SATYA NARAYANA TIWARI AND ANR. A

v.

STATE OF U.P.

(Criminal Appeal No. 1168 of 2005)

OCTOBER 28, 2010 B

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

PENAL CODE, 1860:

ss. 304-B and 498-A IPC and s. 4 of Dowry Prohibition C *Act – Dowry death – Circumstantial evidence – Bride died of strangulation and burn injuries in her matrimonial home – Husband and mother-in-law of deceased charged with the offences – Acquittal by trial court – Conviction by High Court – Held: Trial judge recorded acquittal adopting a superfluous* D *approach without in-depth analysis of the evidence and circumstances established on record – He proceeded on wrong premise and irrelevant considerations –The ingredients of s. 304-B have been established – The presumption u/s 113-B of Evidence Act is attracted and the accused could not* E *displace the same – The prosecution has established that the accused committed the offences – Findings of High Court upheld – Dowry Prohibition Act, 1961 – s. 4 – Evidence – Circumstantial Evidence – Evidence Act, 1872 – s. 113-B.*

s. 304-B – Ingredients – Explained – Expression 'soon F *before her death' – Connotation of – Proximity Test.*

Administration of criminatl justice – Framing of appropriate charge –Dowry death – Bride strangulated and burnt to death by her husband and mother-in-law as their G *demand for dowry was not fulfilled – Held: It was a case u/s 302 but no charge under that section was framed – Such cases of bride burning fall in the category of rarest of rare cases and, therefore, deserve death sentence – However,*

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A *conviction and sentence u/ss 304-B and 498-A upheld – Penal Code, 1860 – ss. 304-B and 498-A – Code of Criminal Procedure, 1973 – Sentence/Sentencing.*

Words and Phrases:

B *Expressions 'soon before her death' as occurring in s.304-B IPC; and 'rarest of rare cases' in the context of dowry deaths – Connotation of.*

A bride, aged about 24 years, died of strangulation C **and burn injuries in her matrimonial home, within three years of her marriage. The father of the deceased stated in the FIR that dowry was being demanded from him and it was insisted that a Maruti car be part of the dowry. The trial court acquitted the accused, namely, the husband** D **and the mother-in-law of the deceased, but the High Court convicted them u/ss 304-B and 498-A IPC and s.4 of the Dowry Prohibition Act, 1961. Aggrieved, the accused filed the appeal.**

Dismissing the appeal, the Court

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HELD: 1.1 As has been held by the Apex Court in the case of *Kunhiabdulla, in order to attract application of s.304B IPC, the essential ingredients are : (1) The death of a woman should be caused by burns or bodily injury** F **or otherwise than in normal circumstances; (2) such a death should have occurred within seven years of her marriage; (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; (4) Such cruelty or harassment should be for** G **or in connection with demand of dowry; (5) Such cruelty or harassment is shown to have meted out to the woman soon before her death. [para 16] [1149-E-H; 1150-A]**

****Kunhiabdulla Versus State of Kerala* 2004 (2) SCR 853 = 2004 (4) SCC 13 – referred to.**

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1.2 As generally happens in a crime of dowry death, this case is also based on circumstantial evidence. As regards ingredients No. 1 and 2, it is an admitted fact that the deceased, as indicated in the post mortem report, died otherwise than in normal circumstances, and that the death had occurred within seven years of her marriage in her 'Sasural' in her bedroom. [para 17] [1150-B-C]

1.3 As regards ingredients No. 3, 4 and 5, the relevant testimony is contained in the statements of the deceasd's father PW 1 and PW 2 (son-in law of PW-1). Their testimony is quite credible regarding the illegal demand of a Maruti Car in dowry by the two accused, namely, the husband and the mother-in-law of the deceased, since after six months of the marriage and that they subjected her to harassment, maltreatment and humiliation on non-fulfilment of the said demand. It goes without saying that cruelty or harassment may not only be physical but also mental. [para 18 and 20] [1150-E; 1152-A-C]

1.4 As has been held by this Court in *Kunhiabdullah,* '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 u/s 113-B of the Evidence Act. The instant case fully answers the test of 'soon before'. There is the testimony of demand of Maruti Car being pressed by the two accused persons after about six months of the marriage of the deceased (which took place about three years before the incident) and of her being pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to her parental home and

A on telephone. Things had reached to such a pass that on getting a message from her about three months before the incident, PW 1 accompanied by PW 2 had to go to her 'Sasural' in an attempt to dissuade the two accused from pressing such demand, but they (the two accused) B humiliated and turned them out of the house with the command not to enter their house again without meeting the demand of a Maruti Car. PW-1did not take any action on the consolation offered by the father-in-law of his daughter and also on the advice of his daughter which C was quite natural. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. It can justifiably be inferred from what happened subsequently that they continued to torture the unfortunate lady because of non-fulfilment of the demand of Maruti Car. The test of 'soon D before' is satisfied in the facts, evidence and circumstances of the instant case. [para 24 and 26] [1153-G-H; 1154-F-H; 1155-A-D]

Kunhiabdulla Versus State of Kerala 2004 (2) SCR 853 E = 2004 (4) SCC 13 – distinguished.

1.5 Indeed, the prosecution could not be expected to bring forth any other evidence as to the persistent demand of dowry in the form of Maruti Car by the two F accused after about six months of the marriage and maltreatment, harassment and torture heaped upon the deceased by the two accused on non-fulfilment of the said demand. The evidence on this aspect of the matter as contained in the statements of PW 1 and PW 2 has the natural aura of the truth. [para 22] [1153-B-C]

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1.6 Thus, ingredients No. 3, 4 and 5 for attraction of s. 304B IPC, are also established by satisfactory evidence adduced by the prosecution in the form of the testimony of PW 1 corroborated by PW 2. [para 27] [1155-E]

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1.7 There is an important feature of the case. Only the husband and mother-in-law of the deceased have been accused of the offences in question. Besides them, there were three other family members i.e., the father of accused No. 1 and husband of accused No. 2 and two daughters. PW 1 has described father-in-law of the deceased as a gentleman. He has all the respect and regard for him. Even when he had been humiliated by the two accused about three months before the incident on expressing his inability to meet their demand of Maruti Car in dowry, he (PW1) had gone to him at his employment place in State Bank and had not taken any action on the consolation offered by him. He mentioned this fact in the FIR too. The circumstance that only the husband and mother-in-law of the deceased have been made accused of the offence, sparing the other three, is an indication that father of the deceased has not acted out of malice, anger or to wreak vengeance. [para 22] [1152-F-H; 1153-A-C]

1.8 The recovery memoes Ex.Ka-10 (with regard to blood and blood stained bindia) and Ka-11 (regarding broken bangles) were not challenged in the cross-examination of PW 5, (the Tehsildar Magistrate) or PW 6 (the SI), who prepared them. These recoveries amply indicate that the deceased had been subjected to violence in her bedroom and she had succeeded in coming out on the 'Chhajja' (balcony) to save herself. Not only this, the presence of burnt cordless phone stuck in the arm and the burnt wire of phone with the dead body indicates that she had tried to contact someone on phone, but in vain. There is nothing to cast a doubt on the said recoveries. [para 30] [1156-F-H; 1157-A-B]

1.9 The theory of suicide put forth by the defence completely falls through on careful analysis of the evidence and the attending circumstances. Two different

A types of injuries found on the dead body of the deceased, i.e., the ligature mark of large dimension and the body being badly burnt because of the ante mortem burns with smell of kerosene coming out of the body, completely rule out the theory of suicide. A half-burnt piece of cloth
B with a knot was also found tied around the neck. It is also to be taken note of that her body was found by the Investigating Officer in the lonely corner of the bedroom where she was rendered immobile and in a helpless state. [para 34] [1158-F-H; 1159-A-C]

C 1.10 This Court records with dismay that the trial judge has taken it to be a ground against the prosecution that the knot found around the neck of the deceased was not produced before the court. It is obvious that he completely misinterpreted the matter relating to the knot
D and took it as a circumstance against the prosecution. While conducting the post mortem, the knot found around the neck of the deceased was untied and removed so as to facilitate the post mortem. Therefore, there could be no question of the knot bring produced
E before the court. [para 37] [1160-B-E]

1.11 On a close scrutiny and careful appreciation of the evidence, this Ccurt is of the firm view that the trial judge wrongly accepted the plea of alibi put forth by the
F two accused persons to get away from the consequences of the serious crime committed by them. Their conduct also voluminously spoke against them. As a matter of fact, only these two accused had an opportunity to commit the offence. The father-in-law of
G the deceased having gone to the place of his employment and the two daughters, including DW 1, having gone to their educational institution, the two accused persons only (husband and mother-in-law of the deceased) had the opportunity to commit this crime

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inside the bedroom of the deceased. The manner in which the deceased was done to death, i.e., by first strangulating her and then setting her afire, needed at least two persons, because she was also a young lady aged about 24 years. A single person could not have possibly overpowered her to strangulate her and to set her afire. As a natural instinct, she was bound to offer resistance and having regard to the two types of the injuries found on her person at the time of post mortem, it was the handiwork of at least two persons, who undoubtedly were the husband and the mother-in-law. The conduct of the mother-in-law of the deceased was that she, in order to misguide the machinery of law through false plea of alibi, lodged a false information at the Police Station at 1.10 P.M. that her daughter-in-law had committed suicide. She had taken a false excuse to support her baseless plea of alibi of herself as also her son, the husband of the deceased. [para 38] [1160-E-H; 1161-A-D-G]

1.12 The interested testimony of DW 1 also cannot be believed that her brother accused No. 1, the husband of the deceased, had gone to his shop at about 8 P.M. After committing the crime, the two accused vanished from the scene, but before doing that, one of them, (the - mother-in-law of the deceased) lodged a false report at the police station that her daugther-in-law had committed suicide. It is in the testimony of PW 7 (C.O/Investigating Officer) that the accused-husband surrendered in court on 7.11.2000 and the mother-in-law on 13.11.2000. Earlier thereto, the attempts to find and arrest them turned to be futile. None of the two accused is witness of the inquest report or Fards. Absconding by both of them after the incident cannot be termed to be normal conduct of innocent persons. The report by the accused was given at the Police Station at 1.10 P.M. on 3.11.2000. It was the outcome of deliberation and consultation with legal

A experts who had already gathered at the scene of occurrence along with Advocate-uncle of the accused, DW 2 – Advocate, and few other lawyers; whereas from the testimony of DW 2, it is evident that the news of the death of the victim was received in the District court at
B 11.30 A.M. itself, i.e., much before the lodging of the report by the accused. [para 39] [1161-H; 1162-A-F]

1.13 The presumption of s.113-B of the Evidence Act is attracted in this case and the facts and circumstances of the case make it abundantly clear that the defence
C could not displace the said presumption. The culpability of the two accused in committing the crime is established to the hilt by the facts and circumstances proved by the prosecution. They undoubtedly are the authors of this crime. The irresistible conclusion is the demand of Maruti
D Car raised by the two accused after about six months of the marriage persisted as it was not settled by the father of the deceased by supplying the same. The prosecution has successfully proved the persistent demand of Maruti Car as a part of dowry by the two accused and
E continuous cruelty and harassment heaped upon the deceased by them over this score. The accused are established to have committed the offences punishable u/ss. 498-A and 304 B IPC and u/s 4 of Dowry Prohibition Act and the findings of the High Court are correct. [para
F 41 and 43] [1163-C-F; 1164-E-F]

2. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they
G call for harsh punishment. In the instant case, as has been established from the medical evidence, the death of the victim was caused by strangulation and then by burning. In fact, it was a case u/s 302 IPC and death sentence should have been imposed in such a case, but

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since no charge u/s 302 IPC was levelled, this Court cannot do so, otherwise, such cases of bride burning fall in the category of rarest of rare cases, and deserve death sentence. Although bride burning or bride hanging cases have become common in our country, the expression "rarest of rare" as referred to in *Bachan Singh's* case* does not mean that the act is uncommon, it means that the act is brutal and barbaric. Bride killing is certainly barbaric. [para 7-10 and 12] [1147-A-G; 1148-D]

Bachan Singh Vs. State of Punjab* **AIR 1980 SC 898 – referred to.

Case Law Reference:

AIR 1980 SC 898	**referred to**	**para 8**
2004 (2) SCR 853	**distinguished**	**para 16 and 24**

CRIMINAL APPELLATE JURISDICTION : CRIMINAL APPEAL No. 1168 of 2005.

From the Judgment & Order dated 12.07.2005 of the High Court of Judicature at Allahabad in State Appeal No. 5570 of 2003.

Indu Malhotra, Rajesh and Vivek Jain for the Appellants.

K.T.S. Tulsi, Shail Kr. Dwivedi, AAG, R.K. Gupta, Pradeep Misra, Suraj Singh, Vandana Mishra, Anurag Dubey, Meenesh Dube, Ravinder Singh and S.R. Setia for the Respondent.

The following order of the Court was delivered

O R D E R

1. Heard learned counsel for the parties.

2. The hallmark of a healthy society is the respect it shows to women.

A 3. Indian society has become a sick society. This is evident from the large number of cases coming up in this Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by
B hanging/strangulating them. What is the level of civilsation of a society in which a large number of women are treated in this horrendous and barbaric manner? What has our society become – this is illustrated by this case.

C 4. This Appeal has been filed against the impugned judgment and order of the Allahabad High Court dated 12.07.2005.

5. The facts of the case are that Geeta (deceased) was married to the appellant No. 1 Satya Narayan Tiwari @ Jolly
D on 9th December 1997. On 03.11.2000 an FIR was lodged by the father of the deceased Surya Kant Dixit alleging that dowry was being demanded from him and the accused was insisting that a Maruti car be part of the dowry. He further stated that three months before the date of the incident the first informant
E along with his relative went to the house of the accused and explained his financial difficulty in giving the Maruti car to the accused but they were insulted by the accused and were told to get out.

F 6. On 03.11.2000 at about 12 noon the first informant received information on telephone that his daughter had died. The FIR was lodged as stated above and after investigation a charge sheet was filed. The appellants - the husband and mother-in-law of the deceased - were acquitted by the trial court but the High Court convicted them under Sections 304B, 498-
G A IPC and Section 4 of the Dowry Prohibition Act and awarded life sentence under Section 304B IPC, 3 years rigorous imprisonment under Section 498A, and six months rigorous imprisonment under Section 4 of the Dowry Prohibition Act. The sentences were to run concurrently.

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7. We have carefully perused the impugned judgment and order of the High Court and the judgment of the trial court and other evidence on record. We see no reason to disagree with the judgment and order of the High Court convicting the appellants. In fact, it was really a case under Section 302 IPC and death sentence should have been imposed in such a case, but since no charge under Section 302 IPC was levelled, we cannot do so, otherwise, such cases of bride burning, in our opinion, fall in the category of rarest of rare cases, and hence deserve death sentence.

8. Although bride burning or bride hanging cases have become common in our country, in our opinion, the expression "rarest of rare" as referred to in Bachan Singh Vs. State of Punjab, AIR 1980 SC 898 does not mean that the act is uncommon, it means that the act is brutal and barbaric. Bride killing is certainly barbaric.

9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment. Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total commercialization of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, with an iron hand.

10. In the present case, there was a post mortem done by a committee of three Doctors. We have perused the post mortem report. In that report ante mortem injuries were mentioned as under :-

"1. Ligature mark around the neck, 31x7 cms. Base slightly grooved with dark red. On cut section-tissue

A ecchymosed a tracheal ring compresses. Clotted blood under soft tissue.

2. Superficial to deep burn all over body. Blistered at places present. On cut section serus fluid present."

B 11. The cause of the death in that report was mentioned in the following terms :-

"Opinion as to cause and manner of death : In my opinion cause of death is suffocation with shock as a result of
C strangulation with simultaneous A/M burn."

12. Thus, in this case the death of the deceased Geeta was caused by strangulation and then by burning. It is impossible for us to believe that this was a case of suicide. It was a clear case of murder and hence charge under Section
D 302 IPC should have been levelled against the appellants but surprisingly enough that has not been done in this case.

13. On the evidence on record which we are repeating here again, we see no reason to disagree with the view taken
E by the High Court.

14. The deceased was aged about 24 years and about ½ day had passed since she died when post mortem was done. She was of average build. Eyes and mouth were partly
F open. Tongue was between the teeth. The body had pugilistic appearance. Smell of kerosene was present. Rigor mortis was also present. There was a half burnt cloth around the neck with knot half burnt. Half burnt bed sheet and other clothes as also a half burnt wire mingled with burnt clothes were found. A burnt cordless phone was also found.
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15. At the trial, the prosecution examined seven witnesses. Surya Kant Dixit PW 1 was the father of the deceased and maker of the F.I.R. who as well as his relative Jaideo Awasthi PW 2 gave evidence about the demand of Maruti Car by the
H accused respondents since after six months of marriage and

about the demand of Maruti Car being repeated and pressed by both the accused, when both of them had gone to the Sasural of the deceased and had been turned out by the two accused after being insulted on their expressing inability to meet the demand of a Maruti Car. Dr. R.K. Singh PW 3 stated that he was included in the panel of doctors conducting the autopsy on the dead body of the deceased and he proved the post mortem report. Head Constable Mohar Pal Singh PW 4 had scribed the check report on the basis of the FIR lodged by Surya Kant Dixit PW 1. Shir Bahadur Singh PW 5, Tehsildar of Tehsil Farrukhabad prepared the inquest report of the dead body of the deceased and other related papers. S.I. Ghanshyam Gaur PW 6 had collected bloodstains etc., from the spot at the instance of Shiv Bahadur Singh PW 5 and Circle Officer D.P.N. Pandey PW 7 was Investigating Officer of the case. The defence also examined three witnesses. Vidushi Tiwari DW 1 was the real sister of the husband of the deceased. Devendra Misra DW 2 and Sushil Kumar Misra DW 3 were non-family members of the two accused.

16. As held by the Apex Court in the case of Kunhiabdulla Versus State of Kerala, 2004 (4) SCC 13, in order to attract application of Section 304B IPC, the essential ingredients are as follows :

1. The death of a woman should be caused by burns or bodily injury or otherwise than in normal circumstances;

2. such a death should have occurred within seven years of her marriage;

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

4. Such cruelty or harassment should be for or in connection with demand of dowry;

A 5. Such cruelty or harassment is shown to have meted out to the woman soon before her death.

17. As generally happens in a crime of dowry death, this case is also based on circumstantial evidence. As regards B ingredients No. 1 and 2 of a crime of dowry death detailed above, it is an admitted fact that the deceased Geeta died otherwise than in normal circumstances vide her post mortem report and that the death had occurred within seven years of her marriage in her Sasural in the bedroom. As per the C prosecution case, she had been married to the accused respondent No. 1- Satya Narain Tewari alias Jolly about three years before this incident occurring on 3.11.2000. Even Vidushi Tiwari DW 1, sister of the husband of the deceased in paragraph 2 of her statement said that the deceased Geeta D was married to her brother Satya Narain Tiwari alias Jolly on 9.12.1997. Thus, her unnatural death in her Sasural occurred within three years of her marriage.

18. As regards ingredients No. 3, 4 and 5, the relevant E testimony is contained in the statement of the deceasd's father Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 (son-in law of Bua of Surya Kant). Both of them have deposed about the persistent demand of Maruti Car in dowry by the accused persons (husband and mother-in-law of the deceased) since F after six months of the marriage and harassment/maltreatment of the deceased over the score of non-fulfilment of the said demand. The gist of the testimony of Surya Kant Dixit PW 1 was that he had performed a decent marriage spending Rs. 4 Lacs giving household goods in dowry but after six months of the marriage, the two accused started torturing his daughter G Geeta pressing for the demand of a Maruti Car. On her visits to her parental house, she (deceased) used to narrate to him (this witness) her torture and maltreatment. She had also informed him in this behalf on telephone. About three months before the incident, he and Jaideo Awasthi had gone to

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Geeta's Sasural at Farrukhabad on getting message from Geeta about the atrocities of the two accused heaped upon her rendering her life miserable because of non-fulfilment of the demand of Maruti Car. Both the accused were there at their home at Farrukhabad and repeated the demand of Maruti car. On his expressing inability to meet this demand, he and Jaideo Awasthi were insulted and humiliated and turned out of the house. Both the accused told them not to visit their house again without meeting their demand of a Maruti Car. Surya Kant Dixit PW 1 then went to Geeeta's father-in-law at the place of his employment-State Bank because he was a gentleman. He apprised him of the conduct of his wife and son (accused) pressing the demand of Maruti Car. He, however, offered consolation, Geeta, daughter of Surya Kant Dixit DW 1, also advised him not to take any action and he went away. The victim might have thought that making of FIR by her father at that juncture would ruin her matrimonial life and so she advised him not to take any legal step at that time.

19. Then he received a telephonic message from someone at about 12 O'clock in the noon on the day of incident about the death of his daughter Geeta in her Sasural at Farrukhabad, he at once rushed from Mainpuri to Farrukhabad covering a distance of about 80-85 km. Reaching the Sasural of his daughter he found her dead in the bedroom of the first floor of the house.

20. Jaideo Awasthi PW 2 has corroborated the statement of Surya Kant Dixit PW 1 in all the essential particulars. He had accompanied Surya Kant Dixit PW 1 about three months before the incident to the Sasural of Geeta as related above while giving the gist of testimony of Surya Kant Dixit PW 1 and thereafter on the day of the incident on the receipt of telephonic message at about 12 O'clock at noon. It is pertinent to state that this witness used to reside in Mainpuri in a separate portion of the house of PW 1. He being a close relative of Surya Kant Dixit PW 1, it is quite believable that he had acquired

A knowledge of the persistent demand of Maruti Car by the accused on Geeta's visits to her parental house and he had also accompanied PW 1 to her Sasural three months before the incident as also on the day of the incident. The testimony of Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 is thus B quite credible regarding the illegal demand of a Maruti Car as in dowry by the two accused since after six months of the marriage and that they subjected her to harassment, maltreatment and humiliation on non-fulfilment of the said demand. It goes without saying that cruelty or harassment may not only be physical but also mental. C

21. There is an important feature of the case. In the present case, Surya Kant Dixit PW 1 has described Ghanshyam Tiwari (father-in-law of his daughter) as a gentleman. He has all the respect and regard for him. Even when he was humiliated by D the two accused about three months before the incident on his expressing inability to meet their demand of Maruti Car in dowry, he (PW1) had gone to him at his employment place in State Bank and had not taken any action on the consolation offered by him. He mentioned this fact in the FIR too. It appears that E Ghanshyam could not control the disposition of his wife and son (the two accused) and they continued to pursue their greed by tormenting and maltreating the young lady (deceased) to get a Maruti Car in dowry from her parents. She (Geeta) had to pay the price of non-fulfilment of this demand of theirs, losing her F life at their hands.

22. Only the husband and mother-in-law of the deceased have been accused of the offences in question. Besides them, there were three other family members i.e., Ghanshyam Tiwari (father of accused No. 1 and husband of accused No. 2), Km. G Vidushi DW 1 (sister of the accused No. 1) and Km. Shalini, another unmarried sister of accused No. 2. Such composition of the family has been related by Vidushi DW1. The circumstance that only the husband and mother-in-law of the deceased have been made accused of the offence, sparing the H

other three, is an indication that Surya Kant Dixit (father of the deceased) has not acted out of malice, anger or to wreak vengeance, as otherwise he would have implicated the entire family including the father-in-law of the deceased and two unmarried sisters of the husband of the deceased as is often done by the parental side of the bride in a dowry death case. Indeed, the prosecution could not be expected to bring forth any other evidence as to the persistent demand of dowry in the form of Maruti Car by the two accused after about six months of the marriage and maltreatment, harassment and torture heaped upon her (deceased) by the two accused on non-fulfilment of the said demand. The evidence on this aspect of the matter as contained in the statements of Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 has the natural aura of the truth.

23. Learned counsel for the appellants argued that the alleged demand of Maruti Car made after about six months of marriage does not answer the test of 'soon before' the death of the deceased. She reasoned that as per the own case of the prosecution, there was no interaction between the two sides since before three mnonths of the death of the deceased when Surya Kant Dixit PW 1 and Jaideo Awasthi PW 2 had allegdly been humiliated and turned out by the two accused from their house with the direction not to come there again without a Maruti Car and that there was no evidence that any such demand was made during the period of three months intervening between the alleged incident of turning them out of the house by the accused and the death of the deceased. The counsel for accused made reference to the case of *Balwant and another Vs. State of Punjab* AIR 2005 SC 1504 to stress the point that proximity test has to be applied. The argument, in our opinion, cannot be accepted.

24. As held by this Court in *Kunhiabdullah and another Vs. State of Kerala,* 2004 (4) SCC 13, 'soon before' is a relative term and it would depend upon the circumstances of

A 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 B presumption under Section 113-B of the Evidence Act. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression, 'soon before' would normally C imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and D has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

25. There can be no quarrel with the proposition that the proximity test has to be applied keeping in view the facts and circumstances of each case. Regarding the aforesaid decision, E the facts were somewhat different in that the deceased was not shown to have been subjected to cruelty by her husband for at least 15 months prior to her death. On the fact of that case, it was held that Section 304B IPC was not attracted.

F 26. On the other hand, the present case fully answers the test of 'soon' before'. There is the testimony of demand of Maruti Car being pressed by the two accused persons after about six months of the marriage of the deceased (which took place about three years before the incident) and of her being G pestered, nagged, tortured and maltreated on non-fulfilment of the said demand which was conveyed by her to her parents from time to time on her visits to her parental home and on telephone. Things had reached to such a pass that on getting a message from her about three months before the incident, Surya Kant Dixit PW 1 accompanied by Jaideo Awasthi PW H

2 had to go to her Sasural in Farrukhabad in an attempt to dissuade the two accused from pressing such demand, but they (the two accused) humiliated them and turned them out of the house with the command not to enter their house again without meeting the demand of a Maruti Car. He did not take any action on the consolation offered by the father-in-law of his daughter and also on the advice of his daughter. It was natural that the victim also did not want her father to take any extreme step against the two accused. She might have thought that things would improve with the passage of timebut it seems that that did not happen. Surya Kant Dixit PW 1 was in a helpless state after suffering humiliation at the hands of the accused persons about three months before the actual incident. He could simply wait and watch in the hope of things to improve, but the situation did not improve at all. It, however, cannot be taken to mean that the demand made by the two accused persons had subsided or was given up by them. It can justifiably be inferred from what happened subsequently that they continued to torture the unfortunate lady because of non-fulfilment of the demand of Maruti Car. In our opinion, the test of 'soon before' is satisfied in the facts, evidence and circumstances of the present case.

27. Thus, ingredients No. 3, 4 and 5 for attraction of Section 304B IPC, are also established by satisfactory evidence adduced by the prosecution in the form of the testimony of Surya Kant Dixit PW 1 corroborated by Jaideo Awasthi PW 2.

28. As regards the important question whether the death of Geeta was homicidal as alleged by the prosecution or suicidal as claimed by the defence, there is a popular adage that the witnesses may lie but the circumstances will not. In the present case, certain recoveries made from the spot strongly indicate that the death of Geeta was homicidal. There are two important recovery memoes Ex.Ka-10 and Ka-11. The recovery memo Ex.Ka-10 relates to the recovery of blood and bloodstained Bindia from the Chhajja (balcony) situated outside the room in which the dead body of the deceased was found

A lying. The said recovery is a pointer that the deceased had been subjected to violence there and there was struggle btween her and her captors. Such recovery leads to the justifiable inference that she had received injuries, and blood had oozed in drops found at the Chhajja. She was a young lady
B of about 24 years of age. The instinct of self preservation is strongest in all human beings. Seemingly, violence had first been applied to her inside the bedroom by the accused and offering resistance she had somehow run out to the Chajja (balcony) adjoining the room and the blood dropped there.
C Another recovery memo Ex.Ka-11 related to the findings inside the room in which the dead body was found. Amongst them, there were broken pieces of bangles also. With the application of force and violence, she was brought back from the Chajja (balcony) to the bedroom where she was done to death. It is
D noted from the Panchnama Ex.Ka-6 that the receiver of the telephone was stuck under the left arm of the deceased and burnt telephone wire was found stuck with the dead body.

29. The post mortem report also makes mention of the burnt wire and burnt cordless phone being found stuck with the
E dead body along with a half burnt scarf around the neck.

30. The recovery memoes Ex.Ka-10 and Ka-11 had been prepared by S.I. Ghanshyam Gaur PW 6 at the dictationof ShirBahadur singh PW 5. Shir Bahadur Singh PW 5 (Tehsildar
F Magistrate) is a witness to the recovery memoes. Inquest report (Panchayatnama) was prepared by himself. One of the witnesses of the recovery memoes and Panchnama is Keshav Tiwari, advocate uncle of accused No. 1. These recoveries were not challenged in the cross-examination of Shiv Bahadur Singh (Tehsildar Magisttrate) PW 5 or SI Ghanshyam Gaur PW
G 6. These recoveries amply indicate that the deceased had been subjected to violence in the bedroom and she had succeeded in coming out on the Chhajja (balcony) to save herself. The signs of struggle and application of violence in the form of broken bangles inside the room and the blood and bloodstained Bindia
H

on the Chhajja were found. Not only this, it appears that the deceased had even tried to make use of the phone to inform someone about what was happening with her but she could not succeed. The presence of burnt cordless phone stuck in the arm and the burnt wire of phone with the dead body indicates that she had tried to contact someone on phone, but in vain. There is nothing to cast doubt on the said recoveries.

31. The argument of the learned counsel for the accused, however, ignores other important aspects of the matter. We have dealt with the above that there was struggle and application of violence on the deceased on the Chhajja (balcony) and in the bed room where she was forcibly taken for being done to death. To incapacitate her of any meaningful resistance, the accused persons interfered with her breathing process with the compression of the windpipe of her neck before burning her. Respiration had not completely stopped. In other words, the air passage was not completely blocked by the ligature pressed by the accused around the neck of the deceased. She was strangulated, but not to death. Strangulating her half way to overpower her and to render her incapable of offering any meaningful resistance, the two accused then poured kerosene over her and burnt her. This explains the presence of sooty particles in her larynx, trachea and bronchi. A half burnt cloth around her neck with a knot had been found by the panel of doctors conducting post mortem on her dead body. Her tongue was between the teeth. Ligature mark of large dimension measuring 31 x 7 cm all around the neck had been found by the doctors. As stated above, the doctors found a half burnt piece of cloth around her neck with a knot half burnt. It was the constricting material used by the accused for compressing the neck of the deceased.

32. Dr. R.K. Singh PW 3 explained that strangulation would mean pressing the neck with force. He also emphatically stated that strangulation was made by the cloth found around the neck of the deceased which was bearing a knot. As a matter of fact, ligature mark was the impression left by the constricting object

A around the neck. The sign of "tissue ecchymosed and tracheal ring found compressed" was explained by the Doctor that it occurred on account of tying the cloth around the neck with toughness. These were the signs of violence and force applied by the assailants on the neck of the deceased strangulating her
B to render her immobile and to overpower her, but half way. They sprinkled kerosene on her and burnt her to accomplish their objective of causing her death. Nothing could be brought out of the cross-examination of Dr. R.K. Singh PW 3 to displace the facts emerging from the post mortem report.

C

33. So far as the alleged manipulation in the post mortem report is concerned, the contention for the accused is wholly unfounded. It was a panel of three doctors formed by the District Magistrate to conduct post mortem of the dead body of the deceased. The complainant was an outsider from another city.
D It would be preposterous to assume that he had such monstrous influence that he could win over the three doctors to produce a port mortem report of his choice, falsely showing the signs of strangulation on the dead body of the deceased. Keshav Tiwari (uncle of accused No. 1) was an Advocate,
E practising at Farrukhabad who was even present at the time of preparation of the inquest report. He was also a witness of Fard of recovery Ex.Ka-10 and Ka-11. Naturally, he would have been watching the interest of the accused persons. It was practically impossible for PW 1 (father of the deceased) to
F maneuver any manipulation in the post mortem report. We also cannot accept the argument that the doctors were incompetent.

34. The theory of suicide put forth by the defence completely falls through on careful analysis of the evidence and
G the attending circumstances. Two different types of injuries found on the dead body of the deceased, i.e., the ligature mark of large dimension and the body being badly burnt because of the ante mortem burns with smell of kerosene coming out of the body completely rule out the theory of suicide. A half burnt piece of cloth with a knot was also found tied around the neck.
H If a cloth is suddenly tightened around the neck, it is likely to

cause loss of consciousness, rendering it impossible for the victim to perform any action because of the interference with her breathing process. Owing to constricting of neck by a ligature, it could not at all be possible for the victim to catch hold of the container of the kerosene and pour it upon her with the lighting of match stick setting her ablaze. Her mental faculty would not have been in such a position to have undertaken such an activity. It is also to be taken note of that her body was found by the Investigating Officer at point "A" was depicted in the site plan in the lonely corner of the bedroom where she was rendered immobile and in a helpless state.

35. Vidushi DW 1 sister of accused No. 1 tried to support the theory of suicide by her statement that her sister-in-law (deceased) used to bear Tabiz in her neck. She stated that she allegedly enquired from Geeta about the same and she had replied that she was being haunted by evil spirits having bad dreams in the night and further that a month before her marriage, her father had taken her to a Tantrik who had given Tabiz of her marriage. According to her, the deceased remained in mental tension because she had not been able to give birth to any child.

36. We have not the slightest doubt that the theory of suicide put forth by the defence is a crude concoction. Ours is a superstitious society. A number of males and females wear Tabiz over their persons on the advice of hermits, astrologers, fortunetellers, palmists, tantriks, etc., for general well being. It is preposterous that even before her marriage, the deceased was taken by her father to some tantrik for such treatment of sorcery so as to ensure the birth of a child to her within three years of marriage. It also cannot be accepted that she was living under gloom or depression for having not given birth to a child. She was only 24 years of age when she died. She was educated upto B.Sc. Standard. She had not passed child bearing age. She had been married about three years back. No evidence could be led by the defence that she was suffering

A from some gynaecological problem running counter to her child bearing capacity. Had there been any such problem, there would have been some history of her consultation with medical experts and related treatment. The accused being her husband and the mother-in-law would have definitely been in a position
B to put forth documentary evidence in this behalf. A bald assertion from the mouth of the sister of the accused No. 1 could not be believed that the deceased was suffering from some mental depression for having not conceived.

C 37. We record with dismay that the trial judge has taken it to be a ground against the prosecution that the knot found around the neck of the deceased was not produced before the Court. It is beyond comprehension as to how the knot of cloth found wrapped around the neck of the deceased could be produced before him. It is obvious that he completely
D misinterpreted the matter relating to the knot and took it as a circumstance against the prosecution. While conducting post mortem, the knot found around the neck of the deceased was untied and removed. In other words, the body was freed from the knot so as to facilitate the post mortem. Therefore, there
E could be no question of the knot bring produced before the court.

38. On close scrutiny and careful appreciation of the evidence, we are of the firm view that the trial judge wrongly
F accepted the plea of alibi put forth by the two accused persons to get away from the consequences of the serious crime committed by them. Their conduct also voluminously spoke against them. As a matter of fact, only these two accused had an opportunity to commit this offence. The father-in-law of the
G deceased having gone to State Bank, Farrukhabad (the place of his employment) and his two daughhters including DW 1 Vidushi having gone to their educational institution, the two accused persons only (husband and mother-in-law of the deceased) had the opportunity to commit this crime inside the bedroom of one of the them, i.e., accused Satya Narayan
H Tiwari alias Jolly. No one else could have access there. The

manner in which the deceased was done to death, i.e., by first strangulating her and then setting her afire, needed at least two persons, because she (deceased) was also a young lady aged about 24 years. As is well known, the instinct of self preservation is natural in all living beings. A single person could not have possibly overpowered the victim to strangulate her and to set her afire. As a natural instinct, she was bound to offer resistance and having regard to the two types of the injuries found on her person at the time of post mortem, it was the handiwork of at least two persons, who undoubtedly were the husband and mother-in-law of the deceased. The conduct of the mother-in-law of the deceased was that she lodged a false information at the Police Station at 1.10 P.M. that her daughter-in-law had committed suicide. In this report, she stated that she had gone to supervise the construction work at her other house and noticing smoke emitting from the first floor of the bedroom of the house of the incident and on the shouts of the residents of the locality, she came rushing to the scene. In our opinion, this statement is false as per the own showing of her daughter DW 1 Vidushi. She stated that the house to which her mother had gone, was situated in another locality. She also stated that it was not visible from the house of the incident. It also emerges from her statement that the distance of that house under construction from the old house of the incident was 1 or 2 furlongs. This being so, there could be no question of her (accused appellant No. 2) noticing emission of smoke from the bedroom of first floor of the house where the incident took place. She (accused appellant No. 2) falsely stated in the report lodged at the Police Station to misguide the machinery of law through false plea of alibi. The story of seeing smoke coming out of the home and hearing the alarm of the respondents of the locality mentioned in the report of Bhuvaneshwari Devi was a stark lie. She had taken a false excuse to support her baseless plea of alibi of herself as also her son-husband of the deceased.

39. The interested testimony of DW 1 Vidushi also cannot

A be believed that her brother accused No. 1 – husband of the deceased had gone to his shop at about 8 P.M. After committing this crime, the two accused vanished from the scene, but before doing that, one of them (Bhuvaneshwari-mother-in-law of the deceased) lodged a false report at the B police station that ner daugther-in-law had committed suicide. It is in the testimony of D.P.N. Pandey PW 7 (C.O/Investigating Officer) that the accused Satya Narayan surrendered in Court on 7.11.2000 and the other accused Rani alias Bhuvaneshwari on 13.11.2000. Earlier thereto, the attempts to find and arrest C them turned to be futile. It is in his testimony that both of them were absconding and for this reason, on 6.11.2000 a report had been submitted for issuing process against them under Section 82/83 Cr.P.C. None of the two accused is witness of the inquest report or Fards. Absconding by both of them after D the incident cannot be termed to be normal conduct of innocent persons. The report by the accused Bhuvaneshwari Devi, as we said, was given at the Police Station at 1.10 P.M. On 3.11.2000. In our opinion, it was the outcome of deliberation and consultation with legal experts who had already gathered at the scene of occurrence along with Keshav Tiwari , E Advocate-uncle of the accused Satya Narayan Tiwari, DW 2 Devendra Misra, Advocate, and few other lawyers. We note from the testimony of DW 2 Devendra Misra that the news of the death of daughter-in-law of Ghanshyam Tiwari was received in the District court at 11.30 A.M., itself i.e., much before the F lodging of the report by Bhuvaneshwari. This witness stated that when he arrived at the scene of occurrence, a group of lawyers was already there. The false report made by the accused Bhuvaneshwari Devi was obviously the outcome of the legal advice to save the culprits from the consequences of the G criminal act committed by them.

40. Learned counsel for the accused also argued that it was the accused Bhuvaneshwari who had passed on the information of the deathof the deceased to her parents on H telephone. Surya Kant Dixit PW 1 (father of the deceased)

denied that the telephone received by him was from Bhuvaneshwari Devi. According to him, he had received the telephone call from some stranger. Even if it is taken for the sake of argument that she had telephoned to him, in our opinion, it is of no consequence and the defence does not score any point on this premise. The reason is that the crime was committed by the two accused with preplanning, so much so that Bhuvaneshwari Devi even lodged a false report at the police station to misguide the machinery of law and to create a false defence. Telephoning to the father of the deceased could only be a part of the scheme to project it as a case of suicide.

41. We are of the view that the presumption of Section 113-B of the Evidence Act is attracted in this case and the discussion that we have made hereinabove makes it abundantly clear that the defence could not displace the said presumption. The culpability of the two accused in committing this crime is established to the hilt by the facts and circumstances proved by the prosecution. They undoubtedly are the authors of this crime. The irresistible conclusion is the the demand of Maruti Car raised by the two accused after about six months of the marriage persisted as it was not settled by the father of the deceased by supplying the same. The prosecution has successfully proved the persistent demand of Maruti Car as a part of dowry by the two accused and continuous cruelty and harassment heaped upon the deceased by them over this score.

42. To sum up, the prosecution has been able to prove the following :

(1) the death of the deceased was caused by strangulation and burning within seven years of her marriage;

(2) the deceased had been subjected to cruelty by her husband and mother-in-law (the two accused appellants) over the demand of

A Maruti Car in dowry raised and persistently pressed by them after about six months of the marriage and continued till her death.

(3) The cruelty and harassment was in connection with the demand of dowry i.e. B Maruti Car.

(4) The cruelty and harassment is established to have been meted out soon before her death.

(5) The Two accused were the authors of this C crime who caused her death by strangulation and burning on the given date, time and place.

43. In our opinion, the trial Judge recorded an acquittal D adopting a superfluous approach without indepth analysis of the evidence and circumstances established on record. On thoroughly cross-checking the evidence on record and circumstances established by the prosecution with the findings recorded by the trial court, we find that its conclusion are quite E inapt, unjustified, unreasonable and perverse. Proceeding on wrong premise and irrelevant considerations, the trial court has acquitted the accused. The accused are established to have committed the offences under Sections 498-A and 304 B IPC and under Section 4 of Dowry Prohibition Act and the findings of the High Court are correct. F

44. As a result of the above discussion, this Appeal is dismissed accordingly.

45. On 27.10.2005 this Court had granted bail to the G appellants. Their bail bonds are cancelled. They shall be taken into custody forthwith to serve out remaining period of sentence.

46. Application for impleadment is allowed.

H R.P. Appeal dismissed.