Ramaiah @ Rama vs State Of Karnataka on 8 August, 2014

Author: A.K. Sikri

Bench: A.K. Sikri, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1671 OF 2011

RAMAIAH @ RAMA	…..APPELLANT(S)	
VERSUS		
STATE OF KARNATAKA	…..RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Laxmi, since deceased, was 14 years of age when she was married to the appellant on 18.11.1992. Within six months of her marriage i.e. on 22.05.1993, she died an unfortunate unnatural death. Her body was recovered on 22.05.1993 at 4 p.m. from a well. It was cremated on that day. However, four days thereafter i.e. on 26.05.1993, at 8 p.m., Mr. Mariyappa (PW-1), maternal uncle of the deceased, lodged the complaint with the Police Station and the case was registered as Cr. No.160/93.

2. As per his statement, it is he and his wife (PW-2) who brought up Laxmi. At the age of 14, appellant's father asked for the hand of Laxmi in marriage with the appellant which resulted in solemnization of marriage between deceased Laxmi and the appellant on 18.11.1992. PW-1 also stated in his complaint that at the time of her marriage, there were negotiations wherein the appellant and her parents had demanded a cash of Rs.5,000/- and certain gold ornaments. PW-1 could arrange Rs.2,000/- cash only at that time which was given by him in dowry at the time of marriage alongwith certain gold ornaments, clothes and other articles. However, since they were not able to pay the balance of Rs.3,000/-, Laxmi was harassed and tortured, mentally and physically, because of non-fulfillment of dowry demand and was asked repeatedly to bring the balance of Rs.3,000/- which was due towards dowry amount. Laxmi had intimated about this demand and harassment to her to PW-1 and PW-2 whenever she visited her parental house. In spite of their best efforts, they could not comply with the said demand. Few days before the fateful day, when she had

come to her parents house, PW-1 and PW-2 sent her back to her matrimonial home by convincing her that they would pay the requisite amount soon after harvest of the crops. It was further alleged that five days before her death, Laxmi had complained about ill-treatment and harassment to her at the hands of the appellant and his parents. However, on 22.05.1993 between 10.00 a.m. to 12.30 p.m., the maternal uncle was informed of the death of the deceased due to drowning in a well belonging to one Bylappa. Her parents were also informed of the said unnatural death of the deceased. According to the informant, they did not accept the theory of accidental fall into the well when deceased went to wash the clothes, as set up by the appellant and that the accused persons after doing away with her life, had thrown her into the well. It was also alleged that before they could reach the village of accused, the dead body of deceased Laxmi was cremated and they did not have an opportunity of seeing her face before she was cremated.

3. On the basis of the aforesaid complaint, a case was registered against the husband (appellant herein), father-in-law, mother-in-law and brother-in-law of the deceased Laxmi. No doubt, the initial complaint by Mariyappa (PW-1) was to the effect that the accused persons murdered Laxmi and then threw her into the well and also led the evidence of such crime to disappear by burning the dead body much prior to the approval of maternal uncle and parents of the deceased. However, after investigation, the chargesheet was filed only for offences punishable under Sections 498-A, 304-B, 201 and 176 of the Indian Penal Code (for short 'IPC') read with Sections 3, 4 and 6 (2) of the Dowry Prohibition Act. During trial, mother- in-law and father-in-law of the deceased passed away. Brother-in-law of the deceased, being a minor, was sent to Juvenile Offenders' Court. Thus, only the appellant was tried for the aforesaid change.

4. The prosecution examined 9 witnesses and 4 exhibits were marked. The appellant gave his statement under Section 313 of the Code of Criminal Procedure (for short 'Cr.P.C.') and thereafter one Ramakrishnappa was examined as DW-1. After the conclusion of trial, arguments were heard by the learned Additional Sessions Judge who returned his verdict vide judgment dated 24.08.2001 acquitting the appellant of the charges with the findings that prosecution was not able to prove the guilt of the appellant beyond reasonable doubt. The State challenged the judgment of acquittal by filing the appeal under Section 378 of Cr.P.C. in the High Court of Karnataka. After re-appreciating the entire evidence on record, the High Court has come to the conclusion that the appellant was in fact guilty of offence punishable under Sections 3 & 4 of Dowry Prohibition Act as well as under Sections 498-A, 304-B, 201 and 176 IPC. The judgment and order of acquittal of trial court is, thereby, set aside by the High Court pronouncing the following sentences on the appellant under the aforesaid provisions:

> “Having regarding to the facts and circumstances of this case, we impose a sentence of five year of rigorous imprisonment and also minimum fine of Rs.15,000/- for the offence punishable u/s 3 of the Dowry Prohibition Act, in default, to undergo rigorous imprisonment for a period of six months.
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> So far as offence u/s 4 of the Dowry Prohibition Act is concerned, the accused is sentenced to undergo rigorous imprisonment for a period of 6 months and fine of Rs.5000/-, in default to undergo rigorous imprisonment for a period of three

months.

So far as offence u/s 498-A IPC is concerned, the accused is sentenced to undergo two years rigorous imprisonment and fine of Rs.2000/-, in default, to undergo rigorous imprisonment for a period of two months.

So far as Sec.304-B IPC, the accused shall undergo minimum sentence of seven years rigorous imprisonment.

As far as offence under Section 201 IPC is concerned, the accused shall undergo sentence for a period of one year.

So far as offence under Section 176 IPC, the accused shall pay a fine of Rs.1000/-.

As the substantive sentence is imposed for the offence punishable u/s 304-B of IPC, all other sentences shall run concurrently.

The accused shall have the benefit of Sec. 428 Cr.P.C."

5. Before we proceed to discuss the tenability of the merits of this appeal preferred by the accused, we would like to state certain admitted facts appearing in the case and would also like to discuss the approach of the trial court as well as the High Court in giving conflicting verdicts.

6. As mentioned above, deceased Laxmi was 14 years of age at the time of marriage and was hardly 15 years old when she met an unnatural death. Marriage between the appellant and Laxmi was solemnized on 18.11.1992 and within six months of the marriage, she died on 22.05.1993. As per the prosecution, Shri Mariyappa (PW-1) learnt about the unnatural death of Laxmi through the message sent from the village of the appellant between 10.00 a.m. and 12.30 p.m. on 22.05.1993. It is not in dispute that the unnatural death of Laxmi was not intimated to the Police by her in-laws. Though the parents of the deceased were informed, it is also not in dispute that no postmortem was sought on the dead body of the deceased. The appellant has also accepted the fact that as per the prevalent custom in the community of the appellant as well as the complainant, dead bodies are buried. However, in the present case, deceased Laxmi was cremated.

7. There is, however, some dispute about the presence of the parents of the deceased at the time of cremation. As per the prosecution, Laxmi was cremated before the parents or maternal uncle/aunt of the deceased could reach the place of the appellant. On the other hand, the appellant maintains that they had reached well in time and she was not only cremated in their presence but it was with their concurrence that the body was cremated and not buried.

8. The persistent and consistent defence put up by the appellant was that it was an accidental death which occurred when Laxmi had gone to the well to wash the clothes at about 8.00 a.m. on 22.05.1993 as she fell into the well accidentally. As per the defence due to this fall, the cause of death was asphyxia as a result of drowning. It was also the defence of the appellant that though, as per the

customs in their community the dead bodies are buried, it was decided to cremate Laxmi because of unnatural death and this decision was taken on the persuasion of the parents of the deceased themselves. The defence had also taken a stand that the appellant and his family even wanted to inform the Police about the incident but her parents did not agree to the same. In so far as allegations of demand of dowry by the appellant and his family are concerned, there was a complete denial on the part of the accused persons.

9. A perusal of the judgment of the learned trial court would reflect that it framed the following questions which had arisen for consideration:

> "(1) Whether the prosecutor has proved that, the accused No.1 while marrying with deceased Lakshmamma has demanded dowry from her parents for a sum of Rupees Five Thousand and the ornaments and accordingly they had given ornaments and cash of Rupees Two thousand as dowry, but he has not summoned the same either to Lakshmamma or to her parents and thus committed an offence punishable under section 3, 4 and 6 of Dowry Prevention Act ?
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> (2) Whether the Prosecutor has proved that, after the marriage Lakshmamma started marital life with 1st accused, the first accused demanding his wife Lakshmamma to bring the remaining dowry amount of Rupees Three Thousand from her parents and started giving pinpricks and thus committed an offence punishable under section 498 (A) of Indian Penal Code?
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> (3) Whether the prosecutor has proved that, the 1st accused was giving more pinpricks to his deceased wife and on that reason on 22.05.1993 she has committed suicide. Hence he has committed an offence punishable under section 304 (B) of Indian Penal Code?
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> (4) Whether the Prosecutor has proved that, the 1st accused with an intention to destroy the evidence has removed the dead body of Lakshmamma from the well and burn her body and thus committed an offence punishable under section 201 of the Indian Penal Code?
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> (5) Whether the Prosecutor has proved that, the 1st accused intentionally has not informed the matter to the concerned officers about the suicide committed by his wife Lakshmamma and thus committed an offence punishable under section 176 of the Indian Penal Code?
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> (6) What order?

10. Dealing with question No.1, which pertains to the allegation regarding demand of dowry, the trial court concluded that allegation of demand of dowry was not true and in arriving on this conclusion, it was swayed by the following factors:

(1) No elders or seniors had come forward and given evidence even when it was stated that dowry was given in their presence.

(2) Further, there was no written documents before the Court in this regard.

(3) None of the villagers had led their evidence before the Court with regard to demand and receiving of dowry.

(4) PW-1 in his complaint had stated that prior to the marriage, discussions were held wherein accused No.1 (father of the appellant) had demanded a sum of Rs.5,000/- cash and ornaments. However, PW-8, Police Sub-

Inspector who received the complaint, admitted in his cross-examination that this fact was not mentioned in the complaint (Ex.P/1). He also admitted that in the complaint, it was also not mentioned that PW-1 would pay the remaining dowry after few days. He also admitted that the averment of PW-1 that two days before the marriage he had given Rs.2,000/- and had told that he would give remaining Rs.3,000/- at the time of Shivratri festival was also not mentioned in Ex.P/1.

(5) The trial court disbelieved the statement of PW-1 regarding payment of Rs.2,000/- and ornaments etc. because of the reason that he had stated in his cross-examination that he had got 3 acres of land which is dry land and he has to maintain his family from his income with no other source of income. Therefore, he was not capable of giving the aforesaid money and ornaments.

(6) The trial court further noted that as per PW-1 and PW-3, Laxmi was very beautiful girl and that was the reason the appellant married Laxmi as he got attracted by her beauty. PW-1 and PW-3 also admitted that the accused persons had incurred the marriage expenses and the marriage was also performed at the residence of the accused/appellant.

(7) The P.W.1 Mariyappa in his cross-examination stated that, he had given cash and ornaments to the bride and bride groom as per the customs in their community. In his examination-in-chief he stated that, the 2nd accused Venkatappa demanded the dowry. The 2nd accused had died. He in his examination-in-chief had not stated about dowry demand by the appellant. To the same effect is the testimony of PW-2, wife of PW-1 who categorically stated that there was a custom of giving silver and gold ornaments and clothes; the ornaments given were got prepared much prior to the marriage of Laxmi; the alleged demand of dowry was made by the parents of groom and his brother i.e. accused Nos. 2 to 4 and did not state about the demand of dowry by the appellant. Even, PW-3, natural mother of Laxmi deposed on the identical lines in respect of the dowry demand.

11. On that basis, the trial court arrived at the conclusion that in the absence of any evidence, oral or documentary, the chances are that whatever cash, clothes or ornaments were given at the time of marriage, was as per the prevailing customs in the community and it was not the result of any demand made by the appellant.

12. In so far as question Nos.2 and 3 are concerned, they were taken up together by the trial court. In the first instance, the trial court pointed out that though the complainant got the information about the death of Laxmi on 22nd May, 1993, he lodged delayed complaint on 26th May, 1993 i.e. four days thereafter. From the statement of PW-1 in the cross- examination that Laxmi was staying in her matrimonial house and visited her parental house 5-6 times alongwith her husband and even stayed there with her husband for some days and also from the admission of PW-1 that even they were visiting matrimonial house of Laxmi and had visited her house for 5-6 times within a span of six months, the trial court observed that it was an indication that the relationship of husband and wife was cordial and with mutual love towards each other. Even, PW-2 and PW-3 had admitted these facts in their cross-examination. The trial court further observed that when the giving of dowry on the demand of the accused persons was not established, it was not possible to believe that they were demanding the alleged remaining dowry amount of Rs.3,000/- and giving pinpricks to her for not fulfilling the said demand. According to the trial court, it was significant that PW-3 who is the natural mother of the deceased did not even state that Laxmi was being harassed for not bringing the balance dowry amount. She had rather admitted that her daughter was happy for the first three months and also accepted in her cross-examination that she had not told the Police about living peaceful life only for three months. She also admitted that she never told the Police about giving of dowry of Rs.2,000/- and demand of balance amount which remained unpaid. The trial court analysed the testimony of PW-4, PW-5 and PW-6 on this aspect and pointed out that the allegation of demand of dowry could not be proved from their testimony either. The discussion on this aspect is concluded in the following manner:

> "(27) After the marriage during the period of 6 months it was not mentioned in the complaint that the accused have assaulted Lakshmamma physically and thrown out of the house nor stated the same before the court. Neither the villagers wherein the accused are residing nor their neighbors have given any evidence before the court about pinpricks meted out to her. As against which D.W.1 Ramakrishnappa, aged 56 years, said that, from the beginning till the death of Lakshamma the accused persons looked after here well and not given any pinpricks to her, he further told that on that day she came to well for washing the cloth and due to slip of her leg she fell in the well and he came to know about the same. In his cross-examination no other statement was given on behalf of prosecution.
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> (28) It is an arranged marriage in the presence of elders, in the event of giving any pinpricks about dowry harassment, this matter would have been brought to the notice of elders and convene a panchayath. But it never revealed anywhere about conveying the panchayath. Hence it is hereby seen that the accused or her husband had not given pinpricks either in the matter of dowry or in any other matter. It cannot be said that she has committed for the said reason. Hence I answer both the questions Negatively."

13. The aforesaid was the raison d'etre which led to the acquittal of the appellant by the trial court. The High Court has, however, given a different glance to the entire matter. According to it, the aforesaid approach of the trial court was erroneous in law as well as in appreciation of the evidence

on record. After taking note of the fact that Laxmi died within six months of her marriage and it was an unnatural death, the High Court has lamented on the conduct of the appellant and has arrived at the conclusion that it was the appellant who was responsible for the death of Laxmi and found him guilty of offence under Section 304-B of IPC. The High Court has also accepted the version of the prosecution that Laxmi was harassed and humiliated on account of non fulfillment of the demand of dowry made by the appellant and, therefore, presumption under Section 113-B of the Evidence Act was attracted. As per the High Court, the appellant has not been able to lead any satisfactory evidence to dislodge this presumption. The infirmities found in the depositions of PW-1 to PW-5 by the trial court have been brushed aside and discarded by the High Court as irrelevant and perverse. The High Court held that it would be impossible to expect any party to the marriage talks to keep a record of demand and payment of dowry as if it was a commercial transaction and, therefore, the absence of documentary evidence in this regard should not have weighed with the trial court. The High Court also observed that there was no admission made by PW-1 that even without the alleged demand of dowry, he would have given customary articles like clothes and ornaments and no such customary practice was indicated. The finding of the trial court that the case of the prosecution regarding demand and payment of dowry was not proved in the absence of anyone from the village of the accused is also brushed aside by observing that such a demand and payment would not be made public inasmuch as such talks would be within closed doors and would be within the knowledge of the parties to the marriage and kith and kin of the bride and bridegroom. Further, apart from PW-1 to PW-3, PW-4, who is the neighbour of PW-1 and PW-2, supported the version of the demand of dowry and the harassment of Laxmi at the hands of the appellant and his family members.

14. Due to the aforesaid divergent and conflicting outcome of the proceedings in the two courts below, we have gone through the testimony of these witnesses. After examining the record and going through the reasons recorded by both the courts below, we are inclined to accept conclusions reached by the trial court as we are of the view that the High Court committed grave error in ignoring and glossing over various contradictions in the testimonies of PW-1 to PW-5 which were pointed out by the trial court.

15. At the outset, we may record that some of the comments of the High Court deprecating few of the reasons recorded by the trial court in support of its findings are fully justified. The High Court is correct in its observation that it was not appropriate for the trial court to expect documentary evidence regarding acceptance of dowry as generally such a record would not be kept since it was not a commercial transaction. The High Court also appears to be justified in its observation that non production of the villagers to prove the dowry demand would not be fatal. We have eschewed and discarded these reasons assigned by the trial court. At the same time, it is necessary to find out as to whether the evidence of these witnesses (PW-1 to PW-3) is worthy of credence, on this aspect. We find that there are certain very glaring and weighty factors which compel us to disbelieve the prosecution version on this account.

16. In the present case, it would be prudent to start the discussion by taking note of the conduct of the maternal uncle (PW-1), his wife (PW-2) and natural mother (PW-3) of the deceased. They accept that information about the death of Laxmi was received by them between 10.00 a.m. to 12.30 p.m.

on 22.05.1993. They also accept the fact that they had reached the place of occurrence. Body of the deceased was cremated on 22.05.1993. There is some dispute as to whether these persons were present at the time of cremation. According to them, deceased was cremated before they reached the village of the appellant. To falsify this position taken by the prosecution through these witnesses, the learned counsel for the appellant had taken us to the evidence of PW-8 who had drawn Mahazar near the well. This Mahazar coupled with the statement of PW-8 is a very significant piece of evidence which has considerable effect in denting the creditworthiness of the testimony of these witnesses. As per PW-8 himself, when he had reached the spot, it was the mother of the deceased who pointed out the place where the dead body was lying. This assertion amply demonstrates that mother of the deceased had known where the body was kept and she along with PW-1 and PW-2 had reached the place of occurrence before the dead body was cremated. Relying upon this evidence, the trial court has disbelieved the story of the prosecution that Laxmi was cremated even before these persons had reached the village of the appellant. Strangely, the High Court has discarded Mahazar drawn by PW-8 by giving a spacious reason viz. it was not an exhibited document before the Court, little realising that this was the document produced by the prosecution itself and even without formal proof thereto by the prosecution, it was always open for the defence to seek reliance on such an evidence to falsify the prosecution version. Moreover, PW-8 has specifically referred to this document in his evidence. It is also a matter of record that a specific suggestion was made to PW-3 (mother of the deceased) in the cross-examination to the effect that it is she who had pointed out the place of the dead body lying near the well to the Police personnel. The version of PW-1 to PW-3 that they reached the village of the appellant after Laxmi had already been cremated, does not inspire confidence and appears to be mendacious.

17. In the aforesaid circumstances, we have to proceed on the basis that PW-1 to PW-3, on coming to know of the death of Laxmi, had reached the village of the appellant when the dead body was still lying near the well from where it was extracted. If the body was cremated thereafter, and not buried, it can clearly be inferred that same was done with consent, express or implied, of the complainant namely maternal uncle and the mother of the deceased. It can also be inferred that parties had decided at that time that matter be not reported to the Police and body be cremated. To say it otherwise, by accepting the version of the prosecution, would lead to some absurdities. It would mean that when maternal uncle or aunt as well as mother of Laxmi were present and had seen the dead body lying at the spot, they objected to the body being cremated. They also wanted Police to be informed. If it was so, why they did not put up any resistance? We have to keep in mind that these family members of Laxmi have come out with the allegation that Laxmi was harassed as well as mentally and physically tortured because of non fulfillment of dowry demand. In such a scenario, they would not have remained silent and mute spectators to the events that followed even when they were not to their liking. Not only this conduct belies their version, another weighty factor is that the complainant remained silent about these happenings for a period of 4 days and lodged the report with the Police only on 26.05.1993 when they came out with the allegations of demand of dowry and harassment.

18. We are conscious of the fact that in such cases, sometimes there may be delay in lodging the FIR for various valid reasons. However, it is important that those reasons come on record. There is no explanation worth the name given by the complainant as to why the complainant maintained stoic

silence. In this backdrop, the testimony of these witnesses alleging dowry demand has to be tested more stringently and with some caution. On that touchstone, when we analyse the statements, we find the contradictions therein, as pointed out by the learned trial court, become very appealing and meaningful.

19. With the aforesaid observations, we proceed to discuss the first specific charge under Section 498-A of the IPC relating to the demand of dowry. We have already stated the reasons which prevailed with the trial court in not accepting the prosecution version of demand of dowry by the appellant herein, as well as the reasons which influenced the High Court to take a contrary view. After going through the evidence of PW-1 to PW-3 as well as PW-4 to PW-6, we find that the trial court correctly appreciated and analysed the evidence of these witnesses. In the first instance, it needs to be recorded with due emphasis that none of the witnesses had made any specific allegation for the demand of the dowry in so far as the appellant is concerned. The prosecution also could not establish that any dowry articles were given at the time of marriage. On the contrary, it is accepted by these witnesses that the appellant had asked for the hand of Laxmi because of her beauty by which he was attracted. We are not suggesting that this reason, by itself, is sufficient to rule out the possibility of demand of dowry. At the same time, this circumstance when seen with all other attendant factors surfacing on the record of this case, makes it somewhat difficult to swallow the prosecution version that there would be a demand of dowry as a precondition for marriage. Other attendant circumstances also negate the theory of demand. PW-1 and PW-3 have themselves admitted that it is the accused persons who had incurred all the marriage expenses and also admitted that marriage was performed at the residence of the appellant. This would be because of the reason, as pleaded by the appellant in support of which the appellant led evidence as well, that the family members of Laxmi were poor persons and had not sufficient means to even incur the expenditure on the wedding of Laxmi. Even in respect of alleged demand of dowry, PW-1 Mariyappa stated that the so-called demand was by the father of the appellant and did not at all accuse the appellant in this behalf. To the same effect is the testimony of PW-2.

20. When the demand of dowry and giving of dowry at the time of marriage has not been proved, further version of the prosecution witnesses that there was a demand for payment of remaining amount of Rs.3,000/- and harassment of Laxmi on that account, also becomes doubtful. It has come on record, and can be clearly discerned from the reading of the statements of the material witnesses viz. the family members of Laxmi, that during this short period of 6 months of the marriage, she had visited her matrimonial house 5-6 times. Pertinently, her visits were alongwith her husband. The couple had even stayed in the parental house of Laxmi for some days on few occasions. This indicates that the relationship of husband and wife was cordial. In this backdrop, evidence of PW-3, mother of the deceased Laxmi, assumes great significance, who has not even stated that her daughter was harassed for not bringing the alleged balance dowry amount. On the contrary, she accepted that her daughter was happy for first 3 months. So much so in her statement to the Police, she had not told the Police about living peaceful life only for 3 months. She did not tell the Police about giving of dowry of Rs.2,000/- and demand of balance amount coupled with harassment because of death.

21. In addition to the aforesaid material aspects which are highlighted from the evidence of the prosecution witnesses, most important feature which is accepted by these witnesses is that in so far as the appellant individually is concerned, there was no demand of dowry by him. In the absence of any particular allegation against the appellant in this behalf, would be improper to convict the appellant under Section 498-A IPC.

22. We find that the High Court has ignored the aforesaid features which are elaborately discussed in the judgment of the trial court, culling from the depositions of the prosecution witnesses. The High Court, while accepting the version of the prosecution on this aspect, namely, Laxmi was harassed and humiliated because of demand of dowry made by the appellant, has embarked on the discussion which is general and non-specific in nature. Even if there is little evidence, that is too infinitesimal to convict the appellant, more so when that is not only self contradictory but also surrounded by other weighty circumstances that go in favour of the accused. Once we find that the demand of dowry and harassment on that account is not proved beyond reasonable doubt, question of invocation of Section 113 Evidence Act would not arise. We feel that the High Court has been totally influenced by the fact that Laxmi had died within 6 months of her marriage and it was an unnatural death.

23. No doubt, it was so. But only for this reason, the High Court could not have convicted the appellant by finding him guilty of offence under Section 304-B of IPC as well by primarily relying upon the provisions of Section 113-B of the Evidence Act.

24. We are conscious of the fact that it was an unfortunate demise of Laxmi who died within 6 months of the marriage. However, at the same time, whether her death was accidental as claimed by the defence or it was a suicide committed by Laxmi, is not clearly established. Had the allegations of demand of dowry and harassment of Laxmi were established thereby making it an offence under Section 498-A of IPC, things would not have been different. However, when we do not find dowry demand and harassment of Laxmi to be established, the inferences drawn by the High Court taking the aid of Section 113-B of the Evidence Act also deserve to be discarded. Section 113-B of the Evidence Act reads as under:

> "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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death." A plain reading of the aforesaid provision would demonstrate that to attract the presumption as to dowry death stated in the aforesaid provision, it is necessary to show that soon before her death, she had been subjected by such persons to cruelty or harassment for, or in connection with, any demand for dowry. When this essential ingredient has not been established in the present case, the question of drawing any presumption by invoking of the aforesaid provision would not arise.

25. In this backdrop, we revert back to the conduct of the mother of Laxmi, as well as her maternal uncle and his wife (i.e. PW-1 and PW-2), which becomes very crucial. As per our discussion above, it is clear that they had reached the place of death, after receiving the information, much before Laxmi was cremated. Once that is accepted, as it is established from record and particularly Mahazar drawn by PW-8, further events happen thereafter are to be analysed keeping in mind this fundamental aspect. In fact, the entire time of thinking of the High Court proceeds on the premise that Laxmi was cremated even before her parents and uncle/aunt reached the appellant's village. Entire edifice based on thereupon crumbles once this finding is found to be erroneous. As we are of the opinion that the finding of the trial court is correct thay they had reached the village well in time and body was cremated in their presence, further sequence of events has to seen in that hue. It was told by the accused persons that Laxmi had died accidentally falling into the well with the active or passive consent of PW-1 to PW-3, Laxmi was cremated. Her last rites were performed in which these persons participated. They accepted the version of the accused persons, at that time. It is only after a period of 3 days that the complaint is filed with the allegations of demand of dowry by the accused persons; harassment of Laxmi on account of alleged non-payment of the balance dowry; and her unnatural death. We state at the cost of the repetition that once it is established that the body of Laxmi was cremated in the presence of these persons, it lends credence to the defence version that there was an acceptance by them at that time that Laxmi had died due to accidental slip in the well and all of them decided to cremate Laxmi and not to report the matter to the Police. Otherwise it would baffle any right minded person as to why they did not inform the Police or did not put up any resistance.

26. Let us test the veracity of the version of these persons from another angle. If there was harassment and cruel treatment given to Laxmi by her in-laws, on reaching the place of the accused persons after receiving the unnatural demise of Laxmi, they would have perceived the same to have happen in mysterious circumstances. In such a situation, they would not have kept quite and inform the Police immediately. They would have also insisted on the postmortem of the body of Laxmi to find out the cause of death. That would be the natural reaction of any such persons who believe that their daughter had faced harassment on account of non-fulfillment of the dowry demand and it would be fresh in their mind, if their version is to be believed that just 5 days before the death, Laxmi had complained of the cruel behaviour of her in-laws. No such thing happened, on the contrary, body of Laxmi was cremated in their presence and after performing the last rites, they turned back to their home quietly. It is 4 days thereafter that they thought of lodging the complaint to the Police.

27. In the case of State of Andhra Pradesh v. M. Madhusudhan Rao, 2008 (14) SCALE 118, in similar circumstances, the Court termed such a delay as 'embellishment and exaggeration' though in that case, it was an abnormal delay of 1 month. The principle stated therein was equally applied herein as well which would be clear from the following observation herein:

> “18. Having gone through the depositions of PW-1 and PW-3, to which out attention was invited by learned Counsel for the State, we are convinced that in the light of the overall evidence, analysed by the High Court, the order of acquittal of the respondent is well merited and does not call for interference, particularly when the First

> Information Report was lodged by the complainant more than one month after the alleged incident of forcible poisoning. Time and again, the object and importance of prompt lodging of the First Information Report has been highlighted. Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.
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> 19. In the present case, as noted supra, First Information Report in regard to the alleged occurrence on 19th April, 1996 was lodged on 22nd May, 1996. Admittedly after her discharge from the hospital on 22nd April, 1996, the complainant went to her parents' house and resided there. In her testimony, the complainant has deposed that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the First Information Report. No explanation worth the name for delay in filing the complaint with the police has come on record. We are of the opinion that this circumstance raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW-1) and her father (PW-3), rendering it unsafe to base the conviction of the respondent upon it. Resultantly, when the substratum of the evidence given by the complainant (PW-1) is found to be unreliable, the prosecution case has to be rejected in its entirety.

28. We may hasten to add here that many times in such type of cases, there can be reasons for keeping quite at the given time and not reporting the matter immediately. Therefore, we are conscious of the legal position that delay per se may not render prosecution case doubtful as there may be various reasons for lodging the FIR with some delay (see Sahebrao and another v. State of Maharashtra, (2006) 9 SCC 794. Thus, there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. However, what is emphasised is that if that was so, it was necessary for the prosecution to at least come forward with the explanation as to why the complainant kept quite and why he did not report the matter to the Police immediately. No such explanation is coming forward in the present case. Moreover, in the instant case, the delay is seen as fatal when examined in juxtaposition with other material that has come on record and discussed above, which shakes the veracity of prosecution case, bringing it within the four corners of doubtful prosecution story.

29. We find that when going by all these considerations, the trial court gave benefit of doubt to the appellant and acquitted him, in the case of reversal of such a verdict of acquittal, the High Court should have specifically dealt with the aforesaid circumstances weighing in favour of the appellant and should have given suitable justification for overturning the verdict of acquittal. The approach of the High Court, as the appellate court, while dealing with the case of acquittal is stated by this Court in the case of Harbans Singh v. State of Punjab, (1962) Supp. 1 SCR 104, in the following manner:

> "8. The question as regards the correct principles to be applied by a Court hearing an appeal against acquittal of a person has engaged the attention of this Court from the very beginning. In many cases, especially the earlier ones, the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on "compelling and substantial reasons" and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal. (Vide Suraj Pal Singh v. The State (1952) SCR 194; Ajmer Singh v. State of Punjab MANU/SC/0042/1952 : 1953CriLJ 521; Puran v. State of Punjab MANU/SC/0090/1952 : AIR 1953 SC 459). The use of the words "compelling reasons" embarrassed some of the High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words "compelling reasons". In later years the Court has often avoided emphasis on "compelling reasons" but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable. (Vide Chinta v. The State of Madhya Pradesh (Criminal Appeal No. 178 of 1959 decided on 18- 11-60); Ashrafkha Haibatkha Pathan v. The State of Bombay (Criminal Appeal No. 38 of 1960 decided on 14-12-60).
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> 9. It is clear that it emphasising in many cases the necessity of "compelling reasons" to justify an interference with an order of acquittal the Court did not in any way try to curtail the power bestowed on appellate courts under s. 423 of the Code of Criminal Procedure when hearing appeals against acquittal; but conscious of the intense dislike in our jurisprudence of the conviction of innocent persons and of the facts that in many systems of jurisprudence the law does not provide at all for any appeal against an order of acquittal the Court was anxious to impress on the appellate courts the importance of bestowing special care in the sifting of evidence in appeal against acquittals. As has already been pointed out less emphasis is being given in the more recent pronouncements of this Court on "compelling reasons". But, on close analysis, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of Appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a "compelling reason" for interference.

For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

30. This very principle of law was formulated by the Court in M. Madhusudhan Rao (supra) in the following manner:

> "13. There is no embargo on the appellate court to review, reappreciate or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is not interfered with because the presumption of innocence, which is otherwise available to an accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it should not be disturbed. Nevertheless, where the approach of the lower court in considering the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to the characterised as perverse, then, to prevent miscarriage of justice, the appellate court is obliged to interfere.
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> 14. All these principles have been succinctly culled out by one of us (C.K. Thakker, J.) in Chandrappa and Ors. v. State of Karnataka, (2007) 4 SCC 415."

31. In Chandrappa (supra), which was followed in the aforesaid case, the Court had observed:

> "44. In our view, if in the light of above circumstances, the trial court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and it can review, reappreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. In this case, a possible view on the evidence of prosecution had been taken by the trial court which ought not to have been disturbed by the appellate court. The decision of the appellate court (the High Court), therefore, is liable to be set aside."

32. We thus, find that there were no solid and weighty reasons to reverse the verdict of acquittal and to convict the appellant under the given circumstances. Accordingly, we allow this appeal and set aside the judgment of the High Court, holding that the appellant is not guilty of the charges foisted against him.

33. During the pendency of this appeal, the appellant was enlarged on bail vide order dated 31.03.2014. The bail bonds and sureties given by the appellant are hereby discharged.

.....J. (J. Chelameswar) .....J. (A.K. Sikri) New Delhi;

August 7, 2014.