

Krishna Vs. State of Karnataka, Represented by K.R. Puram Police State

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Court : Karnataka

Decided On : Aug-13-2009

Judge : Arali Nagaraj, J.

Acts : Indian Penal Code (IPC) - Sections 304B and 498A; Dowry Prohibition Act - Sections 3, 4 and 8A; Evidence Act - Sections 32, 32(1), 60, 113B and 114; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 470/2007

Appellant : Krishna

Respondent : State of Karnataka, Represented by K.R. Puram Police State

Advocate for Def. : A.V. Ramakrishna, HCGP

Advocate for Pet/Ap. : P.V. Kittor, Adv.

Judgement :

Arali Nagaraj, J.

1. The appellant herein who was accused No. I in SC No. 392/2005 on the file of the Fast Track (Sessions) Judge V, Bangalore City (hereinafter referred to as the 'Trial Court' for short) has challenged in this appeal the Judgment and Order of conviction and sentence dated 26.2.2007 passed in the said case convicting him for the offences under Sections 498A, 304B IPC and Sections 3 and 4 of Dowry

Prohibition Act (hereinafter referred to as the 'DP Act' for short).

2. Totally five accused were charge sheeted in the said Sessions Case for the offences punishable under Sections 498A, 304B IPC and under Sections 3 and 4 of DP Act. The appellant is accused No. 1 therein and accused Nos. 2 to 5 are his relatives. After the charge was framed against all the five accused, as it appears from the records, the accused No. 5 Madaiah absconded and therefore, the case against him came to be split up and only accused Nos. 1 to 4 were tried by the Trial Court for the said offences. On appreciation of the oral evidence of PWs. 1 to 19 and the documents at Exs. P1 to P31, and after considering the MO Nos. 1 to 6, the Trial Court convicted the accused No. 1 only for the said offences and acquitted accused Nos. 2 to 4 of all the said offences.

3. I have heard the arguments of Sri P.V.Kittor, the learned Counsel for the appellant - accused and also Sri A.V. Ramakrishna, the learned High Court Government Pleader and perused the impugned judgment and order and also the entire material found in the original records of the Trial Court.

4. Sri P.V. Kittor, the learned Counsel for the appellant - accused strongly contended that the Trial Court committed serious error in accepting the evidence of PWs. 1 to 4 as to the factum of demand for and acceptance of dowry by the accused and also as to the factum of ill-treatment alleged to have been given by the accused to his deceased wife Smt. Lakshmi despite PWs. 1 to 4 not fully supporting the prosecution case. He further submitted that the Trial Court committed further error in recording its finding that the prosecution has proved beyond reasonable doubt that the deceased was subjected to cruelty of such nature as defined under Section 498A in connection with his demand for dowry and the said ill-treatment was 'soon before her death' so as to attract the penal provisions of Section 304B IPC and therefore, the impugned Judgment and order of conviction and sentence deserves to be set aside.

5. Per contra, Sri A.V. Ramakrishna, the learned High Court Government Pleader strongly contended that the evidence of PWs. 1 to 4 in their examination-in-chief as to the accused demanding dowry and he receiving the same is consistent though PWs.2 to 4 have deposed in their cross examination made on behalf of the

accused contrary to their evidence in examination-in-chief as to some facts. He further submitted that the Trial Court on proper appreciation of the entire evidence of these witnesses, has rightly arrived at the conclusion that after they were examined in-chief, PWs.2 to 4 came to be won over by the accused and therefore, they deposed in their cross examination contrary to their evidence in the examination-in-chief as to some facts and therefore, conviction of the appellant - accused for the offences under Section 3 and 4 of the DP Act does not call for any interference in this appeal. He further submitted that the evidence of PWs. 1 to 4, the brothers and sisters of the deceased as to the ill-treatment meted out to the deceased by the accused just few days prior to her death is also consistent and acceptable, and therefore, the Trial Court was justified in convicting this appellant - accused for the offences under Sections 498A and 304B IPC.

6. The facts that the deceased Smt. Lakshmi, the younger sister of PW1 complainant Prakash, PW2 Krishnashetty, PW3 Smt. Pankaja, PW4 K. Manjunath, was given in marriage to the appellant - accused (A1) and her marriage with him was performed on 29.2.2004 and that the deceased died on 1.5.2004 i.e., just 2 months of her marriage, as a result of hanging in the residence of the accused are not in dispute.

7. As to the demand for dowry by this accused, the allegations of PW1 complainant Prakash in his complaint Ex.P1 dated 2.5.2004 are as under:

(a) During marriage talks that were held prior to the marriage of the accused with the deceased, the accused Krishna, his Jr. uncle (A2), his brother-in-law Mudukappa (A5) and PWs.2 & 3, the younger brother and sister of the complainant all participated and at that time, the accused put forth his demand for cash of Rs. 50,000/- and 10 tholas of gold as dowry. Since the complainant and his brother said that they could not afford to pay that much of cash and gold as dowry, it was ultimately agreed that cash of Rs. 30,000/- and 5 tholas of gold should be given to the accused on behalf of the deceased in connection with the marriage and the marriage should be performed by the family of the deceased on 29.2.2004.

(b) The dowry of Rs. 30,000/- was given to the accused a week prior to the marriage. All the accused and the maternal uncle of the deceased took the said amount from the complainant. At the time of marriage, 5 tholas of gold was given to the girl and another 5 tholas of gold was given to the boy (accused). On the very next day of the marriage, the deceased was sent to her matrimonial house. Over a period of one month after the marriage, the deceased stayed in her matrimonial house for few days and for another few days in her parental house. One month after the marriage, the nuptial ceremony was performed. Before the said ceremony, the Junior aunt of the accused namely Smt. Sarojamma, came to the complainant's house and put forth the demand for Rs. 25,000/- saying that the said amount be given to the accused for purchasing scooter. The complainant expressed his inability to meet that demand. 3 days after the nuptial ceremony was performed, the deceased was sent to the residence of the accused.

8. In order to substantiate the above averments in the complaint Ex.PI, the prosecution has placed reliance on the oral evidence of PWs. 1 to 4, 7, 8, 10 & 11. Of these witnesses, PWs. 7, 8, 10 and 11 have turned hostile to the prosecution and they have not supported its case. Therefore, their evidence is of no help to the prosecution. Accordingly, the same is not considered by the Trial Court.

9. PW1 Prakash, the elder brother of the deceased has stated in his evidence that about 3 days after Sankranti festival in the year 2004, the accused visited the complainant's house for seeing the deceased girl, and after seeing her, he and the members of his family gave their consent and, one week thereafter, the accused - appellant, his maternal uncle Madappa and his other relatives participated in the marriage talks that were held at the residence of the complainant and, at that time, the accused demanded cash of Rs. 50,000/- and 10 tholas of gold as dowry but ultimately agreed to receive Rs. 30,000/- cash and 5 tholas of gold as dowry and accordingly, one week prior to the marriage, PWs. 1 & 2 gave to the accused Rs. 30,000/- as dowry. He has further deposed that before the nuptial ceremony, the accused demanded another sum of Rs. 20,000/- for purchasing scooter for him but the complainant told him that as they had already given dowry of Rs. 30,000/- they could not afford to give the said amount again.

10. PW2 Krishna Shetty, the 2nd brother of the deceased Lakshmi and PW3 Smt. Pankaja, the elder sister of the deceased and also PW4 K. Manjunath another elder brother of the deceased deposed have all consistently stated the same in their examination-in-chief as deposed by PW1, the complainant Prakash as to the accused demanding cash of Rs. 50,000/- and 10 tholas of gold as dowry during the marriage talks and ultimately agreeing to receive cash of Rs. 30,000/- and 5 tholas of gold and also as to the accused receiving from PW1 dowry of Rs. 30,000/- one week prior to the marriage. Their evidence as to the accused demanding additional amount of Rs. 25,000/- for purchasing scooter also falls in line with that of PW1 complainant and also the averments in Ex.PI complaint. Therefore, it is quite clear that the evidence of PWs. 1 to 4 besides being consistent with each other is consistent with the averments in Ex.PI complaint.

11. It is pertinent to note that examination-in-chief of PWs. 1 to 4 was recorded on the same day i.e. on 13.7.2005 and their cross examination was deferred at the request of the learned Counsel for the accused and thereafter, though PW1 was cross examined on 19.9.2005 and on 21.10.2005, PW3 was cross examined on 21.10.2005 and PW4 was cross examined on 19.11.2005 and PW2 on 29.12.2005.

12. During the cross examination made on behalf of the accused, on dated 7.10.2006 PW1 Prakash has stated that the accused did not ask Rs. 25,000/- for purchasing scooter but one Puttamma asked that amount and that his deceased sister did not tell before him that the accused had pressurised her to bring money from him. On careful reading of the evidence of this PW1 in his cross examination made on behalf of the accused on dated 19.9.2005 it could be seen that though he was cross examined at length on that day, nothing is brought on record to disbelieve his evidence in examination-in-chief recorded on 13.9.2005 which fully corroborates the allegations in the complaint.

13. It is pertinent to note that PW2 Krishna Shetty was cross examined on 29.12.2006 i.e. more than one year and 3 months after his examination-in-chief was over; PW3 Smt. Pankaja was cross examined on 21.10.2005 i.e. more than three months after the examination-in-chief; PW4 Manjunath was cross examined

on 19.11.2005 i.e. more than four months after his examination-in-chief.

14. On a careful reading of the evidence of these PWs.2 to 4 in their cross examination, it could be seen that they have stated therein quite contrary to what they stated in their examination-in-chief. It is pertinent to note that the evidence of these three witnesses in their examination-in-chief falls in line with the allegations in Ex.P1 complaint and also the evidence of PW1 complainant. It is not the case of the appellant - accused that these PW.2 to 4 stated in their examination-in-chief the facts which they did not state before the 10 in their respective statements recorded by him during investigation of the case. Thus it is clear that, what all they have stated in their examination-in-chief before the Court, was stated by them before the 10 at the earliest opportunity, in their statements recorded by him during investigation, In this view of the matter, I am of the considered opinion that where a witness fully supports the prosecution case in his examination-in-chief as to any material and relevant fact but turns hostile to the prosecution in his cross-examination made on behalf of the accused on a later date and states contrary to his evidence in his examination-in-chief as to the said fact, the evidence of such hostile witness in his examination-in-chief has to be accepted as true if it is not shown that what he stated in his examination-in-chief as to the said fact was not stated by him at the earliest opportunity, in his statement recorded under Section 161 of Cr.P.C. by the Investigation Officer during investigation of the case. Therefore, I hold that the Trial Court did not commit any error in relying on the evidence of PWs.2 to 4 in their examination-in-chief as to factum of demand for and receipt of dowry by the appellant - accused from the brother of his deceased wife. The Trial Court has rightly observed at para Nos. 42 to 44 of its impugned judgment that as these witnesses were won over by the accused, they stated in their evidence in cross-examination contrary to their own evidence in examination-in-chief as to certain facts and therefore their evidence in their examination-in-chief has to be accepted.

15. The evidence of PW1 complainant which is convincing and acceptable, as being consistent with the averments in Ex.P1 complaint, coupled with the evidence of PWs.2 to 4 clearly establishes the facts constituting the demand for, and receipt of, dowry by the accused - appellant. Further, Section 8A of the DP Act which

provides for burden of proof in certain cases under the said Act says that where any person is prosecuted for taking or abetting the taking of any dowry under Section 3 or demanding of dowry under Section 4 of the DP Act, the burden of proving that he had not committed an offence under those sections shall be on him. Since the defence of the accused is one of total denial, he has not chosen to get any witness examined for him nor has he chosen to produce any document. Besides this, nothing is brought on record in the evidence of any of the prosecution witnesses in discharge of this burden. This being so, it is clear that this accused-appellant has failed to discharge this burden of proof cast on him under Section 8A of the DP Act. Therefore, I am of the considered opinion that even if the evidence of PWs.2 to 4 is totally ignored, the allegations in the complaint which constitute the offences under Sections 3 and 4 of the DP Act have been successfully proved by the prosecution beyond reasonable doubt, through the oral evidence of PW1 complainant who is none other than the eldest brother of the deceased. Hence, I hold that the Trial Court is quite justified in convicting the accused - appellant for the offences under Sections 3 and 4 of the DP Act.

16. Learned Counsel for the appellant - accused strongly contended that absolutely there is no evidence of any witness to the effect that the deceased was ill-treated by the appellant - accused in connection with his demand for additional amount of dowry of Rs. 25,000/- for purchasing the scooter 'soon before her death' and as such, the Trial Court committed serious error in convicting the appellant - accused for the offence under Section 498-A and 304B IPC.

17. Per contra, the learned High Court Government Pleader strongly contended that the averments in the complaint and the evidence of PWs. 1 to 4, clearly establish that the appellant - accused ill-treated the deceased pressurising her to bring from her parental house additional dowry of Rs. 25,000/- towards purchase of Scooter for him and the deceased committed suicide in two months of her marriage with him and thus, the prosecution has established beyond reasonable doubt the case against the accused - appellant for the offence under Section 304B of IPC and hence, the impugned judgment and order of conviction and sentence does not call for any interference in this appeal.

18. On careful reading of the averments in Ex.P1 complaint filed by PW1 Prakash, the eldest brother of the deceased, it could be seen that it is alleged in the said complaint that the nuptial ceremony was fixed to a day after one month of the marriage and on the day previous to it Smt. Sarojamma, the maternal aunt of the appellant - accused came to the parental house of the deceased and demanded from her brothers a sum of Rs. 25,000/- saying that the same was required by the appellant - accused for purchasing a scooter for him. It is further alleged therein that the complainant told the said Smt. Sarojamma that they could not afford to give the said amount to the accused and that on the next day, nuptial ceremony was performed and 3 days thereafter, he took the deceased Smt. Lakshmi to her matrimonial home and left her there.

19. As could be seen from Ex.P1 complaint, it is further alleged therein that the marriage of his (complainant's) brother namely CW3 Chandrashekar was fixed to 25.4.2004 and when the deceased attended the said marriage along with her husband, she told him that she was ill-treated by the accused by abusing and beating on the ground that they (her brothers) did not give him (her husband) the said amount of Rs. 25,000/ for purchasing the scooter. It is also alleged in the complaint that despite the requests made by her brothers to this accused to leave her in her parental house for a day after the marriage of the said Chandrashekar, the accused appellant took her with him to his house and within a week thereafter on 1.5.2004, the deceased committed suicide.

20. PW1, the complainant Prakash, has stated in his evidence that nuptial ceremony was performed one month after the marriage of the deceased with the appellant - accused and at that time, the accused No. 1 (appellant herein) demanded from him Rs. 25,000/- for purchasing scooter for him but PW1 told him that as dowry of Rs. 30,000/- was already given to him at the time of marriage, he could not afford to pay the said further amount. He has further deposed that during the last week of April 2004, when the deceased had come to her parental house, for attending the marriage of her brother Chandrashekar (CW3), she told him (PW1) that the accused was illtreating her by beating and abusing on the ground that he (PW1) did not give to him (accused) the said sum of Rs. 25,000/-. He has further deposed that he consoled the deceased and sent her to her matrimonial

house with the appellant - accused. He has further deposed that though he requested the accused to leave the deceased in his house, he (accused) did not agree to it but took the deceased with him to his house and thereafter on 1.5.2004, the deceased committed suicide.

21. The above evidence of PW1, is quite consistent with the allegations made in his complaint Ex.PI. PWs.2 to 4 have deposed the same in their examination-in-chief as deposed by PW1 complainant Prakash. On careful reading of the cross examination of PW2 Krishna Shetty, another brother of the deceased, it could be seen that, his evidence in examination-in-chief that when he asked his deceased sister as to why she could not come to the marriage of Chandrashekar early, she told him that since Rs. 25,000/- was not given to her husband for purchasing scooter, he had been ill-treating her by beating and abusing and, he was not prepared to attend the said marriage but she forcibly brought him to the marriage and that on the same day, Al took her back to his house, has remained unchallenged inasmuch as no suggestion is put to him that the deceased did not disclose before him (PW2) about the said ill-treatment by the accused on the ground that money was not given to him for purchasing the scooter.

22. Further, on careful reading of the cross examination of PW3 Smt. Pankaja, the elder sister of the deceased, it could be seen that she has denied the suggestion of the learned Counsel for the accused that she has deposed falsely that when she (PW3) asked the deceased as to why she did not come to the marriage early, she told her that since her brothers had not given money to her husband (accused) for purchasing scooter, he ill-treated her by beating and abusing and that he was not prepared to attend the marriage, but she brought him to the marriage.

23. Further, on careful reading of cross examination of PW4 Manjunath, another brother of the deceased, it could be seen that his evidence in examination-in-chief that when the deceased attended the marriage of Chandrashekar, he asked her why she could not come early, she told him that since her brothers did not give her husband Rs. 25,000/- for purchasing scooter, he recklessly beat and abused and thereby ill-treated her and she herself brought him to the marriage forcibly, has

remained unchallenged inasmuch as, it is not suggested to him (PW4) in specific terms that this evidence in his examination-in-chief is false.

24. In view of the above evidence of PWs. 1 to 4 which is quite consistent with the averments in the complaint Ex. P1, I am of the considered opinion that the Trial Court rightly believed the said evidence and held that the prosecution has established beyond reasonable doubt, through the evidence of PWs. 1 to 4 that the appellant - accused ill-treated the deceased in connection with his demand for Rs. 25,000/- as additional dowry towards purchase of his scooter and the said ill-treatment continued till one week prior to her death and consequently the deceased committed suicide on 1.5.2004.

25. Sri P.V. Kittoor, the learned Counsel for the appellant - accused has relied upon the following decisions.

(i) : 2005 CrLJ 1221 (Ganesh Y. Bhutekar v. State of Maharashtra)

(ii) : 2005 CrLJ 4168 (Sangannagari Narasimulu v. State of A.P.)

(iii) 2004 (1) KCCR 593 (DB) (State of Karnataka v. T. Balarama.

26. In first of the above said decisions, i.e., : 2005 CRLJ. 1221, all the witnesses were close relatives of the deceased and they were all present in the village at the time when the PSI was conducting investigation of the case, and as such, they had opportunity to disclose before him about the factum of unlawful demand and ill-treatment by the accused, but they did not disclose the same to the PSI at that time and they deposed those facts before the Court in their evidence. Therefore, Bombay High Court held that their evidence was not acceptable. But in the instant case, it is not the contention of the learned Counsel for the accused - appellant that PWs. 1 to 4 did not state in their respective statements recorded by the 10 under Section 161 Cr.P.C. during investigation as to the facts constituting the demand for additional dowry by the accused No. 1 for purchasing scooter and ill-treatment given by him to the deceased in connection with the said demand. Therefore, I am of the considered opinion that the observations made by the High Court of Bombay in the said case are of no help to the appellant - accused,

27. In second of the above decisions i.e. : 2005 CRL.LJ 4168, the High Court of Andhra Pradesh has observed at para No. 14 is as under:

14. As seen from the above said evidence, P.W. 3 is not a direct witness to the alleged harassment of the deceased by the accused either in respect of the demand for dowry or in respect of the second marriage with the sister of deceased. The source of her information is the information, said to have been given by the deceased. In cross-examination she stated that when the revision petitioner and Mangamma visited her house, they were happy and that they were happy even after the birth of their daughter. The Courts below relied on the evidence of this witness though this witness is not a direct witness for the alleged harassment. She did not even state that she went to the house of the accused and questioned them as to why they were harassing the deceased either for the dowry or to persuade her to accept for the second marriage of A-I. The only source of information for this witness is the alleged information given by the deceased - Mangamma. Even if it is assumed that the deceased - Mangamma had informed her statement of Mangamma to her mother cannot be taken as gospel truth and the said statement is a very weak piece of evidence as the deponent is not subjected to cross-examination. Further such statement of the deceased made to her mother even if true, is not admissible in evidence. Admittedly, the statement is not in relation to the cause of death of the deceased in this case. When the said statement was not regarding the cause of her death, it does not come within the purview of Section 32(1) of the Evidence Act. The evidence of P.W. 3 that her daughter informed her about the harassment becomes hearsay, which is not admissible in evidence. The Apex Court in *Inderpaul v. State of M.P.* : 2002 Crl.LJ 926 (supra) categorically held that unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence and that in order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstances of the transactions which resulted in her death. Their Lordships further observed in the cited case that by not stretch of imagination can the statements of the deceased contained in letters. Where reference had been made by her regarding her life in the house of her in laws, and the statements quoted by the witnesses,

who had not spoken of anything which they had seen directly, be connected with any circumstance of the transaction which resulted in her death. In that case also the matter therein relates to an offence punishable under Section 498-A, I.P.C. The Division Bench of this Court followed the said decision. Earlier also the Apex Court in *Gananath Patnaik v. State of Orissa* 2002 SCC CrLJ 461 (supra) considered the admissibility of the statements made by the deceased during her lifetime to the witnesses regarding the harassment. In that case, the appellant was tried for an offence punishable under Section 304B, and 498-A, I.P.C. the trial court acquitted the appellant for the charge under Section 304B, I.P.C. for want of acceptable evidence but convicted him for the offence punishable under Section 498-A I.P.C. The conviction under Section 498-A, I.P.C. was confirmed by the High Court and the said confirmation of the sentence was challenged before the Apex Court. It was argued on behalf of the appellant that the finding of the trial Court was not based on legal evidence. In that case, the sister of the deceased stated before the trial Court that the deceased had been telling her about her ill-treatment meted out to her by her husband and in-laws for non-fulfillment of balance dowry and about assaults by her husband etc. The Apex Court considered whether such deposition of the sister of the deceased is admissible in evidence. The Apex Court held that such a statement is not admissible in evidence so far as the offence punishable under Section 498A, I.P.C. and it has to be termed only as hear say evidence. Their Lordships observed that Section 32 of the Evidence Act is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death and that if a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused. Their Lordships in that case observed that there was no legal evidence for returning a finding with respect to the alleged cruelty of the accused with the deceased and, therefore, it has to be held that the prosecution has failed to prove, beyond doubt that the appellant had committed the offence under Section 498-A I.P.C. So the facts of the cited case are almost similar to the facts of the present case.

28. Relying on the above observations of High Court of Andhra Pradesh in the said decision, the learned Counsel for the appellant - accused submitted that the evidence of PWs. 1 to 4 is based on the information given to them by the deceased and therefore, their evidence becomes inadmissible as hearsay evidence. This submission cannot be accepted for the reasons that PWs. 1 to 4 have consistently stated in their evidence that the deceased directly told to them (PWs. 1 to 4) that as they did not give her husband (accused - appellant) Rs. 25,000/- for purchasing a scooter, she had been ill-treated by him by beating and abusing and that he (accused) told her that since the said amount was not given to him, he would not attend the marriage of her brother Chandrashekar, but herself brought him to the said marriage forcibly. This information was given to PWs. 1 to 4 by the deceased herself directly and not through any one else. Therefore, the evidence of PWs. 1 to 4, cannot be termed as hearsay evidence.

29. Section 60 of the Evidence Act says that 'oral evidence must be direct' that is to say, if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. This being so, the evidence of PWs. 1 to 4, who have deposed that they heard directly from the deceased as to the factum of ill-treatment given to her by the appellant - accused cannot be termed as hearsay evidence. Besides this, the said information given to PWs. 1 to 4 by the deceased was in respect of the ill-treatment given to her by the accused in connection with his demand for the said additional dowry but not as to the cause of her death so as to attract Section 32(1) of the Evidence Act. Therefore, with all respect, I have not been able to agree with the above observations made by the learned Single Judge of Andhra Pradesh High Court in the said decision.

30. In third of the decisions relied upon by the learned Counsel for the appellant - accused reported in 2004(1) KCCR 593 (DB), it is observed as under:

The Police and the investigating authorities should not generalize and should not improperly and technically jump to the conclusion that merely because the death has occurred of a young wife that ipso facto a criminal offence has been committed. Unless there is very cogent and convincing evidence and unless there is material to sustain those charges, it would be totally impermissible and

completely unjustified to embark upon legal action.

The authorities must act with a sense of responsibility and that there should be a very careful and correct analysis of the allegations and the material in support thereof. When it does appear to the investigating authority that there is no ground to file a charge sheet, papers must be submitted to the opinion of Public Prosecutor before proceeding to file charge sheet.

31. The above observations were made by the Division Bench of this Court in an appeal against an order of acquittal and the said appeal came to be dismissed holding that no grounds could be found for interfering with the impugned order of acquittal. In the present case, no faults on the part of the investigating authority are shown to have been committed and no defects in the investigation are brought on record. Therefore, I am of the opinion that the above observations of the Division Bench of this Court in the said case cannot be applied to the present case.

32. As observed by me supra, the allegations in the complaint Ex.P1 and the oral evidence of PWs. 1 to 4 clearly establish that the deceased was subjected to cruelty by the appellant - accused by beating and abusing her on the ground that she did not bring from her brothers, additional money of Rs. 25,000/- for purchasing scooter for him in addition to dowry of Rs. 30,000/- that was given to him by them at the time of marriage of the deceased with him which was performed just about two months prior to the death of the deceased. It is established by the prosecution that the deceased had come to her parental house, just one week prior to her death for attending the marriage of her brother Chandrashekar (CW3) and at that time, she informed PWs. 1 to 4 that she was being ill-treated by the accused by beating and abusing in connection with his demand for the said amount of money.

33. As to the expression 'soon before death', found in Sections 304B of IPC and 113B of Evidence Act, there is a decision of the Hon'ble Supreme Court in the case of Kans Raj v. State of Punjab and Ors. reported in : 2000 CRI.L.J. 2993. The Hon'ble Supreme Court has observed at para 14 therein as under:

14. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straight-jacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before the alleged such treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.

(Emphasis supplied)

34. On careful reading of the facts in the said case, it could be seen that the deceased therein had come to her brother's house on 21.9.1988 complaining of ill-treatment by her husband and his relatives in connection with their demand for dowry and that she died on 23.10.1988 i.e., exactly one month thereafter and there was no intervening circumstance showing that the said demand was met with by her brother and as such, the alleged ill-treatment did not persist. On those facts, Hon'ble Supreme Court, held that the 'ill-treatment given to the deceased by

the accused therein was 'soon before her death': Holding so, the Supreme Court reversed the judgment and order of acquittal passed by the High Court as against the husband of the deceased and convicted him for the offence under Section 304B IPC.

35. In the instant case also, it is successfully proved by the prosecution that the deceased was ill-treated by the appellant - accused till a week prior to her death, in connection with his demand for additional dowry and the same was disclosed by her to PWs. 1 to 4 when she attended the marriage of her brother Chandrashekar on 25.4.2004. During the intervening period 'from 25.4.2004 till the deceased committed suicide on 1.5.2004 the said demand of the accused persisted inasmuch as, it was neither met with by the brothers of the deceased, nor was it given up by the accused for any reason. Therefore, following the above decision of Hon'ble Supreme Court, I hold that the deceased was treated with cruelty by the appellant - accused in connection with his demand for dowry during the said intervening period i.e. 'soon before her death'. Therefore, the presumption under Section 113B of Evidence Act has to be drawn against him. It is pertinent to note that the appellant - accused has not given any explanation as to why the deceased committed suicide by hanging herself in his residential house itself nor has he brought on record any circumstance to show that the Court would not be justified in drawing presumption under Section 113B of the Evidence Act. This being so, the Trial Court is quite justified in recording its finding that the appellant - accused is found guilty of the offences under Sections 498-A and 304B IPC. Hence, the impugned judgment and order insofar as it relates to conviction and sentencing of this appellant - accused for these offences also does not call for any interference in this appeal.

36. While referring to the impugned order of sentence, the learned High Court Government Pleader submitted that though the Trial Court recorded its finding that the appellant - accused is found guilty of the offence under Section 498-A IPC, it has not passed any sentence against him for the said offence and that though the offence under Section 3 of the DP Act is punishable with imprisonment for a term which shall not be less than five years and with fine which shall not be less than Rs. 15,000/- or the amount of value of such dowry whichever is more, the Trial

Court committed error in imposing on this appellant - accused RI for six months only and fine of Rs. 10,000/- only despite the amount of dowry being Rs. 30,000/- and therefore, adequate sentence is to be imposed on this appellant - accused for the offence under Section 498-A and the sentence imposed by the Trial Court for the offence under Section 3 of DP Act requires to be modified in terms of the provisions of Section 3 of the said Act. These submissions of the learned High Court Government Pleader deserve acceptance. The Trial Court committed grave error by not passing sentence against the appellant - accused for the offence under Section 498-A IPC, despite convicting him for the said offence. It also committed further serious error in not imposing minimum sentence as provided under Section 3 of the DP Act.

37. For the reasons aforesaid, the present appeal is hereby dismissed as being devoid of merits. The impugned judgment and order of the Trial Court insofar as it relates to conviction of the appellant - accused for the offences under Sections 498A and 304B IPC and also under Sections 3 and 4 of DP Act is hereby confirmed. Since no sentence is passed on this appellant - accused by the Trial Court for the offence under Section 498-A IPC despite convicting him for the said offence, I hereby sentence him to undergo RI for a period of two years and also to pay fine of Rs. 25,000/- in default, to undergo SI for a further period of six months.

38. Further, the sentence imposed by the Trial Court for the offence under Section 3 of the DP Act is hereby modified and the appellant - accused shall undergo RI for a period of 5 years and also pay fine of Rs. 30,000/- being the amount of dowry received by him from the brothers of the deceased. The sentence of imprisonment and fine imposed by the Trial Court for the offence under Section 4 of the DP Act, is left undisturbed. All the substantive sentences shall run concurrently. The entire amount of fine if paid by the accused, shall be paid to PW1 complainant Prakash, being the elder brother of the deceased.