'. It would be adding insult to injury if we were to countenance that their action would not attract the provisions of Section 4 of the Act. Such an interpretation would frustrate the very object of the Act and would also run contrary to the accepted principles relating to the interpretation of statutes.'

27. The Supreme Court spoke with anguish at the alarming increase in dowry deaths. At paragraph 17 the Supreme Court pronounced as follows :

'The alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent shock waves to the civilized society but unfortunately the evil has continued unabated. Awakening of the collective consciousness is the need of the day. Change of heart and attitude is needed. A wider social movement not only of educating women of their rights but also of the men folk to respect and recognise the basic human values is essential needed to bury this pernicious social evil. 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 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.'

28. The demand of dowry of accused-2 the father of accused-1 and the acceptance of dowry by A-2 is clearly spelt out from the evidence of PW-1, PW 2, PW 4 and PW-7. From the materials on record it cannot be said with any clinching proof that A-3 the father of accused-1 was a party to the demand of dowry from PW-1. The demand for dowry from the evidence of PWs. 1, 2, 4 and 7 came only from accused-2 and not from A-3 the mother of A-1. In particular the evidence of PW 1 clearly indicates that it is A-2 who demanded the dowry. In the words of PW-1 it is stated that 'A-2 demanded dowry of Rs. 20,000/- a Gold chain, a Kapali Ring

for the Bridegroom and a Mangalya Chain and a Ring to the Bride along with leg Chain. Apart from these things there was demand for clothes also for both. I pleaded my inability to give all this. Thereafter the demand was reduced to Rs. 10,000/- and a Kapali Ring to the bridegroom and also a Mangalya Chain to the bride. It was decided to celebrate the marriage on 27-5-1990 at Panduranga Complex, Chikmagalur. Accordingly the marriage took place.' The evidence of PW-1 is corroborated by the evidence of PWs. 2, 4, 6 and 7.

29. We will have to now determine whether the father of A-1 namely A-2 is guilty under section 498-A, IPC. Section 498-A, IPC has given a new dimension to the concept of cruelty in matrimonial matters. If no evidence is available for an offence under section 302, IPC it is no impediment for a conviction under Section 498-A if cruelty is established. The concept of cruelty under section 498-A, IPC is much wider than dowry harassment. The Supreme Court in the case of State of Karnataka v. H. S. Srinivasa, 1996 Cri LJ 3103 (sic) defined 'cruelty' as follows :-

'The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their interaction in daily life.'

30. The Supreme Court in : 1991 CriLJ1713 and : AIR 1991 SC1142 has pronounced that Sections 498-A and 304-B are distinct offences although they overlap each other. It is perfectly possible to convict the person under section 498-A and acquit a person under Section 304-B for want of evidence. Therefore, before we deal with the offence under section 304-B, we have no hesitation in holding that A-2 the father of A-1 and the father-in-law of the deceased is guilty of an offence under section 498-A on the evidence of P.Ws. 1, 2, 4, 6 and 7 and under sections 3, 4 and 6 of the Dowry Prohibition Act.

31. We shall now deal with the ingredients necessary for a person to be found guilty under section 304-B, IPC. Section 304-B, IPC reads as follows :-

'304-B. (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 the same meaning as in S. 2 of the Dowry Prohibition Act, 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.'

32. The Supreme Court in : 1991 CriLJ1713 (Shanti v. State of Haryana) pronounced that there should be four essentials to make a reference under section 304-B.

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

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

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand for dowry.'

If any one of these ingredients is not proved to the satisfaction of the Court then an offence under section 304-B cannot be made out.

33. Mrs. Manjula N. Tejashree, learned counsel who was appointed as Amicus Curiae drew our attention to certain pronouncements of the Court. In 1996 (3) Crimes 126 : (1995 Cri LJ 3706) (Nand Kishore alias Kishore Bhim Rao v. State of Maharashtra) the Bombay High Court held that there has to be a nexus between cruelty or harassment on one hand and demand for dowry on the other and two

must co-exist. Reliance is also placed on the Judgment of the Supreme Court reported in 1998 (1) Crimes 164 : (1998 Cri LJ 1144) (SC) (Pawan Kumar v. State of Haryana).

34. A reading of these four ingredients would lead to the conclusion that death caused by bodily injuries (as in this case) must have been as a result of cruelty or harassment in connection with demand for dowry. If death occurs due to cruelty under the wider definition of 'cruelty' under section 498-A, IPC and is not referable to cruelty in connection with demand of dowry as required under section 304-B then it would not be permissible for the Court to convict a person under Section 304-B, IPC although he may be liable for conviction under Section 498-A, IPC. To put it in the light of the facts of this case, if we were to hold that the death of the deceased was as a result of the cruelty meted out by the A-1 in unreasonably suspecting her virginity, then we are not sure whether an offence under section 304-B can be made out against the accused. The Supreme Court has stated that such cruelty or harassment should be for or in connection with demand for dowry. If the death occurs pursuant to such cruelty which is not referable to demand for dowry, then the four ingredients necessary for a conviction under section 304-B is not made out.

35. We are not sure whether the presumption under section 113-B of the Evidence Act can apply in the facts of this case. Section 113-B of the Evidence Act reads as follows :-

'S. 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 304B of the Indian Penal Code.'

The ingredient necessary for a presumption under section 113-B of the Evidence Act is that just soon before the death the deceased was subjected to cruelty in connection with the demand for dowry.

36. In this case there is considerable doubt that the death was due to dowry harassment. On the contrary the evidence of P.W. 1 and the materials placed in the form of letters such as Exs. P-1 to P-4 clearly indicate that there was cruelty meted out to the deceased in unforgivably suspecting the chastity of the deceased at the time of marriage but it is not referable to a demand for dowry. In other words if Section 304-B, IPC had included other forms of cruelty as defined under Section 498-A, IPC and if the death had occurred within seven years of marriage other than under normal circumstances the case under section 304-B may have been made out. The Legislature in its wisdom has confined to such cruelty referable only to dowry harassment and not to such cruelty referable to the definition of 'cruelty' under Section 498-A. Therefore, we are unable to draw any presumption under section 113-B of the Evidence Act.

37. The penal statute has not provided for a separate offence for 'cruelty death' corresponding to dowry death as in Section 304-B, IPC. In the present context it is also not possible to widen the definition of dowry death as specified under section 304-B, IPC to include all cases of cruelty as defined under section 498A, IPC. It is also not possible to draw a presumption under section 113-B of the Indian Evidence Act since such presumption is referable only to dowry deaths.

38. It is settled law that Section 498A, IPC is not restricted to dowry harassment alone. It also includes other forms of cruelty as defined in Section 498A, IPC although one may overlap the other. As held by the Supreme Court 304-B and 498A are distinct offences.

If for example a wife does not beget a male child or unjustifiably harassed his wife with respect to her chastity at the time of the marriage and where the death is not one under section 306 (suicide) but the death is homicidal and where there is no evidence on record to convict an accused under section 320, IPC, it would not be possible for the Court to convict the accused except under section 498A, IPC. It is for the Parliament to rectify this lacuna in order to strengthen the laws with respect

to matrimonial offences.

39. As the Supreme Court has observed in : 1996 CriLJ3237 in the case of S. Gopal Reddy that there is an alarming increase in cases relating to harassment of a married woman.

In the words of Dr. Anand, J. (as he then was) speaking for the Bench held as follows :

'That there is alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent shock waves to the civilised society but unfortunately the evil has continued unabated. Awakening of the collective consciousness is the need of the day, change of heart and attitude is needed. A wider social movement not only of educating women of their rights but also of the men folk to respect and recognise the basic human values is essentially needed to bury this pernicious social evil. 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.'

The Supreme Court in the same judgment has however, cautioned the Courts of the cardinal rules of interpretation that a penal statute must be construed strictly. We shall leave it at that say no more.

40. In the facts and circumstances of the case we have no hesitation to hold that the A-2, the father-in-law of the deceased, and father of A-1 for the reasons stated is not only guilty under sections 3, 4 and 6 of the Dowry Prohibition Act and also under section 498A of the IPC but not guilty under section 304-B, IPC. or u/S. 302 r/w 34, IPC.

41. What is sauce to the goose is sauce to the gander. What applies to A-2 equally applies to A-1. We have no doubt in our mind that A-1 is guilty under section 498-A for unreasonably suspecting the chastity of the deceased at the time of her marriage to A-1 and causing unbearable cruelty to her which led to her untimely death.

42. Considering the facts and circumstances of the case, we give the benefit of doubt to all the accused and hold that all the accused are not guilty for an offence under section 302, IPC or under section 302 read with Section 34, IPC. We also give the benefit of doubt for the reasons stated above and find that the accused are not guilty under Section 304-B or 304-B read with Section 34, IPC.

43. For the reasons stated above, we find A-2 and father-in-law of the deceased, guilty under sections 3, 4 and 6 of the Dowry Prohibition Act and also under section 498-A, IPC.

44. As far as A-2 is concerned, we are deeply conscious of the fact that we are dealing with an appeal against acquittal and if two views are possible, the benefit of doubt must go to the accused. Equally there is no immunity to an erroneous order on scrutiny. The Supreme Court in number of pronouncements has used expressions, such as 'substantial and compelling reasons' and 'strong reasons' before an appeal against acquittal can be allowed.

In : 1989 CriLJ288 (State of U.P. v. Krishna Gopal) the Supreme Court held as follows :

'13. xxx xxx xxx 'A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What decree of probability amounts to proof is an exercise particular to each case. xxx xxx xxx Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.

The concepts of probability and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units

constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately, to the trained intuitions of the Judge.'

45. Bearing in mind the above pronouncement of the Supreme Court we have no doubt that the trial Court was palpably wrong in acquitting A-2. The evidence of PWs. 1, 2, 4, 6 and 7 are clear and unambiguous that there was a demand for dowry by A-2 and the demand was met by PW-1. The trial Court on vague assumptions came to the erroneous conclusion that there was no demand for dowry on the part of A-2. We have carefully perused the evidence of witnesses that speak about the demand for dowry and the cruelty meted out by A-2 and we have no hesitation in holding that the trial Court has committed grave error in acquitting A-2 for the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act and under section 498-A, IPC.

46. We accordingly convict A-2 for an offence under sections 3, 4 and 6 of the Dowry Prohibition Act and under section 498-A of the IPC.

47. We dismiss the appeal (Criminal Appeal No. 125/1995) preferred by A-1 against his conviction under section 498-A, IPC. We, however, allow the State Appeal (Criminal Appeal No. 868/1995) as against A-1 for an offence under section 201, IPC for giving false information stating that the deceased committed suicide by giving a false complaint Ex. P-10.

48. We have heard the learned counsel for A-1 on the question of sentence. A-1 is a teacher and is a reasonable citizen of the country. He should have set an example to the society. Instead he has demeaned himself by unjustifiably questioning the chastity of his wife at the time of her marriage. The deceased-wife was even prepared to see a doctor to prove her innocence. The letters written by the deceased before her demise are an eloquent reminder to the society that the women-folk in India are prepared to endure any sacrifice to make the marriage a success. The torment and anguish of the step father in the untimely demise of his daughter cannot in any way be compensated. It is a small consolation to the father that the Court may award some compensation. No amount of compensation can

bring back the life of his daughter. However, there is the definite movement of Courts towards awarding compensation to the victim in criminal cases. The Supreme Court has laid great emphasis on the theory of victimology in a number of cases.

48A. For our part we feel the ends of justice will be met if the sentence of the accused No. 1 is reduced from three years to two years considering the fact that the occurrence took place in the year 1990. For all these reasons we feel that the sentence be reduced from three years R.I. to two years R.I. We also enhance the fine from Rs. 2000/- to Rs. 20,000/- to be paid in the trial Court.

48B. Accordingly A-1 is convicted for an offence under section 498-A, IPC and sentenced to a period of two years R.I. and also sentenced to pay a fine of Rs. 20,000/- in the trial Court in default to undergo R.I. for three months. On such payment, the trial Court shall disburse the amount as compensation to P.W. 1 the father of the deceased.

49. We have heard the learned counsel for A-2 on the question of sentence. A-2 was also a teacher and his conduct is equally reprehensible. However, taking into account the facts and circumstances of the case and that the occurrence took place in 1990 we propose to sentence the A-2 leniently. A-2 shall be sentenced to R.I. for one year for offences under sections 3, 4 and 6 of the Dowry Prohibition Act and to pay a fine of Rs. 10,000/- (received as dowry) in default to undergo R.I. for three months and one year R.I. for an offence under section 498-A, IPC. The fine of Rs. 10,000/- shall be deposited by the A-2 in the trial Court. On such deposit, the trial Court shall disburse the said sum of Rs. 10,000/- to P.W. 1 the father of the deceased. The sentences shall be concurrent.

50. We acquit A-3 (mother-in-law of the deceased) of all the charges.

51. Accordingly the appeal preferred by A-1 (Crl. A. No. 125/1995) stands dismissed. The appeal (Crl. A. No. 868/1995) preferred by the State is partly allowed in the above terms.

52. Both the accused (A-1 and A-2) shall surrender and serve the remaining portion of the sentence. A-1 and A-2 are entitled to set-off under Section 428, Cr.P.C.

53. We place on record the assistance rendered by Smt. Manjula N. Tejeswini the Amicus Curiae and determine her fees as Rs. 1000/-.

54. Before parting with this case, it would not be out of place to mention that in view of the anguish expressed by this Court and by the pronouncements of the Supreme Court, Parliament may consider such legislation as is necessary to enlarge scope of Section 304-B, IPC to include such cruelty meted out to a wife other than such cruelty referable to dowry harassment. However, the law as it stands as pronounced by the Supreme Court would clearly indicate that only such cruelty referable to dowry harassment could be brought under Section 304-B, IPC. We shall leave it to the wisdom of Parliament to determine whether any amendment is necessary to enlarge the scope of Section 304-B, IPC.

55. Order accordingly.