Supreme Court of India Kans Raj vs State Of Punjab & Ors on 26 April, 2000 Author: Sethi Bench: G.B. Pattanaik, R.P. Sethi, Shivaraj V. Patil. CASE NO.: Appeal (crl.) 688-90 of 1993

PETITIONER: KANS RAJ

Vs.

RESPONDENT: STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 26/04/2000

BENCH: G.B. Pattanaik, R.P. Sethi, & Shivaraj V. Patil.

JUDGMENT: SETHI,J. L...I...T.....T.....T.....T.....T.....T.....T..J Sunita Kumari married on 9th July, 1985 was found dead on 23rd October, 1988 at the residence of her in-laws at Batala in Punjab. The death was found to have occurred not under the ordinary circumstances but was the result of the asphyxia. On post-mortem it was found that the deceased had injuries on her person including the ligature mark 20 cm x 2 cm on the front, right and left side of neck, reddish brown in colour starting from left side of neck, 2 cm below the left angle of jaw passing just above the thyroid cartil-age and going upto a point 2 cm below the right angle of jaw. The parents of the deceased were allegedly not informed about her death. It was a shocking occasion for Ram Kishan, PW5 when he came to deliver some customary presents to her sister on the occasion of Karva Chauth, a fast observed by married women for the safety and long life of their husbands, when he found the dead body of his sister Sunita lying at the entrance room and the respondents were making preparations for her cremation. Noticing ligature marks on the neck of her sister, Ram Kishan PW5 telephonically informed his parents about the death and himself went to the police station to lodge a report Exh.PF. On the basis of the statement of PW5 a case under Section 306 IPC was registered against the respondents. After investigation the prosecution presented the charge-sheet against Rakesh Kumar, husband of the deceased and Ram Piari, the mother-in-law of the deceased. Ramesh Kumar, brother-in-law and Bharti, sister-in-law of the deceased were originally shown in Column No.2 of the report under Section 173 of the Code of Criminal Procedure. After recording some evidence, Ramesh Kumar and Bharti were also summoned as accused. The appellant, the father of the deceased, filed a separate complaint under Section 302 and 304B of the Indian Penal Code against all the respondents. The criminal case filed by the appellant was also committed to the Sessions Court and both the appellant's complaint and the police case were heard and decided together by the Additional Sessions Judge, Gurdaspur who, vide his judgment dated 28th August, 1990, convicted the respondents under Section 304B IPC and sentenced each of them to undergo 10 year Rigorous Imprisonment. He also found them guilty for the commission of offence under Section 306 and sentenced them to undergo rigorous imprisonment for 7 years besides paying a fine of Rs.250/- each. The respondents were also found guilty for the commission of offence punishable under Section 498A IPC and were sentenced

to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.250/- each. All these sentences were to run concurrently. The respondents herein filed an appeal in the High Court against the judgment of conviction and sentence passed against them by the Trial Court and the appellant, father of the deceased, filed a revision petition against the said judgment praying for enhancement of the sentence to imprisonment for life on proof of the charge under Section 304B of the IPC. Both the appeals and the revision were heard together by a learned Single Judge of the High Court who vide her judgment impugned in this appeal acquitted the respondents of all the charges. The revision petition filed by the father of the deceased was dismissed holding that the same had no merits. Ms.Anita Pandey, learned Advocate appearing for the appellant has vehemently argued that the judgment of the High Court suffers from legal infirmities which requires to be set aside and the respondents are liable to be convicted and sentenced for the commission of heinous offence of dowry death, a social evil allegedly commonly prevalent in the society. She has contended that the judgment of the High Court is based upon conjectures and hypothesis which are devoid of any legal sanction. The High Court is alleged to have not properly appreciated the evidence led by the prosecution in the case which, according to the learned counsel, had proved beyond doubt that the respondents were guilty of the commission of the offences with which they were charged and convicted by the Trial Court. Relying upon the provisions of Section 113B of the Evidence Act, the learned counsel has contended that as the death of Ms.Sunita Kumari had occurred within 7 years of marriage and the prosecution had established her harassment on account of demand of dowry, a legal presumption was to be drawn against the respondents for holding them guilty and sentencing them for the offences committed. Supporting the case of the respondents Shri U.R. Lalit, Senior Advocate appearing for@@ JJJJJJJJJJJJJJJJJJJJ them has submitted that there being no direct evidence@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ regarding the cause of the death or circumstances leading to death, particularly in the absence of demand of dowry soon before the death, none of the respondents could be held guilty for the offences with which they were charged, convicted and sentenced by the Trial Court. According to the learned counsel the statements made by the deceased before her death were not admissible in evidence even under Section 32(1) of the Evidence Act and in the absence of demand of dowry immediately before the alleged occurrence no inference or presumption could be drawn against the respondents. We have heard the learned counsel for the parties at length and perused the record. We have also minutely examined the original record of the Trial Court and critically analysed the statements of the witnesses produced by the prosecution. We agree with the learned counsel for the respondents 3 to 5 that his clients, namely, Ramesh Kumar, brother of the husband, Ram Pyari, mother of the husband and Bharti sister-in-law of the husband-accused cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the appellant worth the name against the aforesaid respondents. Even PW Nos.5 and 6 have not brought on record any

incriminating circumstance attributable to the aforesaid accused which could be made the basis for their conviction. Ram Kishan, PW5 in his deposition before the Court had stated that "after the marriage Rakesh Kumar, accused raised a demand of Rs.15,000/- for a scooter and refrigerator. We fulfilled that demand by giving Rs.20,000/- to him for scooter and refrigerator..... Rakesh Kumar used to threaten Sunita that she would be done to death because of having inadequate dowry. On 21st September, 1988 Sunita had come to my younger brother Tarsem in connection with a ceremony concerning his son. She also visited us as the house of Tarsem Kumar is close to our house. She stayed with us for the night. We gave her customary present i.e. clothes etc. and cash amount of Rs.500/-. She apprehended danger to her life in the house of her in-laws and was not willing to go there". He has not referred to any demand of dowry or harassment by the respondents except Rakesh Kumar. Tarsem Kumar, the other brother of the deceased at whose residence she had gone on 21st September, 1988 has not been produced as a witness in the case. Kans Raj PW6, the father of the deceased stated before the Trial Court that Sunit Kumari had told him that she was being taunted by her mother-in-law Ram Piari, accused Ramesh Chander and his wife Bharti accused besides her husband Rakesh Kumar. The details of the alleged taunting have not been spelt out. The only thing stated is that the accused used to tell the deceased that she being the daughter of BJP leader, who used to boast about his financial position had brought inadequate dowry. He further stated that various sums of money and the colour TV was given to Rakesh Kumar on his demand. Amar Nath and Janak Raj, President and General Secretary of Mahajan Sabha respecively and one Kundan Lal Gaba were taken by him to the residence of the accused persons. The deceased was alleged to have been taunted again in presence of the aforesaid witnesses. However, none of the aforesaid witnesses supported the case of the prosecution. In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that respondents 3 to 5 were roped in the case only on the ground of being close relations of respondent No.2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case. We, however, find that there is reliable legal and cogent evidence on record to connect Rakesh Kumar, respondent No.2 with the commission of the crime. There is evidence showing that immediately after his marriage with

the deceased the respondent-husband started harassing her for the demand of dowry. We do not find substance in the submission of the learned defence counsel that the statements made before her death by the deceased were not admissible in evidence under Section 32(1) of the Evidence Act and even if such statements were admissible, there does not allegedly exist any circumstance which could be shown to prove that the deceased was subjected to cruelty or harassment by her husband for or in connection with any demand of dowry soon before her death. It is contended that the words "soon before her death" appearing in Section 304B has a relation of time between the demand or harassment and the date of actual death. It is contended that the demand and harassment must be proximately close for the purposes of drawing inference against the accused persons. The offence of "dowry death" was incorporated in the Indian Penal Code and corresponding amendment made in the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Evidence Act by way of insertion of Section 113B vide Act@@ JJJJJJJJJJJJJJJJJJJJJJJ No.43 of 1986. In fact the Dowry Prohibition Act, 1961 being Act No.28 of 1961 was enacted on 20th May, 1961 with an object to prohibit to giving or taking the dowry. The insertion of Section 304B of the Indian Penal Code and Section 113B in the Evidence Act besides other circumstances was also referable to the 91st Report dated 10th August, 1983 of the Law Commission. In the Statement of Objects and Reasons to Act No.28 of 1961 it was stated: "The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time enures that any dowry, if given does enure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament, Hence, the present Bill." Realising the ever increasing and disturbing proportions of the evil of dowry system, the Act was again amended by Act No.63 of 1984 taking note of the observations of the Committee on Status of Women in India and with a view to making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity, the Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth in its proceedings and after noting the observations of Pt.Jawaharlal Nehru, recommended to examine the working of Act No.28 of 1961 and after considering the comments received on the Report from the State Governments, Union Territories, Administrations and different administrative Ministries of the Union concerned with the matter, decided to modify the original definition of "dowry" with consequential amendment in the Act. Again finding that the Dowry Prohibition Act, 1961 has not been so deterrent, as it was expected to be, the Parliament made amendments in the Act vide Act No.43 of 1986. In the Statement of Objects and Reasons of the said Act it was stated: "The

Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act 1984 to give effect to certain recommendations of the Joint Committee of the House of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended. 2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are: (a) The minimum punishment for taking or abetting the taking of dowry under section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand. (b) The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry. (c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act. (d) Any advertisement in any newspaper, periodical journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees. (e) Offences under the Act are proposed to be made non-bailable. (f) Provisions has also been made for appointment of Dowry Prohibition Officers by the State Governments for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women). (g) A new offence of"dowry death" is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed. 3. The Bill seeks to achieve the aforesaid objects." The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, 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 should 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. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113B of the Evidence Act. It has to be kept

in mind that presumption under Section 113B is a presumption of law. We do not agree with the submissions made by Mr.Lalit, learned Senior Counsel for the accused that the statement made by the deceased to her relations before her death were not admissible in evidence on account of intervening period between the date of making the statement and her death. Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without an amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. The phrase "circumstances of the transaction" were considered and explained in Pakala Narayana Swami v. Emperor [AIR 1939 PC 47]: "The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular persons, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused."Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae". Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been

caused, for the condition of the admissibility of the evidence is that "the cause of (the declarant's) death comes into question". The death referred to in Section 32(1) of the Evidence Act includes suicidal besides homicidal death. Fazal Ali, J. in Sharad Birdhichand Sarda v. State of Maharashtra [1984 (4) SCC 116] after referring to the decisions of this Court in Hanumant v. State of Madhya Pradesh [1952 SCR 1091], Dharambir Singh vs. State of Punjab[Criminal Appeal No.98 of 1958, decided on November 4, 1958], Ratan Gond v. State of Bihar [1959 SCR 1336], Pakala Narayana Swami (supra), Shiv Kumar v. State of Uttar Pradesh [Criminal Appeal No.55 of 1966, decided on July 29, 1966], Mahnohar Lal v. State of Punjab[1981 Cri.LJ 1373 (P&H)] and other cases held: "We fully agree with the above observations made by the learned Judges. In Protima Dutta v. State [1977 (81) Cal WN 713] while relying on Hanumant Case the Calcutta High Court has clearly pointed out the nature and limits of the doctrine of proximity and has observed that in some cases where there is a sustained cruelty, the proximate may extend even to a period of three years. In this connection, the high Court observed thus: The 'transaction' in this case is systematic ill- treatment for years since the marriage of Sumana and incitement to end her life. Circumstances of the transaction include evidence of cruelty which produces a state of mind favourable to suicide. Although that would not by itself be sufficient unless there was evidence of incitement to end her life it would be relevant as evidence. This observation taken as a whole would, in my view, imply that the time factor is not always a criterion in determining whether the piece of evidence is properly included within 'circumstances of transaction'... 'In that case the allegation was that there was sustained cruelty extending over a period of three years interspersed with exhortation to the victim to end her life'. His Lordship further observed and held that the evidence of cruelty was one continuous chain, several links of which were touched up by the exhortations to die. 'Thus evidence of cruelty, ill- treatment and exhortation to end her life adduced in the case must be held admissible, together with the statement of Nilima (who committed suicide) in that regard which related to circumstances terminating in suicide'. Similarly, in Onkar v. State of Madhya Pradesh [1974 Cri.LJ 1200] while following the decision of the Privy Council in Pakala Narayana Swami case, the Madhya Pradesh High Court has explained the nature of the circumstances contemplated by Section 32 of the Evidence Act thus: The circumstances must have some proximate relation to the actual occurrence and they can only include the acts done when and where the death was caused....Thus a statement merely suggesting motive for a crime cannot be admitted in evidence unless it is so intimately connected with the transaction itself as to be a circumstance of the transaction. In the instant case evidence has been led about statements made by the deceased long before this incident which may suggest motive for the crime. In Allijan Munshi v. State [AIR 1960 Bom 290] the Bombay High Court has taken a similar view. In Chinnavalayan v. State of Madras [1959 Mad LJ 246] two eminent Judges of the Madras High Court while dealing with the connotation of the word 'circumstances' observed thus: The special circumstances permitted to transgress the time factor is, for example, a case of

prolonged poisoning, while the special circumstances permitted to transgress the distance factor is, for example, a case of decoying with intent to murder. This is because the natural meaning of the words, according to their Lordships, do not convey any of the limitations such as (1) that the statement must be made after the transaction has taken place, (2) that the person making it must be at any rate near death, (3) that the circumstances can only include acts done when and where the death was caused. But the circumstances must be circumstances of the transaction and they must have some proximate relation to the actual occurrence. Before closing this chapter we might state that the Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English Law where only the statements which directly relate to the cause of death are admissible. The second part of clause (1) of Section 32, viz.,"the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law. This distinction has been clearly pointed out in the case of Rajindra Kumar v. State [AIR 1960 Punj 310] where the following observations were made: Clause (1) of Section 32 of the Indian Evidence Act provides that statements, written or verbal, of relevant facts made by a person who is dead,. . . .are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question. . . It is well settled by now that there is difference between the Indian Rule and the English Rule with regard to the necessity of the declaration having been made under expectation of death. In the English Law the declaration should have been made under the sense of impending death whereas under the Indian Law it is not necessary for the admissibility of a dying declaration that the deceased at the time of making it should have been under the expectation of death. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge: (1) Section 32 is an exception of the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice. (2) The test of proximity cannot be too literally construed and practically reduced to a cut-and- dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements

come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3- 4 months the statement may be admissible under Section 32. (3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring. (4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide. (5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant." In Ratan Singh vs. State of Himachal Pradesh [1997 (4) SCC 161] this Court held that the expression "circumstances of transaction which resulted in his death" mean that there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death. Relying upon Sharad Birdhichand Sarda's case (supra) the Court held that: "It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death." In view of this legal position statements of Ms.Sunita made to her parents, brother and other acquaintances, before@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ her death are admissible in evidence under Section 32 of the@@ JJJJJJJJJJJJ Evidence Act. 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.. No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on Sham Lal v. State of Haryana [1997 (9) SCC 579] is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up between the two sides for which Panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a Panchayat was shown to have held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home and her tragic end. Such is not the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved. Mr.Lalit, learned Senior Counsel has further contended that as the prosecution@@ JJJJJJJJJJ had failed to prove the cruelty or harassment for or in@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ connection with the demand of dowry, the High Court was justified in acquitting the accused persons including Rakesh Kumar, respondent No.2. He also pointed out to some alleged contradictions in the statements of PWs 5 and 6. Having critically examined the statements of witnesses, we are of the opinion that the prosecution has proved the persistent demand of dowry and continuous cruelty and harassment to the deceased by her husband. The contradictions pointed out are no major contradictions which could be made the basis of impeaching the credibility of the witnesses. Reference to different sums of money demanded by Rakesh Kumar in the statements of PWs5 and 6 cannot, in any way, be termed to be contradictory to each other. At the most some of the amounts referred by one witness and not mentioned by the other can be termed to be an omission which in no case amounts to a major contradiction entitling the

respondent No.2 of any benefit. Ram Kishan, PW5 has categorically stated that Rakesh Kumar accused had raised a demand of Rs.15,000/- for scooter and refrigerator immediately after the marriage which was fulfilled by giving him a sum of Rs.20,000/-. His demand of a colour TV was also fulfilled. The continuous harassment connected with the demand of dowry is shown to be in existence till 21st September, 1988 when the deceased is reported to have come to her brother's house and met her parents. Thereafter she is not shown to have met anyone and no intervening circumstances showing the resolvement or settlement regarding demands of dowry is brought on record. She was admittedly found dead on 23rd October, 1988. Kans Raj, PW6 has stated that a colour TV, clothes and jewellery were given to the accused husband as dowry. He has deposed that his daughter had told him that the accused wanted her to bring further cash amount. The deceased, on persistent demands of the accused, had withdrawn the total sum of Rs.26,000/- from the accounts which was opened by the father in her name. He was also given a new Colour TV in lieu of the TV set given to him at the time of marriage as the same had allegedly gone out of order. It is contended that as there was no Karva Chauth on 23rd October, 1988, the whole of the statement of PW6 should not be believed because he is alleged to have stated that his son had gone to the house of accused on 23rd October, 1988 which was the day of Karva Chauth. The submission is based upon the wrong assumption of fact. It appears that the statement of PW6 has wrongly been translated in English wherein it is mentioned: "On 23.10.1988 on the day of Karva Chauth my son Ram kishan went to the house of the accused with customary presents. He telephoned me to inform that Sunita Kumari has died in the house of the accused. I and my wife went to Batala. The police came to the spot and I was examined inquest proceedings also. My separate statement was also recorded." We have examined the original record and found that the statement of the witness which were recorded in Punjabi/ Gurmukhi script states that Ram Kishan had gone to the residence of the accused at the occasion of Karva Chauth (Mauke Te) and not on the date of Karva Chauth. Relying upon the evidence in the case, the Trial Court had rightly concluded: "The sum and substance of the above discussion is that the prosecution has adduced best available evidence to prove the charge against the accused. The statement of Kans Raj (PW6) and Ram Kishan (PW5) inspire confidence. It is not disputed that Sunita Kumari committed suicide about 3-1/2 years after the marriage. The accused have not given any satisfactory account of even high probability as to how Sunit Kumari died. There is a presumption under Section 113A of the Evidence Act that the suicide has been abetted by the husband or other relative of the husband of the deceased. The accused have not been able to rebut that presumption. It is also proved that Sunit Kumari was treated with cruelty on account of dowry." It is established that the death of Sunita Kumari by suicide had occurred within 7 years of her marriage and such death cannot be stated to have occurred in normal circumstances. The term "normal circumstances" apparently means not the natural death. This Court in Smt.Shanti & Anr.v. State of Haryana [AIR 1991 SC 1226] held that: "....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 the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called 'dowry death' and the husband or relatives shall be deemed to have caused her death and shall be punishable with imprisonment for a minimum of seven years but which may extend to life imprisonment." In other words the expression 'otherwise than under normal circumstances' would mean the death not in usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury. The High Court appears to have adopted a casual approach in dealing with a specified heinous crime considered to be a social crime. Relying upon minor discrepancies and some omissions, the court has wrongly acquitted the accused-husband, namely, Rakesh Kumar. The charges framed against respondent No.2 had been proved by the prosecution beyond reasonable doubt and there was no justification for interferring with the conviction recorded and sentence passed against him by the Trial Court. Under the circumstances the present appeal is partly allowed by setting aside the judgment of the High Court in so far as it relates to respondent No.2, namely, Rakesh Kumar, the husband of the deceased and confirmed so far as it relates to other accused persons. The judgment of the Trial Court regarding conviction of Shri Rakesh Kumar under Section 304B is upheld but the sentence is reduced to seven years Rigorous Imprisonment. His conviction under Section 306 is also upheld but his sentence is reduced to five years besides paying a fine as imposed by the Trial Court. In default of payment of fine the respondent No.2 shall suffer Rigorous Imprisonment for one month more. Confirming his conviction under Section 498A IPC, the respondent No.2 is sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.250/-, in default of payment of fine he will further undergo Rigorous Imprisonment for one month. All the sentences are directed to run concurrently. The bail bonds of respondent No.2, who is on bail, are cancelled and he is directed to surrender to serve out the sentence passed on him.