

Khandavalli Amith Kumar Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Jul-13-2012

Judge : K.S. Appa Rao

Appeal No. : Crl.A.No.1939 of 2004

Appellant : Khandavalli Amith Kumar

Respondent : State of A.P.

Judgement :

This Appeal is filed against the judgment dated 20-08-2004 passed in S.C.No.108 of 1999 on the file of the V Additional Sessions Judge, West Godavari, Eluru, whereby and whereunder the appellant-A1 was convicted for the offences under Section 498-A and 304-B of IPC and accordingly sentenced to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for one month for the offence under Section 498-A of IPC, and sentenced to undergo rigorous imprisonment for a period of ten years and also to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for one year for the offence under Section 304-B of IPC.

2. The brief averments of the charge sheet are as follows:

A-1 and A-3 are the sons of A-2. A-1 is working as Development Officer in LIC at Gopalapuram. The deceased by name Khandavalli Florence @ Anitha is the sister of PW-2 and daughter of PW-3. The deceased was married to A-1 on 31-08-1990.

At the time of marriage, as per the demand of the accused, the parents of the deceased paid Rs.1,20,000/- towards dowry in addition to other formalities. After marriage, having not satisfied with the said dowry amount, A-1 started demanding the deceased for a motor cycle and other household articles, and was harassing her for the same. In that connection, the deceased filed a criminal case against the accused for the offences under Sections 498-A of IPC etc. and subsequently, the same was compromised and her parents agreed to pay an amount of Rs.10,000/- to A-1 towards the cost of the motorcycle. Thereafter, A-1 demanded the deceased for an amount of Rs.1,00,000/- to purchase the car. Meanwhile, the marriage of the sister of the deceased, was fixed. Then A-1 told the deceased that her sister's marriage was fixed by giving dowry of Rs.1,00,000/-, but his demand of Rs.1,00,000/- to purchase the car was not complied with. As the deceased did not oblige to the demand of A-1, he attempted to throw away her into Godavari river from the road-cum-rail bridge, while returning from Rajamundry side, but the passersby went to her rescue and saved her life. The deceased also wrote letters Exs.P-23 to P-25 to their parents about the harassment and cruelty caused by A-1 towards her.

On 26-07-1996, A-1 and the deceased went to Eluru to the house of PW-2 to attend the house warming ceremony. At that time, A-1 asked the deceased to demand Rs.1,00,000/- from her mother, for which the deceased refused. Then A-1 demanded PWs.2 and 3 for the said amount of Rs.1,00,000/- and PW-3 replied that she would adjust that money later. Then A-1 beat the deceased in the function in the presence of all the invitees and took away her from the function. On 02-08-1996 A-2 and A-3 abused the deceased and A-1 beat her which was witnessed by her son (PW-1). The harassment and cruelty caused by the accused abetted the deceased to go inside the bathroom and bolted the doors from inside and poured kerosene on her body and set fire to herself and committed suicide on the same day i.e., 02-08-1996. On hearing the cries from the house of the deceased, PWs.5 and 6 went to the spot and noticed the flames and smoke coming from the bathroom. PWs.6 and 8 extinguished the fire by pouring water, broke open the doors of the bathroom and noticed the dead body of the deceased with burn injuries. PW-12, the village servant, after coming to know about the incident, visited the spot, noticed the dead body of the deceased in the bath room and went

to the VAO, and informed about the incident. The VAO rushed to the spot and noticed the dead body of the deceased in the bathroom and enquired about the cause of death and thereafter gave Ex.P-12, report to the police. Basing on the same, the police registered Crime No.64 of 1996 for the offence under Section 304-B of IPC, visited the scene of offence, prepared rough sketch of the scene of offence, held inquest over the dead body of the deceased and after due investigation, filed the charge sheet against the accused for the offences punishable under Sections 498-A and 304-B of IPC. The learned Magistrate has taken the case on file and numbered as P.R.C.No.72 of 1996, and while considering the material on record and having satisfied that there is a prima facie case, committed the case to the Court of Sessions. The trial Court, basing on the averments in the charge sheet, framed the charges for the offences under Sections 498-A and 304-B of IPC against the accused. The accused denied the charges and claimed to be tried.

3. The prosecution, in order to prove the guilt of the accused, examined PWs.1 to 19 and got marked Exs.P-1 to P-28 and M.Os.1 to 10. On defence side, DW-1 was examined and Exs.D-1 to D-13 were marked. The trial Court, on an overall scrutiny of the entire evidence on record, found A-2 and A-3 not guilty of both the offences and accordingly, acquitted them. However, the trial Court found the appellant-A1 guilty of the offences under Sections 498-A and 304-B of IPC and accordingly, convicted and sentenced him as stated above. Aggrieved thereby, A-1 preferred the present appeal.

4. Sri C. Padmanabha Reddy, learned senior counsel appearing for the appellant-A1, mainly argued that the finding of the trial Court that a duty is cast on the appellant to explain the compelling circumstances, which made the deceased to commit suicide, is not correct and the conviction placing reliance on the highly interested testimonies of PWs.2, 3, 10 and 11 is erroneous. He further argued that the trial Court failed to see that PWs.1, 4 and 11 did not support the prosecution case and they were declared hostile, moreover the evidence of PWs.2 and 3 is of no consequence in view of the material particulars regarding the payment of amount for the household articles, in the light of the evidence of DW-1 and Exs.D-9 to D-13. He also argued that to prove the offence under Section 304-B of IPC,

there should be harassment for, or in connection with, demand of dowry, but Ex.P-24, letter, dated 08-04-1994, is about two years prior to the incident, and a perusal thereof and another letter Ex.P-23, nowhere the deceased had written about the alleged harassment of A-1 for dowry, and none of the neighbours were examined to prove the alleged harassment. He further laid stress heavily on Exs.P-23 to P-26, which are crucial documents, and urged that those documents are not proved, as the handwriting expert was not examined, and Ex.P-26, diary, seized in the house of the deceased did not prove that the incidents narrated therein are written by the deceased, and therefore, without proving Ex.P-26, diary, the letters in Exs.P-23 to P-25 cannot be said to be written by the scribe who prepared Ex.P-26 and thus, the finding of the trial Court placing reliance on Exs.P-23 to P-26, in any view of the matter, is not sustainable.

5. The learned Public Prosecutor, while supporting the judgment of the trial Court, mainly argued that though the expert is not examined to prove Ex.P-26, diary, it is his opinion that the handwriting under Exs.P-23 to 25 is similar and identical to the handwriting under Ex.P-26, and therefore, the finding of the expert cannot be doubted when these documents were marked through the investigation officer. He also further argued that the evidence of PWs.1 to 3 is suffice in proving the guilt of the accused for the offences under Sections 498-A and 304-B of IPC, and the trial Court well discussed the evidence on record and came to the correct conclusion while convicting and sentencing A-1 for the said offences.

6. Now the point for consideration is whether the prosecution proved the guilt of the appellant-A1 for the offences under Sections 498-A and 304-B of IPC and whether the judgment of the trial Court is sustainable?

POINT:

7. As seen from the record, originally the trial Court framed charges against A-1 to A-3 for the offences under Sections 498-A and 304-B of IPC and after due trial, A-2 and A-3 were acquitted for the said charges, as the prosecution failed to prove the same against them. The State has not preferred any appeal against the finding of the trial Court on that score. The present appeal is filed by A-1, who is none other than the husband of the deceased, challenging the conviction and the

sentenced imposed on him.

8. Admittedly the marriage between A-1 and the deceased by name Khandavalli Florence @ Anitha, was performed on 31-08-1990. It is an admitted fact that the deceased poured kerosene on her body and set fire herself in the bathroom on 02-08-1996 while she was living with A-1 in the rented house at Gopalapuram. It is also an admitted fact that her death was occurred within seven years after her marriage and during their wedlock, they were blessed with two sons.

9. In order to prove the offence proper, the prosecution examined PWs.1 to 3. PW-1 is the son of A-1 and deceased. PW-2 is the brother and PW-3 is the mother of the deceased.

10. PW-1, the son of A-1 and deceased, was declared hostile by the prosecution. Except that on the date of incident, the hand fingers of A-1 also burnt, nothing was elicited during his cross-examination.

11. PW-2 is the brother of the deceased and a material witness of the prosecution. According to him, the marriage of the deceased with A-1 was performed at Tanuku on 31-08-2000 and it is an arranged marriage. By the time of marriage, A-1 was working as Development Officer in LIC at Gopalapuram.

A-1 to A-3 used to reside together at Tanuku as A-1 used to attend to his job therefrom. His father died on 26-11-1993 while working as Lecturer. After the engagement of the deceased with A-1, they gave a sum of Rs.1,20,000/- to A-1 towards dowry in the presence of A-2 and Rs.2,000/- each to the sisters of A-1 towards Adapaduchu lanchanams. After the marriage, the deceased joined the society of A-1 at Tanuku and about 3 or 4 months thereafter, A-1 taken a house on rent and shifted from Tanuku to Gopalapuram. During the course of putting up of the family at Gopalapuram, the accused demanded them to provide all the household articles with amenities. His father expressed inability to meet all the demands of A-1 since he performed his another daughter's marriage along with the deceased and he has to perform the last daughter's marriage and he will provide the household articles for the present, for which A-1 refused and proclaimed that he will not take back the deceased and he will not lead life with

her. In that context, A-2 and A-3 visited their house at Kottapeta, where PW-3 was working as Teacher, and demanded the household articles and pressured his parents. On such demand, his father paid an amount of Rs.5,000/- to A-1 for purchasing the household articles. Again A-1 demanded cash of Rs.25,000/- for purchasing of a motorcycle. Then his father expressed inability to give the same since the marriage of his last daughter was going to be performed on 12-12-1990.

He further stated that for the engagement function of his youngest sister, A-1 and the deceased attended on a motorcycle and while returning from the function on the way at rail-cum-road bridge of Rajahmundry, A-1 made an attempt to push the deceased into Godavari River from that bridge proclaiming that inspite of his demand, she has not demanded her father for the additional dowry of Rs.1,00,000/- and good dowry is provided for the youngest sister's marriage. At that time, the passers-by rescued the deceased from the hands of A-1. Subsequently on one occasion, A-1 brutally beat the deceased bolting the doors inside his rented house at Gopalapuram, and on hearing her cries, the owner of the house came and rescued her and chastised A-1. With the help of the house owner, the deceased came to Kottapeta and all of them approached Kottapeta Police Station for lodging the complaint. The police then summoned A-1 to A-3 and settled the matter amicably. Later they filed a private case before the Courts at Kovvur. Thereafter at the request of the brother of A-1 and others, they have withdrawn the said case. He also stated that on another occasion A-1 took the deceased to his mothers house at Tanuku and demanded the payment of additional dowry of Rs.1,00,000/- for purchasing the car for which they paid Rs.10,000/- to A-1. He further stated that his father died on 26-11-1993 at Tadepalligudem, and they sent men for information to A-1 and the deceased for attending the obsequies of his father. A-1 neither attended the obsequies nor sent the deceased. It is also his further evidence that he got constructed a house at Eluru and invited A-1 and the deceased for the house warming ceremony on 27-07-1997. A-1 and the deceased attended the function and while the function is going on, A-1 asked the deceased to demand PW-3 for the amount of Rs.1,00,000/-, and when the deceased refused for the same, A-1 came to him and PW-3 and demanded Rs.1,00,000/- for purchasing the car. They stated that they will pay the amount within a short period, for which A-1 grew wild and beat the

deceased in the presence of all the invitees and immediately A-1 took away the deceased from the function stating that they are no way concerned with the function. On 02-08-1996 morning at 6-00 AM, some unknown person came to his house and proclaimed that the deceased committed suicide. Immediately they rushed to the place and they were informed by PW-1 that A-1 beat the deceased on the previous night and A-2 and A-3 abused her, and the deceased committed suicide due to the harassment of A-1 to A-3. He further stated that the deceased used to address letters to him and his mother (PW-3) and he handed over those letters to the police.

12. The evidence of PW-3, the mother of the deceased, is also on the same lines as spoken by PW-2.

13. PW-4 is a resident of Kottapeta and he is said to be the elder for the marriage of A-1 and deceased. According to him, at the time of marriage a sum of Rs.70,000/- was given to A-1 as Pasupu Kumkuma and Rs.4,000/- was given as pasupu kumkuma to adapaduchulu. Earlier the deceased filed a case against the accused and it was withdrawn. He attended the house warming ceremony at Aminapeta, Eluru and A-1 and the deceased also attended the function. This witness turned hostile and did not support the prosecution case thereafter.

14. PWs.5 to 10 turned hostile and did not support the case of the prosecution.

15. PW-11 is a resident of Muramalla. According to him he attended the house warming ceremony of PW-2 at Eluru. A-1 and the deceased also attended the said function. During the course of function, A-1 demanded the deceased an amount of Rs.1,00,000/- as katnam for which the deceased replied that it is not proper time to ask the same, as gruha pravesam was taking place. This witness turned hostile and did not support the prosecution case.

16. PW-12 is the village servant of Gopalapuram. According to him, on 02-08-1996 at about 7-00 or 7-30 AM, he learnt about the incident and reported the same to the VAO, who went to the scene and gave report to the police.

17. According to PW-13, the doctor, who conducted inquest over the dead body of the deceased on 03-08-1996, he found extensive burn injuries all over the body except the back of the head including hair and sole of her feet. He found about 90% to 95% of burns over the dead body of the deceased. He opined that the cause of death was due to shock and haemorrhage due to extensive burns.

18. PW-14, the attestor of Ex.P-10, turned hostile and did not support the prosecution case.

19. PW-15 is the then VAO of Bhimolu village. According to him on 02-08-1996 at about 10-00 AM, he was called by the Sub-Inspector to act as inquestdar. He went to the house of A-1 at Gopalapuram and noticed the dead body of the deceased in the presence of inquestdars. He is one of the attestors of

Ex.P-11, inquest report. The panchayatdars opined that the deceased died by pouring kerosene and setting fire to herself.

20. PW-16, the Civil Assistant Surgeon, Gopalapuram, deposed that on 02-08-1996 he has provided first aid to A-1. To both anterior parts of the arms there are scalds.

21. PW-17 is the then MRO, Gopalapuram. According to him, he was present at the time of inquest conducted under Ex.P-11, and recorded the statements of the witnesses. During the course of inquest, it is held by the inquestdars that the deceased died due to harassment.

22. PW-18 is the then Sub-Inspector of Police, Gopalapuram. According to him, on 02-08-1996 at about 8-00 AM, he received Ex.P-12, report from the VAO of Gopalapuram and basing on the same, registered a case in Crime No.64 of 1996 for the offence under Section 304-B of IPC and issued Ex.P-13, FIR.

23. PW-19 is the then SDPO, Jangareddygudem. According to him, he received information through PW-18 about the incident and immediately rushed to the scene and got drafted the scene of offence observation report under Ex.P-14, examined the witnesses at the scene and during the course of inquest, PW-17 recorded the statements of PWs.2, 3 and others, and the property on the person of

the deceased was seized under M.Os.4 to 7. On 02-08-1996, after the inquest, he sent the dead body of the deceased for post-mortem examination. He arrested the accused on the same day at Gopalapuram bus stop. After arrest, A-1 was referred to the Government Hospital for first aid since he is having burn injuries on his hands. Prior to 15-08-1996, the mother of the deceased produced three inland letters at his office, Jangareddigudem, and later, he went to the house of the deceased and secured Ex.P-26, diary alleged to have been maintained by the deceased, in an almirah in the presence of mediators and seized the same under Ex.P-22, mediators report. The three letters are Exs.P-23 to P-25.

On 06-09-1996 he sent Exs.P-23 to P-26 to FSL, Hyderabad for comparison of the handwriting. On examination, the Assistant Director of FSL, forwarded the report under Ex.P-27 opining that the handwriting in Exs.P-23 to P-26 is of the same person. After completion of the investigation, he filed charge sheet.

24. To rebut the evidence of PWs.2 and 3 regarding the demand of household articles and providing the same by the father of the deceased, DW-1 was examined. According to DW-1, A-1 purchased a refrigerator, TV, Iron Almyrah, and mixi at their shop.

25. To proceed further, firstly let us see whether, in the light of the above evidence adduced by the prosecution, the ingredients of Section 498-A of IPC are attracted and whether the prosecution proved the guilt of A-1 thereunder. For better appreciation, Section 498-A of IPC reads as follows:

“S.498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extent to three years and shall also be liable to fine.

Explanation.-For the purpose of this section, “cruelty” means-

(a) any wilful conduct which is of such a nature as is

likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. To come to a conclusion for the offence punishable under Section 498-A of IPC, the Court can also draw presumption under Section 113-A of the Indian Evidence Act (for short 'the Act'), which is extracted as under:

“S. 113-A. Presumption as to abetment of suicide by a married woman.-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-For the purposes of this section, 'cruelty' shall have the same meaning as in Sec.498A of the Indian Penal Code.”

27. To attract the ingredients of Section 498-A of IPC, it is for the prosecution to prove that the accused subjected the deceased with cruelty and harassment and such harassment drove her to commit suicide. Section 113-A of the Act does not create an offence or make it punishable. It only deals with presumption which the Court may draw in a particular fact situation as contemplated under the provision is found existing. Presumption under Section 113-A would obviously arise only when the necessary ingredients in order to attract that provision are established. It is required that it should be proved that suicide has been committed by a woman and there should be an allegation of abetment by her husband or any relative of her husband or she has been subjected to cruelty and such presumption is extendable for a period of seven years from the date of marriage. Presumption under Section 113-A of the Act is not conclusive, but is rebuttable. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does

not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances, which has to be considered by the Court, is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. Where the death of the deceased is in unnatural circumstances, it is necessary to raise presumption under Section 113-A of the Act that having regard to all the circumstances of the case, the suicidal death of the deceased had been abetted by her husband. Section 113-A of the Act relates to the offences under Sections 498-A and 306 of IPC, whereas Section 113-B relates to Section 304-B thereof. Whereas in terms of Section 113-A of the Act, the prosecution is required to prove that the deceased was subjected to cruelty and in terms of Section 113-B, the prosecution must prove that the deceased was subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry.

28. Presumption of abetment of suicide can be drawn only when the prosecution has discharged the initial onus of proving cruelty. The Court should not mechanically resort to a strait-jacket approach in applying the provisions of Section 113-A of the Act for raising a presumption of abetment of suicide. Presumption under Section 113-A of the Act refers to one of the three ingredients of abetment as defined in Section 107 of IPC i.e., instigation, conspiracy and intentional aiding of the act. In order to raise a presumption under Section 113-A of the Act, the facts and circumstances should be such as can reasonably sustain a presumption about the existence of a nexus of cause and effect between the cruelty and suicide. In the absence of any evidence to show that the deceased was being harassed within the meaning of Explanation (b) of Section 498-A of IPC, presumption under Section 113-A of IPC cannot be raised.

29. It was held in a catena of decisions that in a criminal trial, the degree of proof is stricter than what is required in a civil proceeding. In a criminal trial, however intriguing may be the facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The

requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A of IPC and Section 113-A of the Act. Although the Court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the case and the materials placed on record.

The doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter.

30. In this case, admittedly PW-1 is the son of A-1 and deceased, and he was living with A-1 by the time of his evidence. PW-2 is the brother and PW-3 is the mother of the deceased. PWs.2 and 3 in one voice deposed that from the date of marriage A-1 was harassing the deceased and demanding her to bring money from her parents house in order to meet his expenses of purchasing household articles, scooter and car. On a combined reading of the evidence of PWs.2 and 3, there are series of events which made the life of the deceased miserable in the hands of A-1. Admittedly A-1 and the deceased are well educated having good family background, and A-1 is an employee also. The parents of the deceased are employees.

31. According to PW-3, the date of marriage of A-1 and the deceased is 31-08-1990 and date of suicide committed by the deceased is 02-08-1996, and the same is not in dispute. Hence, it is established that the suicide committed by the deceased is within seven years after her marriage. According to the prosecution, no one witnessed the incident to conclude that the alleged death is a suicide. In a case of this nature, where there is no direct evidence, the Court has to see the circumstantial evidence to know the cause of death. As stated already, series of events are spoken by PWs.2 and 3 about the alleged harassment of A-1 towards the deceased. It is also borne out from the evidence of PW-3 that on one occasion

when the deceased did not oblige for his demand of money, A-1 attempted to kill her by pushing her into the river from the road-cum-railway bridge at Rajamundry and the passers have rescued her while admonishing A-1. Consequently the deceased was beaten black and blue in the house at Kottapet for which a complaint was also lodged before the police. It is the evidence of PW-2 that on the eve of house warming ceremony at his house, A-1 and the deceased attended the function and during the course of function, A-1 beat the deceased in the presence of the invitees in connection with the demand of dowry. It is also borne out from the record that the deceased earlier lodged a complaint before the Criminal Court at Kovvur and thereafter the same ended in compromise. On an overall scrutiny of the evidence of PWs.2 and 3, it is their evidence that from the beginning of the marriage of the deceased with A-1, he was harassing and humiliating the deceased, by one way or the other, and the said humiliation reached its peak at the house of PW-2 just one day prior to the alleged suicide. They have specifically stated the instances of harassment and the inhuman conduct of A-1 towards the deceased. Though the learned defence counsel could able to elicit some omissions marked as Exs.D-1, D-2, and D-5 during the cross-examination of PW-2, and Exs.D-6 to D-8 during the cross-examination of PW-3, in my honest view, those minor omissions and contradictions are general in nature which are found to be occurred due to lapse of time in particular, in the background of the case.

32. In a case of this nature, where there is no independent or direct evidence, presumption must be taken aid by the Court. In the present case on hand, the accused was charged for the offences under Sections 498-A and 304-B of IPC. So, the presumption under Section 113-A of IPC has to be drawn so as to take aid by the Court. So what we can understand is that it has to be proved by the prosecution beyond reasonable doubt that the deceased was subjected to cruelty, harassment by her husband to attract the offence punishable under Section 498-A of IPC.

33. It is the further evidence of PWs.2 and 3 that when the deceased came to their house at Kottapet and narrated the harassment and torture meted out by her in the hands of A-1, her father filed a criminal case in Kovvur Court and after A-1 paid apology and given undertaking that he will look after the deceased properly, the

same was withdrawn. This portion of evidence discloses that the deceased was subjected to cruelty and she was harassed by her husband and so she came to her parents' house and filed the case at Kovvur Magistrate Court. It is very strange to note that the accused did not deny the filing of the said case before the Magistrate Court at Kovvur. Apart from the same, A-1 made an application in CrI.M.P.No.186 of 2004 to send for the record from Gopalapuram Police Station about the case. Ex.D-3 is the alleged compromise petition containing the signature of the deceased. A perusal of Ex.D-3, it is evident that the deceased filed the case with police at Kottapet and subsequently she requested the police to withdraw the same since they compromised in the matter. Furthermore as per the orders in CrI.M.P.No.186 of 2004, it came into light that the deceased filed the case against A-1 to A-3 and the sister of A-1 for the offences under Sections 506 , 498-A, 403, 386 read with 34 and 511 of IPC. In the said petition, the deceased categorically mentioned how she was subjected to cruelty by the accused for the dowry. This complaint was filed on 06-07-1991 i.e., one year after the marriage. The said complaint was forwarded to police by the learned Magistrate under Section 156(3) Cr.P.C. and subsequently, it was compromised resulting the deceased joined A-1. This part of evidence gives much more strength to the plea of PWs.2 and 3 in proving the cruel conduct of A-1 towards the deceased.

34. Apart from the said evidence, the deceased died on 02-08-1996. The peak incident of harassment was just four days prior to the date of suicide i.e., 27-07-1996. Admittedly on 27-07-1996, A-1 and the deceased went to the house of PW-2 to attend house warming ceremony to be performed on 28-07-1996 at Eluru and during the course of the function, when the deceased refused to make a request to PW-3 for Rs.1,00,000/- as demanded by A-1 for purchasing the car, he grew wild and beat the deceased in the presence of all the invitees and took away her from the function stating that they are no way concerned with the function. PW-10, one Nageswara Rao also corroborated the evidence of PW-2 that A-1 grew wild and beat the deceased on that day. Though it was suggested to PWs.2 and 10 that having seen PW-10 and the deceased coming out from a room, A-1 grew wild and chastised the deceased and took away her, this suggestion was given PWs.2 and 10 attributing the suspecting circumstances against PW-10 and the deceased on that day. This suggestion was put to PWs.2 and 10 after due deliberations as at no

point of time, A-1 pleaded any unchastity against the deceased. Absolutely there is no iota of evidence on that score. However, PW-10 deposed the manner in which A-1 grew wild and beat the deceased and took her to his house. The version of PW-2 on this aspect gained support from the evidence of PW-3 who also stated that she attended the house warming ceremony and A-1 and deceased also attended the same, and there was a godava for the amount and A-1 beat the deceased and ultimately took her to his house abruptly from the function.

35. The evidence of PW-4 also corroborated about the participation of the deceased and A-1 in the house warming ceremony at the house of PW-2. But he was declared hostile. Further PW-11, a resident of another village, who also participated in the house warming ceremony, corroborated the evidence of PWs.2, 3, and 10 about the house warming ceremony and he came to know that in the function A-1 demanded an amount of Rs.1,00,000/-.

36. In any view of the matter, the evidence of PWs.2, 3, 10 and 11 corroborated the last event of demand of dowry by A-1 from the deceased and when such demand is not obliged by the deceased and PWs.2 and 3, he grew wild, beat the deceased and took away her to his house abruptly from the function and five days thereafter, she committed suicide.

37. It is also pertinent to note that the deceased wrote three letters Exs.P-23 to P-25 expressing her suffering in the hands of A-1. The contents of the said letters are self-explanatory. Those letters will really touch the heart of any individual. The language and the manner in which the letters were written are very sensitive and expose the depression of the author. Exs.P-23 to P-25 are the letters alleged to have been written by the deceased in favour of PWs.2 and 3, and Ex.P-26 is the diary alleged to have been maintained by the deceased during her lifetime. According to the evidence of PW.1, PW-2 handed over Exs.P-23 to P-25 to the police. Whereas according to PW-19, prior to 15-08-1999 those letters were produced before him and thereafter he made a search for the other documents purported to be written by the deceased to compare the handwritings in terms of Exs.P-23 to P-25 and seized Ex.P-26. It is also the evidence of PW-19 that he sent Exs.P-23 to P-26 to the FSL, to compare the handwritings of those letters and

the expert expressed his opinion under Ex.P-27 that the handwritings in Exs.P-23 to P-25 letters and Ex.P-26, diary, are similar in nature and they were written by the same person.

38. The defence counsel mainly urged that the handwriting expert is not examined and thereby Ex.P-27 had no evidentiary value and if that be the case, the opinion on Exs.P-23 to P-26 is not conclusive. His main argument is that unless the prosecution proves that Ex.P-26 was written by the deceased, it cannot be said that Exs.P-23 to P-25 written by the deceased. But, in my humble opinion, though the said argument has some force, the fact remains that even the expert's opinion is not final and conclusive and the Court can examine the disputed handwritings to come to a conclusion. In the present case on hand, if we go through the contents of Exs.P-23 to P-25, and Ex.P-26, the writing pattern, curving, strokes etc. are similar and identical even to a naked eye. When the handwritings are similar and identical and apparently seem to be convincing in its nature even to a naked eye, the other evidence i.e., the expert opinion under Ex.P-27 can be taken as additional evidence for giving the finding about the handwriting of the author of the said documents. For better appreciation, the contents of Exs.P-23 to P-25, letters and Ex.P-26, diary, are extracted hereunder:

Ex.P-23:

Life Insurance Corporation of India

Phones:537596: Branch Office, Sakha Karyalaya, Branch Office,

Grams: Bimasakh Bapuji Nagar, Bapuji Nagar, Bapuji Nagar,

Post Box No.15, P.B.No.15, P.B.No.15,

Kovvur-534350 Kovvur-534350 Kovvur-534350

To

My Dear Brother,

I thought that mother was at Eluru. About one month back I wrote a letter to Mother at Gudem, but now and then, here situations did not change.

Mainly, what I informed to you my brother is that, my husband harassed me daily physically and mentally till now, with so many patience I bear it, but I have no patience and I did not bear this harassment and I vexed with my life. If you have also neglected me I might have been any. I faced these consequences only for you and our mother, but not even for mine and my children.

He asked me loathsomeness questions and fearful talkings and pressed me for those answers.

Brother, after my marriage I never wrote single letter to you, but, today after deep thought, I wrote this one, please show me anyway and try to come out to me from this hell. Daily night time he beat me black and blue and at that time I don't be cry and don't be weep, and at that time of beating fire-stars were coming out from my eyes and in the day time he harassed me with talks. Presently no maid-servant or washer man are worked and all the works could done by me and the puss will come out from the stitches. Till now he did not take me to any doctor and provide any tablet, and said to me to go to your brother and took treatment there. What was informed to you on telephone is all false, really at the time when you telephoned to my neighbourers, I was being beaten by him at our house, because the telephone was not lifted by us.

Brother, I did not understand what has to be informed and what has not to be informed. Presently, I am living as a mad person. I did not sleep even single night. He did not leave me to live or die, without any reason he beat me and do not know when he beat. I am not in a position to talk even single word and suffered as like a dumb person. Brother, I put my life in your hands and what will you do otherwise suggest me to what I will do or if you leave me to my fate and also say to me to spent here only.

Sufferings faced by me for the sin done by me is sufficient and I have no energy to face the same in future. I tired a lot. My mind was completely senseless because of his beatings.

Our younger son was joined in Vamsi Hospital at Rajahmundry on 25th and 26th April, for his motions and on those two days I never feel happy.

Brother, do you come here once? You will, I am not calling you. If you have any mercy on me, think deeply and show me any way. I cannot live with him through out my life. This is my last word.

If you might have come here, I cannot say any more.

Yours

CHINNA

Ex.P-24:

To Dt:8-4-94

L. Sundaram, Lecturer,

Anjaneya Varada Veedhi,

Mudunurupadu P.O.,

TADEPALLIGUDEM.

To

Mother

Facts written by Chinna.

I hope this is a hell. Mainly, after one hour of the brother's went away on the day before yesterday, he came with younger brother-in-law and did not talk with me and also not asked who took me and my younger brother-in-law spent upto 10-10 PM and went away.

Later, here my position is very bad, always raised dispute. Yesterday, heat beat me black and blue and on hearing the same the neighbourers came and knocked the doors, but he did not open the doors and the reason was with whom, how many times and how many pictures I went to the cinemas in gudem? And on that I replied how I should go to pictures when I underwent operation. On that he replied after getting operation what works you have done and what acts you had taken, I know it. Even though your mother and brother knowing it but they concealed the facts, but I am not a fool. I know all the things, for that reason only your brother went away without wait till my arrival to the house and by saying so, he questioned me why I had come and I did not ask you to come and your people sent me here as they couldn't look after you, now you go away and I brought you whenever I like, but you should not live here. But God promisify I never talk even though he beat me and then he said to me that now I telephoned to your brother to take away you with him.

Both the children are feared for the yesterday's galata and today they are suffering from fever.

Really, yesterday I want to tell the same to brother on phone, but why? Even though if he comes, he can't do anything to me. Mother, for the yesterday's beatings, I have no capacity to bear and none were present to say so that I wrote this letter to you. But, one thing, anybody of you, either you or brother come here if you had any solution to give to me to lift out from this hell. I can't do Kapuram with him, and these words are never changed, and he did not mend. If you have capacity to settle this matter and to take away me, then only interfere with this matter. But don't do as like before and also to place before the elders and to lead us to Court. These type of persons never mend even though they lead to ten Courts.

No, if you have no source to help me, please forget me completely and don't raise even little of a word about me and don't think about me. I bear his harassment and beatings till the little of a patience and till my last breathe I would do Kapuram with him, but I will not do injustice to you and my children. Mother, everyday father comes in my dreams. Our father might have seen my sufferings, from the above,

so that you sent me to here and on that I was sent and I repeated so many times that after my arrival what kind of harassment might have been faced by me. Today he went to Tanuku, and on that I feared if he might have come with his brother and raised altercation with me.

If I telephoned or to give telegram to my brother, brother should not come. It is better to leave some days as stated by brother. Always he took while paper and forced me to sign, but I do not know the reason. I am leading my life every second with fear. If you like me you will pray for me, nothing do more. Don't torn this letter, give it to brother.

From

Chinna,

Gopalapuram

Ex.P-25:

K. AMIT KUMAR, M.Sc. Life Insurance Corporation of India

Phone:537596 Kovvur

Development Officer Gopalapuram

To

My dear mother and brother,

Written by china,

Mother,

Mainly, I am writing, from the date of my coming to here, I never fell happy. Everyday he harassed me and questioned me as to why did you come? Who asked you to come? And asks me to go to your house for the reason as your mother was retired so you took one lakh of rupees from her as your share and later your father passed away so you took another one lakh of ruppess i..e, in total

you would come with two lakhs of rupees otherwise don't come and otherwise I will kill you and also stated that he would marry again by taking dowry amount of rupees four lakhs. I feel that I might have been died for the everyday beatings during night time and he also alleging that I would cut your hand or leg then only your people would give and I don't know what to do. But you objected for me to come along with my children by saying to pay patience but how much time I would bear this and major operations even though he bet me black and blue and on that I am suffering from abdominal pain. Mother,

I had no more patience and I must die now and then in his hands. So, please show me one solution otherwise how many days I spent here with these harassment. Yourself and brother take one decision to save my life otherwise my children would face injustice.

I was beaten by him and brought one white paper and forced me to sign on it, but I do not know the reason, but I never signed even though he beat me so many times and I am feeling fear. One day he folded my hand to my back and on that I feel that it was broken and I felt very much pain. Everyday I feel it is a hell and he always told that he will give divorce, be care.

I do Kapuram for your sake only but I disliked to stay here even one day. I feared for every second. Mother, at least now you minding about me and save me from this hell and took me along with you. Yourself and brother come to here at once.

Your's daughter

Florence,

Chinna

Ex.P-26 (Diary):

Saturday - 1st January, 1994:

"Today I am at Tanuku gone to Church. Brother came to take me. Reached Tadepalligudem at 7'o clock."

Sunday - 23rd January, 1994:

“Operation done at night 1-20 P.M. Younger brother born to ‘Babu’ Kanna.”

Sunday - 30th January, 1994:

“Today sister-in-law and children went to Vijayawada”

Tuesday- 1st March, 1994:

“Today his birthday. He came to us at night 9’ o clock. Mother was not present, went to Rajahmundry along with Bangaru. He altercated with me and talking as he likes. Mother came at 10-30 and he went away at 12 hours without motorcycle.”

Saturday - 19th March, 1994:

“When I am witnessing the Hindi picture in T.V. at night 7’ o clock, both children slept, by that time himself and his younger brother came. Since day before yesterday he is angry with me and did not talk with me even though I offered chair but he kicked it with leg. Then I kept calm. Kanna suffering with motions from the morning and he is in dull and he stated to take Kanna along with him but I objected. He is talking some thing with mother in a loud voice. I took Kanna to the backyard then both of them went and returned back and forcibly took child from my hands. Because of the subordination given by me he forcibly took my son from my hands by the time of the said situation, my husband to be came up by stepping on steps and then he pushed him and both of them went into the street and gathered the people by crying like a mad dog upto 10 or 1 hours.”

Sunday - 20th March, 1994:

“Brother came at night. Mother informed the facts briefly, and on that brother informed one thing, it is better to kept as calm even though they raised altercation in the presence of mother, the God will teach them. Whenever they ask us to send then only we send otherwise we keep silent, but as like previously I did not want to go to their house and did not talk with them. This day cut the relation between us and them.”

Monday - 21st March, 1994:

“Early morning brother went to Eluru and when the mother returned back after see-under the brother he came behind her along with Kanna.”

Friday - 1st April, 1994:

“April Fools I and my children, that’s why we came today to our house.”

We started at Gudem by 2-30. When mother expressed to come, brother did not accept it. We reached by one hour. As per our estimation, by the time of our arrival the door was locked and on that myself, children and elder brother waited at the house of my neighbourer till 6-30 and then brother started to go, otherwise his return journey would late and so he went away. At 7-30 he and his younger brother came. I arranged bath to Babu in the neighbourers house and the neighbourer cooked food and served to us. Night by 10 PM his younger brother went away and he slept on a cot in the outside room and after completion of my work I asked him to take meals after preparing for his abusing or beating, but by the God’s grace on me he took meals and talked with him.”

Sunday - 3rd April, 1994:

“Camp with jeep. In jeep to Tanuku.”

“Gas exhausted.”

Thursday - 7th April, 1994:

“Today morning when I am singing a song he asked me about the song of that picture and I replied and again asked me did you see that Cinema? and on that I replied as with whom I went to Cinema while I was underwent operation and on that he stated that you had got a lot of freedom in your house and who would question your likings and never asked where you go and what will do, then I did not understand his opinion. If I am really a prostitute as treated by him and I am in attitude why I married him when an adultery was done by me, why I should bear his torture and harassment for doing Kapuram with him and I would have deserted him long back. When he is on that opinion he may give divorce to me and leave

me to my fate. Why he called me and took me and put me in troubles and why he beat me black and blue and trying to broke my hand by folding it. How so long I would bear this torture? Till my end of life is it happened.”

Friday - 8th April, 1994:

“Today at 9’ o clock gone to Tanuku. And night at 8-30 Telephone to neighbour that not coming. I do not know the reason for not coming to this night. I don’t bother about his not coming for this night but not even continuously for 10 nights.

Why because, to me and my children the God will save us. We are orphans. We are leading our lives as like Central Jail and we do not know when and why they beat and even we do not know when and why they abused.

It is their sin to born in my womb.”

Saturday - 9th April, 1994:

“He witnessed the T.V. upto night 1’ o clock and came to me and then I objected him and on that he slapped me forcibly. What you could do on 28th February would know to your younger sister, your mother and your elder brother and also to me and I also know what acts would be played by you at your house that means I was burnt with a cigarette that means that I slept with another by sharing his bed. Throw a blame on me without my fault I would not be spoiled. If I commits any fault I would face 10 times to it. The people who thrown blame on me will face the consequences, but that day will not come early. The God knows my truthfulness and nothing were to be known unnecessarily, by adjusting myself, only after their death the God will punish them, so that I kept as a calm as I am helpless.”

Sunday - 10th April, 1994:

There is no power from the morning of this day. He is witnessing the picture in the evening. Sister-in-law by name Santha Kumari came, but I don’t know the reason. I got more courage when she happened to come, then I would reveal my happiness and troubles to her, then I got some relief. Her husband came at 9’ o clock and they spent upto 10-30 and he talked with them happily. They went away.

After he took the meals, I completed my meals and slept. During that entire night Kanna was weeping and vomiting at 3 AM and later he slept.

Monday - 11th April, 1994:

“From morning no talkings, no serious. I offered Tiffin and he took it. He went on camp and returned within one hour. I asked him to bring milk tin. Soap was finished two days back. Cinthol soap was used for bath for the three months child. Anyhow there is no glaata till mid day and spent at home and no where he was gone. After so many days I talked with him, but in limit.

Agents came in the evening. He went to Devarapalli at 7-30 and stated that he took Lactogen by his return.

He stated that no servants would engage, even though he did not suffer, it is a burden to me to face.

Wednesday - 13th April, 1994:

“As usually he is in serious position. I prepared coffee and put in window in the morning but he did not take it. Then Kanna went there and handled the cup and poured it on himself and the entire body was with burns and then he applied burnol to Kanna and he stated to me to pray God for Kanna, that is alright and then he admonished me as to how you grown up without praying the God and never read Bible and also he stated that the male persons would wondering outside and talked such like by signs with his face as loathsomeness. Really, yesterday night I read Bible much time before going to bed. Really, I don't want to read Bible when he is present. If any he uttered, I would feel, so that

I read Bible only during nights at his absence. That fact will not necessarily remain to him. Never told.

I gave Polio drops to my younger son.”

Thursday - 14th April, 1994:

“After taking meals at 12’ o clock he went to Kovvur on Subrahmanyam motorcycle. Immediately after his gone Prasad came but I did not talk with him and even I did not offer water. He slept at outside. I informed to my husband at night 7 P.M. after his coming and on that he started to harass me by stating with same dialogues that your people will never entered into my house and even would not offered them the drinking water and will go upto the extent of divorce and also stated that it is my duty to pick up him wherever he goes and from where he telephoned to us and I would inform to him to come to my house and to take meals and to stay here for that night, similarly he came at 10-30 PM and took meals and slept at outside and he (my husband) slept on mat and that night was over without taking meals by me.”

Friday - 15th April, 1994:

“Entire this day he spent at house.

I am feeling so weakness, as without taking meals I slept on the yesterday night and that too the work is more. Did not take the gas, as no money. I faced my problems.

I am feeling weakness and go to bed by 9 hours without taking meals and I served to him.”

Saturday - 16th April, 1994:

From morning stayed in home because of money problem and no medical.

I asked him to get back to Kanna at night 7’ o clock.

He stated that we reside by the side of Agent, if you talk any more I will beat you. Night no meals to me.

During entire nights the power would cut. Kanna also even did not sleep and he (my husband) did not care about Kanna, and by the by he stated that weekly once you would have beaten by me otherwise I would not control you, that mid night.

From three nights no meals.

Sunday - 17th April, 1994:

"Morning Prasad came.

He asked me to cook food and I prepared it. Both of them took meals and went away at 12 Noon.

My stitches were oozing puss, because I took red-gram dall and for attending all the work and I showed the same to him and he stated in his nature that might have been infected.

I telephoned to him at his office and on that he replied that work was not completed and informed that he telephoned to me. He telephoned to me in the night and informed that he goes to Tanuku and did not come to house to that night and on that I did not give any reply as it is his will and would do according to his likes. The neighbouring people were not present and during nights the power was cut, so how I would stay with both the children, he knows all these things, but with an intention to put me in troubles he frequently goes to Tanuku for two or three days, without any work even during nights also stayed there. I know all these things but the time will not come to ask him."

Monday - 18th April, 1994:

"Night 7'o clock but he did not come. There, office P.P. engage. I telephoned to Branch Manager's house and came to know.

9-30 he came to house after two days.

As I cooked cucumber and eggs, he asked me do you cooked these type of meals to your father for three years. I asked him so many times for not to disclose my father, mother aspects. Why he should raise that topic. Did I raise topic about his father and mother? The parents-in-law to me are to the parents-in-law to him also, but their affairs are unnecessary to me."

Tuesday - 19th April, 1994:

Today morning he informed that he took me to Hospital, at Devarapalli and on that I disagreed for the same and on that he gave me Rs.100/- to me to go and purchase medicines and he took that amount by the time he went to office, that is another thing. By the time of his return he took soaps and medicines to the children. Returned early.

Wednesday - 20th April, 1994:

Morning 11' o clock goes to Tanuku and return at 8-30.

Morning he asked me to brought chicken but I did not give any reply. I came about 20 days back but only one time he took. I did not observe fastness and I ate all the things without taking meals properly or regularly and leading my life with altercations and according to my fate.

Night again I asked him about divorce.

He alleged fearful words, that words would stop the heart, broke the heart and not to reveal to anybody and by the by not to hide in the heart. On that spot I want to die, but no dare. More brave is necessary to die, but I came to know now I wait to get the same on what day and what second and prays to God to give it and with that ideas I slept but Kanna did not slept on the entire night.”

Thursday - 21st April, 1994:

“Morning he telephoned to Vijayawada to sister-in-law and got the number of brother and telephoned to the office at Eluru 9 A.M. but the brother was not present and on that he informed to get telephoned to his office. Left to office by 11 hours. No more talks.”

Saturday - 23rd April, 1994:

“Morning altercation with Saraswathi. He talked with her as he is a good person and I am a bad and on that I got weeping.

Mid-day I offered Tea and he thrown the cup. At night 2 A.M. he closed the doors and windows and woke up me and beat me and caught hold of my tuft of hair and

pulled and by that time Kanna is in wakefulness and by the time of every beating he was afraid and came to me with fear and these things are planted in his child heart which he never forget, but now he is helpless even he did not talk clearly and by that time that younger boy vomiting a lot and also with motions, 'to complete the milk tin early you administered more to him, because of that he happened like this' he stated and also he stated that he will see my end if anybody happens to the child and also stated that he will beat black and blue and he knows all the talks of labour people."

Sunday - 24th April, 1994:

"When the Kanna was weeping, he uttered that if he beat him both would join, he also uttered the child with that big words, on that I thought that after they grown up also their situations are also like me? Early morning he went somewhere. Younger son will attacked with loose motions and he suffered from vomitings, fever and by weeping, and he is in serious condition, I don't know what to do, and with these two children where I did go, and with these thoughts I spent some time but by God's grace he came and I informed to him about the situation and on that he took him to Subbareddy Hospital and there they gave cyline and including Kanna we never take any food and we returned back to home at night 9' o clock. We hope to take to Rajahmundry by tomorrow. This night babu slept normally.

Monday - 25th April, 1994:

"Morning at 10' o clock Taxi, Rajahmundry, D.V. Ramakrishna. There Dr. Vamsi Krishna informed that there is no serious, admitted in hospital and now I am in some relax. He is at Kovvur. Gas return and then meals."

Tuesday - 26th April, 1994:

"From today morning he is suffering with vomitings and motions. Informed to Doctor and on that Doctor gave two cyline bottles and later his health is in good condition.

I hope that God will tested us to avoid the altercation between us and it is better to understand by him. By the evening he and babu health is in good condition, and

doctor informed to discharge. Taxi to Gopalapuram.

Wednesday - 27th April, 1994:

“Today is elder sister’s birthday. I wore the saree today is the saree is expected to wore on my Birthday, if I am revealed this issue to elder sister she feel very happy. At the early days of marriage we both sent greetings, but now none.”

Thursday - 28th April, 1994:

Morning phone from Prasad to come his brother for some purpose of their sister.

Kanna suffering from fever, I am feeling unwell with cold and he is also not feeling well even though he went to Tanuku. Kanna was taken to Government Hospital by him and from there he telephoned at night 7’ o clock as he prepared to come.

Night 10’ o clock he came along with his mother and took meals and slept, but I did not talk with him.”

Friday - 29th April, 1994:

“She informed that to her elder daughter a match was coming from Kurnool, but I did not ask about the particulars.”

Saturday - 30th April, 1994:

“He went to Office, later grand mother telephoned from Kovvur to come and from there to go to Mandapaka.

He came to house by night at 9-30 P.M. as usually his face is ever serious and she informed him that to go in the early morning of tomorrow.”

Sunday - 01st May, 1994:

“Morning himself, aunt and Kanna went to Tanuku. During this night, here is heavy rain and I am afraid of it and I am sitting in the neighbourer’s house. He came by 11 P.M. and he informed that Kanna weeping more.”

Monday - 02nd May, 1994:

“Today he spent at house. On the mid-day I remember Kanna and got weeping more.

I came to understand that without Kanna I cannot live even one day. I informed to him to take Kanna tomorrow and he accepted it.”

Tuesday - 03rd May, 1994:

“Morning camp. He informed that he would gone to Tanuku from Kovvur and took Kanna. I am feeling bore. I am waiting for them without Kanna, for so many hours.

Night at 9-30 PM while he was travelling with Kanna on motorcycle from Tanuku to Gopalapuram. They met with an accident and it was serious and on that he informed that never sent him to any place.”

Thursday - 05th May, 1994:

“Again they telephoned during night and informed to come on tomorrow about sister marriage.

Today evening the neighbourers went on tour.”

Friday - 06th May, 1994:

“He stated that he will go to Tanuku from Kovvur.

The neighbourers also were not present, so I asked him to come to night, but he did not come. I alone slept this night.

He came tin the morning at 8 AM.

Saturday - 07th May, 1994:

“Night at 1 A.M. Kanna woke up without any cause and without weeping and on that he stated that I gave more food to him because of that he felt stomach pain

and woke up and he stated that I took him to Hospital, if anything happens to him, I will see your end and beat him by caught hold of the tuft of my hair and on that I did not sleep during entire night, but the child did not weep and he beat me without any cause. I am living for the kids at that time how I put them in troubles, as like him I did not show any external love on the kids. God behind me so even though he beat me daily but

I pray God not to beat you.”

Sunday - 08th May, 1994:

“I kept so silent. Today’s evening he took one barber and tonsured to Kanna.”

Monday - 09th May, 1994:

“In the morning, Kanna is eating earth and on that he abused me like double meaning words, and he also abused me that, Kanna another time if you would eat earth I will beat your mother. If anything he uttered we are helpless only the God will see us to do justice.

When I offered coffee to him at 7’ o clock, he objected for the same and went away. Good. I am at free mind without peaceful till he returns.”

39. If we read the contents of Exs.P-23 to P-25 in correlation with the entries in Ex.P-26, dairy, date wise, the gist of the letters Exs.P-23 to P-25 were noted against the particular dates in the said diary. Admittedly A-1 is working in LIC and the said diary Ex.P-26 also belongs to LIC. It is not the case that PWs.2 and 3 produced Ex.P-26, diary, before the police. The police, after receiving Exs.P-23 to P-25 made a search in the house of the accused and seized Ex.P-26 under the cover of mediators report Ex.P-22. Ex.P-23 is the letter dated 09-05-1993 written on the LIC letterhead, addressed by the deceased, and Ex.P-25 is also the letterhead of LIC and it contains no date. In any view of the matter, Ex.P-26 is a crucial document which has vital bearing in giving strength to the letters Exs.P-23 to P-25. The seizure of Ex.P-26 by police cannot be doubted as it was seized in the house of the accused itself, that too in the almyrah, in the presence of the mediators. Furthermore if we go through the contents of the said dairy, the events

in her day-to-day life were noted by the deceased and the events in Exs.P-23 to P-25 are few among them. In this backdrop of the case, the saying that "Men may lie, but document will not lie" is applicable to the facts and circumstances of the case on hand. Therefore, documentary evidence Exs.P-23 to P-26 clinches the whole issue while drawing the presumption under Section 113-A of the Act.

40. As per Section 161 Cr.P.C. statement of PW-1, on the night after return from Eluru, A-1 beat the deceased and there was a galata and on the date of incident during night the deceased went inside the bathroom and committed suicide by pouring kerosene and setting fire to herself. Of course PW-1 turned hostile and did not support the prosecution case, however, he stated that the hand fingers of his father (A-1) also burnt. The said evidence was elicited during the cross-examination of PW-1. It is also suggested to PW-16, doctor, by the defence counsel that A-1 stated before him that while he was saving his wife, he sustained those burn injuries and the same was noted in the O.P. register of the hospital. When such a defence that A-1 sustained injuries while saving the deceased is taken, the conduct of A-1 in not attending the deceased to shift her from the place of incident to the hospital, is doubtful. It is the evidence of the prosecution witnesses that the deceased committed suicide in the bathroom and on seeing the smoke therefrom, the neighbours rushed there, put off the flames, and brought the deceased outside of the bathroom with burn injuries. None of the witnesses deposed that they have seen A-1 at the time of incident. Even as per the prosecution version, the accused was arrested on the evening of 02-08-1996 at the bus stand. When it is suggested on behalf of the defence that A-1 was present with the deceased and made an attempt to put off the flames, his absence from the scene till he was arrested speaks about his conduct. If really he is interested towards the deceased, he would have immediately shifted her to the hospital, and moreover the silence on his part all through while the deceased was in flames is nothing but inviting the death of the deceased so that he can get rid of her forever. No ordinarily prudent husband, if really has affection and concern towards his wife, will not be the silent spectator at that helm of situation when the wife is in flames. The presence of the accused at the time of the incident and making attempt, as pleaded by him, to put off the flames gives ample doubt that he might be the abettor to drive the deceased to commit suicide. Furthermore the presence of the

accused along with the deceased at the time of the incident goes to show that he may also be responsible to cause the death of the deceased in fire.

41. This is a case where the deceased was humiliated and beaten black and blue in her matrimonial house by the accused. The contents of Exs.P-23 to P-26 are self-explanatory about the cruel conduct of the accused.

42. Therefore, in any view of the matter, the evidence on record amply established that there is continuous wilful harassment on the part of A-1 towards the deceased, with view to coerce her to meet his unlawful demands, and such harassment drove her to commit suicide. Even otherwise while drawing the presumption under Section 113-A of IPC also, the prosecution is able to prove the guilt of A-1 beyond reasonable doubt for the offence under Section 498-A of IPC.

43. Now let us see whether the prosecution proved the guilt of A-1 for the offence under Section 304-B of IPC. Section 304-B of IPC reads as follows:

“304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, “dowry” shall have the same meaning as in Section 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.”

44. To come to a conclusion for the offence punishable under Section 304-B of IPC, the Court can draw presumption under Section 113-B of the Act, which is extracted as under:

“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, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

In view of the above provisions, in order to prove ‘dowry death’ under Section 304-B of IPC, the prosecution is obliged to prove that:

- (a) The death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) Such death have occurred within 7 years of her marriage;
- (c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) Such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) To such cruelty or harassment the deceased should have been subjected to soon before her death.

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

- 1) The question before the Court must be whether the accused has committed the dowry death of a woman (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B of IPC).
- 2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- 3) Such cruelty or harassment was for or in connection with any demand for dowry.
- 4) Such cruelty or harassment was soon before her death.

46. In dowry death and suicide cases, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence which could be direct or indirect. The conduct of husband and his relatives also plays a vital role in coming to the conclusion of the guilt.

47. It has to be kept in mind that for an offence of 'dowry death' under Section 304-B of IPC, the term 'dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. For invoking the legal presumption, the prosecution has to prove that "soon before her death" the deceased was subjected to cruelty or harassment in connection with the demand of dowry. But the number of days alone is not a criterion and there should be a perceptible nexus between her death and dowry related harassment inflicted on her.

48. In **GURDITTA SINGH v. STATE OF RAJASTHAN** (1992 CRI.L.J 309), a Division Bench of Rajasthan High Court, while dealing with the provisions of Sections 304-B of IPC and 113-B of the Act, observed that there are sufficient in-built safeguards for the accused in these provisions itself before raising a presumption for dowry death or holding the accused guilty of such offence because the Courts are to scrutinise the evidence carefully as cases are not rare in which occasionally there is demand and then the atmosphere becomes calm and quite and then again there is demand. The Division Bench also sounded a note of caution by observing that the Courts should be vigilant to scrutinise the evidence regarding the harassment and torture carefully if the witnesses are relatives of the deceased and the relations between them and her in-laws are strained for any reason whatsoever it might be.

49. On a conjoint reading of Section 113-B of the Act and 304-B of IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates, and evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the

circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Act. No definite period has been indicated and the expression "soon before" is not defined. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned.

50. In the backdrop of the above legal position, it has to be seen whether the evidence adduced by the prosecution established the ingredients of Section 304-B of IPC, by drawing the presumption under Section 113-B of the Act.

51. In proving the prosecution case for the offence under Section 304-B of IPC, the evidence of the material witnesses PWs.2 and 3 is of paramount importance. Though PWs.2 and 3 are none other than the brother and mother of the deceased, their evidence cannot be brushed aside on the sole ground that they are the interested witnesses. In a case of this nature, where the case of the prosecution to some extent falls under the circumstantial evidence, the evidence of the interested witnesses has to be taken into consideration while deciding the issue in right perspective. It was held in a catena of decisions that even if the solitary witness is an interested one, the conviction can be founded provided his/her evidence is natural, convincing, trustworthy and genuine. Though PWs.2 and 3 are interested witnesses and blood relatives of the deceased, in any view of the findings arrived at in the preceding paragraphs for the offence under Section 498-A of IPC, their evidence is natural, convincing, trustworthy and genuine and hence, their evidence cannot be termed as interested and it can be relied upon.

52. As stated already, the deceased died within seven years after the marriage by committing suicide. As stated in the earlier part of my discussion, A-1 harassed the deceased continuously to meet his demand and when she failed to fulfil the same, she was subjected to harassment and cruelty and the same drove her to commit

suicide. It is the evidence of PWs.2 and 3 that five days prior to the alleged suicide also, A-1 humiliated her while demanding money for purchasing the car and when she failed to comply the same, he made a demand to PWs.2 and 3 and when they both expressed the inability and told that they will pay later, A-1 grew wild, beat the deceased before all the invitees in the house warming ceremony and took her forcibly to his house and five days thereafter, the deceased committed suicide.

53. The evidence of PWs.2 and 3 shows that at the time of marriage, they have given dowry and also made some presentations to A-1. Three or four months thereafter, A-1 put up family at Gopalapuram and during that period, he demanded the above said articles and amenities for which the father of the deceased expressed inability and told that he will provide the same in due course, for which A-1 refused. In that context, PWs.2 and 3 visited the house of the A-1 and due to pressure of A-2 and A-3, the father of the deceased provided all the articles by way of instalments. To rebut the evidence of PWs.2 and 3, A-1 produced the evidence of DW-1. According to DW-1, A-1 purchased the household articles under Exs.D-9 to D-13, bills.

A-1 got marked Exs.D-9 to D-13 showing that he purchased the household articles from his own funds, but there is no evidence to show that the said amounts were not paid by PWs.2 and 3. It is also the evidence of PWs.2 and 3 that about two months after A-1 put up the family at Gopalapuram, he demanded an amount of Rs.25,000/- for purchasing motorcycle for which they paid an amount of Rs.10,000/- and the said amount was paid during the course of compromise of the case on the file of Kovvur Magistrate Court. PW-11 also corroborated the evidence of PWs.2 and 3 about the house warming ceremony and stated that he came to know that in the function A-1 demanded the deceased an amount of Rs.1,00,000/-.

54. In any view of the matter, the evidence of PWs.2, 3 and 11 corroborated the last event of demand of dowry by A-1 from the deceased and when such demand is not fulfilled by the deceased and PWs.2 and 3, he grew wild, beat the deceased and took away her to his house and five days thereafter, the deceased committed suicide. Only four days after her return to her matrimonial house, she was done to death. Therefore, it can very well be said that the demand of dowry and

harassment, to which the deceased was subjected by A-1, was soon before her death. It is not the first occasion of A-1 demanding the money from the deceased to purchase car. The evidence of PWs.2 and 3 clearly discloses that from the beginning of the marriage, A-1 was continuously demanding money from them on one ground or the other i.e., household articles, motorcycle and car, and the last demand was made in the house warming ceremony at the house of PW-2, for purchasing car. It has come in the evidence that the deceased had revealed to her parents about the demand of dowry, cruelty and harassment caused by A-1 towards her. Further, a perusal of Ex.P-25, the scribe narrated her plight in the hands of the accused while demanding the money, and Exs.P-23 and P-24 are the subsequent letters. If we correlate and connect Ex.P-25 with Exs.P-23 and P-25, the series of events narrated by the executant made out that the conduct of A-1 towards the deceased is a continuous harassment to meet his demands for money for purchasing articles of his choice much less the household articles, motorcycle and car.

55. In the light of this evidence, the prosecution proved that there is demand for money for purchasing motorcycle and car. So it has to be seen whether this demand of money by A-1 for purchasing household articles, motorcycle and car comes within the definition of 'dowry', as the said amount was not paid by PW-3 and her husband voluntarily, and it was paid in connection with the marriage.

56. At this juncture, it is pertinent to note that for the purpose of Section 304-B of IPC, 'dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

2. Dowry.-Dowry means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I- (omitted)

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

57. In **BACHNI DEVI v. STATE OF HARYANA** (AIR 2011 SC 1098), the Supreme Court held that if a demand for property or valuable security, directly or indirectly, has a nexus with marriage, such demand would constitute ‘demand of dowry’; the cause or reason for such demand being immaterial. The sum and substance of the said ruling was that 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 Dowry Prohibition Act.

58. Therefore, while following the above legal position, in the present case, the demand of money for purchase of motorcycle and car made by A-1 has a nexus with the marriage, and it amounts to demand of dowry. Accordingly, viewed from any angle, in the totality of the circumstances, there is ample evidence on record that the death of the deceased is an unnatural death, and the same had occurred within seven years of her marriage; and soon before the death, she was subjected to cruelty and harassment both physically and mentally by A-1 and such cruelty and harassment is in connection with the demand of dowry. Hence, all the ingredients to bring home the guilt for the offence under Section 304-B of IPC are established against A-1 by the prosecution evidence. As a matter of law, presumption under Section 113-B of the Act is fully attracted in the facts and circumstances of the present case. The appellant-A1 failed to rebut the presumption under Section 113-B of the Act.

59. For the foregoing reasons, I find that the prosecution proved the guilt of the appellant-A1 for the offences under Sections 498-A and 304-B of IPC beyond all reasonable doubts. The trial Court also well discussed the evidence in right

perspective and came to the correct conclusion while convicting the appellant-A1 for the said offences.

60. The trial Court, having taken into consideration the conduct of the appellant-A1, sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- for the offence under Section 498-A of IPC and to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- for the offence under Section 304-B of IPC. Having regard to the gravity of the offence and in view of the facts and circumstances of the case, the said sentences of imprisonment imposed on the appellant-A1 are justified and I see no grounds to interfere with the same.

61. In the result, the Criminal Appeal is dismissed confirming the conviction and the sentence imposed on the appellant-A1 for the offences under Sections 498-A and 304-B of IPC, by the judgment dated 20-08-2004 passed in S.C.No.108 of 1999 on the file of the V Additional Sessions Judge, West Godavari, Eluru. The trial Court is directed to take appropriate steps immediately for apprehension of the appellant-A1 to serve the unserved sentence of imprisonment.

62. As seen from the impugned order, the trial Court ordered M.Os.1 to 10 to be destroyed after appeal time is over. But, as seen from material objects, M.O.5 is anklets-2 (silver), M.O.6 is toe rings-2 (silver), M.O.7 is ear rings (gold). M.Os.5 to 7 are valuable properties admittedly seized on the dead body of the deceased. Therefore, M.Os.5 to 7 are ordered to be returned to the legal heirs of the deceased after appeal time is over.

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