A DR. SUNIL KUMAR SAMBHUDAYAL GUPTA AND ORS.

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 891 of 2004)

NOVEMBER 11, 2010

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[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

***Penal Code, 1860**: ss.306/34 and 498A/34 – Conviction under – Suicide by married woman 6 years after marriage –* C *Allegation against husband and parents-in-law that they ill treated the deceased and suspected that the deceased had illicit relation with a family friend and that they demanded dowry few days prior to her death and all that compelled the deceased to commit suicide – Acquittal by trial court –* D *Conviction by High Court – Challenged – Held: Cumulative effect of medical evidence given by three doctors led to the inference that the deceased suffered from manic depression and had mental/psychosis problem – The protests on part of the accused even on a mere suspicion, and asking the* E *deceased to keep distance from the family friend, with whom they suspected she was illicitly involved cannot be termed as unwarranted – Depositions of father, brother and aunt of deceased were full of contradictions and exaggerations – Allegation of demand of gold ornaments by mother-in-law not* F *found plausible – Certain vital facts stated for the first time in court which were neither mentioned in statements made u/ s.161 Cr.P.C. nor in FIR – It was a case of gross abuse of dowry laws – High Court dealt with the case very casually, adopting a very superficial approach to the whole matter and brushed aside the allegation of illicit relationship, for which* G *there had been documentary evidence, without recording any cogent reasons for the same – High Court did not make any attempt to appreciate the evidence with accuracy and reversed the findings of the trial court which were based on*

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evidence and detailed reasons – Code of Criminal Procedure, 1973 – s.161. A

Evidence:

Contradictions/Omissions/Discrepancy/Improvement in evidence – Reliability of such evidence – Discussed. B

Statement made in FIR or u/s.161 Cr.P.C. not disclosing certain facts – Disclosing those facts for the first time in court – Reliability of such evidence – Discussed – Code of Criminal Procedure, 1973 – s.161. C

Discrepancy in evidence – Normal and material discrepancy – Distinction between, and their respective effect on the credibility of a party's case.

Presumption of service – Registered letter – Held: There D *is a presumption of service of a letter sent under registered cover – No doubt, the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never* E *tendered the registered letter to him – The burden to rebut the presumption lies on the party challenging the factum of service.*

***Appeal against acquittal**: Interference by appellate court,* F *with the order of acquittal passed by the trial court – Scope of.*

The prosecution case was that the victim-deceased got married to appellant no.1 on 1.12.1978. A female child was born out of the wedlock in the year 1981. The victim G **committed suicide on 28.9.1985. PW-2, the brother of the deceased filed a complaint against the appellants who were the husband and the parents-in-law of the deceased alleging that they had been demanding gold ornaments**

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A and ill-treating the deceased, which drove the deceased to commit suicide.

The trial court acquitted all the accused on the ground that the alleged demand of gold ornaments or ill-
B treatment of the deceased could not be established and the letters produced by the prosecution were neither suggestive of ill-treatment nor of demand of dowry; that no such allegations were made either while lodging the FIR or in the statements recorded under Section 161,
C Cr.P.C. and such allegations were made for the first time only while making statements before the court during trial; and there were material contradictions and improvements in the testimonies of witnesses which made them unreliable.

D The High Court relied upon the deposition of the doctor (PW.10) that the deceased had told him that she was deprived of love and affection by her family members and had no faith any of them. The High Court held that the defence failed to establish that the deceased was
E suffering from epilepsy before her marriage and that there was existence of any illicit relationship between the deceased and a family friend 'Kake'. It further held that there had been a demand of a gold chain by appellant No.3, the mother-in-law of the deceased. Accordingly, the
F High Court convicted the appellants under Sections 306/ 34 and 498A/34 IPC. The instant appeal was filed challenging the order of conviction. During pendency of appeal, appellant no.3 died and her appeal stood abated.

Allowing the appeal, the Court

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HELD: 1.1. Material Contradictions: While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect
H the trial. Minor contradictions, inconsistencies,

embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. Where the omission amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt. In case, the complainant in the FIR or the witness in his statement under section 161 Cr.P.C., has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. [Paras 14, 15, 16, 17] [480-C-H; 481-A-B]

State Represented by Inspector of Police v. Saravanan & Anr. AIR 2009 SC 152; *State of Rajasthan v. Rajendra Singh* (2009) 11 SCC 106; *Mahendra Pratap Singh v. State of Uttar Pradesh* (2009) 11 SCC 334; *State Represented by Inspector of Police, Tamil Nadu v. Sait @ Krishnakumar* (2008) 15 SCC 440; *State of Rajasthan v. Smt. Kalki & Anr.* AIR 1981 SC 1390 – relied on.

1.2. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do

A not corrode the credibility of a party's case, material discrepancies do so. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to B contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Paras 19, 21] [481-E-F; 482-A-B]

C *Syed Ibrahim v. State of A.P.* AIR 2006 SC 2908; *Arumugam v. State* AIR 2009 SC 331; *Bihari Nath Goswami v. Shiv Kumar Singh & Ors.* (2004) 9 SCC 186 – relied on.

2.1. Appeal against Acquittal: While dealing with a D judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a E finding of fact, the trial court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of F acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses. [Para 22] [482-C-E]

G 2.2. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and H gravity has to be taken into consideration. The appellate

court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. [Paras 23, 24] [482-F-H; 483-A-C]

Balak Ram & Anr. v. State of U.P. **AIR 1974 SC 2165;** *Shailendra Pratap & Anr. v. State of U.P.* **AIR 2003 SC 1104;** *Budh Singh & Ors. v. State of U.P.* **AIR 2006 SC 2500;** *S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.* **AIR 2008 SC 2066;** *Arulvelu & Anr. v. State* **(2009) 10 SCC 206;** *Ram Singh alias Chhaju v. State of Himachal Pradesh* **(2010) 2 SCC 445;** *Babu v. State of Kerala* **(2010) 9 SCC 189 – relied on.**

3.1. The record revealed that at an initial stage the relationship between husband and wife had been very cordial and they had love and affection for each other. It was only at a later stage when the family suspected an illicit relationship between the deceased and 'Kake' that the appellants were very much disturbed. Both the families made serious attempts to re-concile and patch up the matter and the appellants had agreed that the deceased may be given an opportunity to improve her

A behaviour. Thus, admittedly there was a doubt that the deceased had developed serious intimacy with 'Kake', which was much more than what happens in normal course with a family friend. Therefore, the finding recorded by the High Court that the intimacy between B them to the extent of having an illicit relationship was not there, loses its significance, for the reason that even the suspicion of such a matter becomes the talk of the town and the reputation of the family remains at stake. The protests on the part of the appellants even on a mere C suspicion and asking the deceased to keep distance from 'Kake' or improve her behaviour was not something which can be termed to be unwarranted or uncalled for. [Para 25] [483-E-H; 484-A-B]

3.2. There had been a lot of improvements and D contradictions in statements of the doctor (PW-10). He deposed for the first time in the court during the trial, that when he went to examine the deceased, she was found in an unkept room/store room and that he was introduced to the deceased as a Psychiatrist and that the E deceased had asked him whether he treated his wife in the same way as she had been treated by her husband. None of this was mentioned in his statement recorded by the police. Nor it had been recorded therein that the deceased had told him that she was harassed by the F appellants and her ornaments were taken away/worn by her mother-in-law (A.3). More so, he had not stated in his police statement that the deceased was merely mentally disturbed and not suffering from a gross psychological problem. Nor had he stated therein that the deceased had G told him that she was not having any faith in any of her family members and she was deprived of their love, affection and sympathy. Such contradictions in his statements cannot be held to be mere explanations or elaborations of his version, but tantamount to material H contradictions or vital omissions. The rules of

appreciation of evidence requires that court should not draw conclusions by picking up an isolated sentence of a witness without adverting to the statement as a whole. In such a fact-situation, it is not safe to rely on his testimony for the simple reason that he had made a lot of improvements/embellishments while deposing in court and vital contradictions existed with his earlier recorded statement. Thus, no reliance could be placed on his depositions to hold that appellants had ill-treated the deceased or that appellant no.3 had taken away/worn her ornaments or that she had been deprived of their love and affection or that she was not suffering from epilepsy etc. The deposition of the doctor (PW.1) revealed that E.C.T. treatment is given only to mental patients, who have mental depression and tend to commit suicide; the ailment of epileptic fits is a neurological problem. This view stood fully corroborated by the deposition of the doctor (PW.12), Reader in Psychiatric Medicine, Mental Hospital, Kanpur. He had examined the deceased and prescribed medicines for manic depressive Psychosis. The prescription of this witness substantially remained the same as of PW.10. The cumulative effect of the medical evidence given by three doctors would lead to the conclusion that deceased had been suffering from manic depression and certainly had some mental/ epileptic/ psychosis problem. [Paras 28, 29] [485-E-H; 486-A]

3.3. The other witnesses were the father, brother and the aunt of the deceased. Being close relatives, in such facts and circumstances, they might have developed inimical feelings towards the appellants, since they came to the conclusion that the appellants were responsible for the death of the deceased. However, their depositions were full of contradictions and have marked improvements from their statements recorded earlier. The exaggerations and improvements are of such a nature

A that they made their whole statements in respect of the demand for gold ornaments and/or the ill-treatment of the deceased liable to total disregard on these counts. Gold ornaments had been given by the complainants to the deceased out of love and free will at the time of the B marriage of PW.2 and at the time of birth of daughter of the deceased. Undoubtedly, PW.2 had alleged in the FIR that there had been demand of gold ornaments by the appellants but without any details of the same. He could not furnish any explanation as why this fact was not C disclosed to the police when his statement and supplementary statement was recorded. Also no such inference could be drawn from any of the letters on record. Only one un-dated letter (Ext.P-21) written by the deceased to her father suggested that her mother in-law had been asking for a gold chain. More so, as the chain D had been given by the complainants to the deceased just 2/3 months before her death, and there was no evidence that any further demand had been there, the issue became totally irrelevant in terms of proving the motive, and it cannot be presumed that any demand was made. E More so, even if it is presumed that there was some demand by appellant No.3, as she is no more, and her appeal stood abated, this issue has become totally irrelevant for the reason that no such allegation had ever been made against the remaining two appellants. [Para F 29] [486-B-G]

3.4. The relations between the parties became strained because of the suspicion that the deceased was having an illicit relationship with 'Kake'. However, it was G admitted by PW.8, father of the deceased, that subsequently the relations became normal and they were invited at the house of the appellants after the deceased tendered an apology to her mother-in- law. The said witness did not state in his statement before the police H that when he went to see the appellants, they had asked

him whether he had brought gold ornaments or that he was told that the deceased would not be allowed to live there and they would make her condition even more miserable. Such an improvement was made while deposing in court and no explanation could be furnished by him as to why such vital facts were not stated by him at the time of recording his statement under Section 161 Cr.P.C. This statement is to be discarded as it is not safe to hold the appellants guilty of the offences alleged against them on such an improved version. The deposition of PW.7, aunt of the deceased is by no means different, as she had also made major contradictions and improvements in her statement made in court. She had not stated in her police statement that the appellants were demanding gold ornaments from the deceased and her family or that the appellants were keeping the deceased starving and were not allowing her to meet her daughter. The explanation furnished by her that she had not been feeling well and had forgotten to narrate such material facts, cannot be believed. The statement of PW.2, the brother of the deceased was also full of contradictions and suffered from major improvements. The contradictions were of such a nature that they impaired the whole of his evidence. The same cannot be held to be clarificatory. He was not in a position to state what ornaments his family had presented to the deceased on different occasions. He could not even furnish an explanation as to why the demand of a gold chain was not evident from any of the letters between the parties, except in the letter (Ext. P-21). The complainants have denied the receipt of letter written by appellant no.2 to the father of the deceased. However, the appellants have produced the correspondence with the post office and proved the postal stamp to show that the said letter was sent by registered A.D. to PW.8. The law in this regard is well settled. There is a presumption of service of a letter

A sent under registered cover. No doubt, the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered
B the registered letter to him. The burden to rebut the presumption lies on the party challenging the factum of service. It was the responsibility of the complainants to prove by adducing evidence of the official of the Post Office, that the said letter had not been delivered to them.
C However, for the reasons best known to the prosecution such an exercise was not undertaken. [Paras 30-33] [487-A-H; 488-A-C-E-F; 489-B]

Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani AIR 1989 SC 1433; *Chief Commissioner of Income*
D *Tax (Administration), Bangalore v. V.K. Gururaj and Ors* (1996) 7 SCC 275; *Shimla Development Authority and Ors. v. Santosh Sharma (smt.) and Anr.* (1997) 2 SCC 637; *Harihar Banerji v. Ramshashi Roy* AIR (1918) PC 102 – relied on.

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4.1. The instant case is required to be examined from another angle also. The marriage took place on 1st December, 1978. The complainant party could not place any correspondence on record prior to February 1985
F except letter dated 24th February, 1979 written by the deceased herself to her husband. However, it also goes in favour of the appellants. The controversy arose only after the expiry of the period of more than 6 years from the date of marriage. It is quite possible that the dispute
G arose between the parties only because of the suspicion that the deceased had developed an illicit relationship with 'Kake'. Had there been a demand of dowry or ill-treatment to her on any other ground by the appellants, there could have been some correspondence between the parties during the said long period of more than 6
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years. None of the prosecution witnesses had made any allegation of any demand of dowry or ill treatment during the said earlier period. It is unnatural that after expiry of such a long period, the appellants suddenly became greedy and started demanding ornaments and for not meeting their demand, started ill treating the deceased to the extent that she had to commit suicide. Thus, the allegations made by the complainant party remained unnatural and improbable. More so, the demand had been only of a thin gold chain which could not be very expensive in those days, especially Considering the socio-economic status of all the parties. For the gold ornament worth such a petty amount after the expiry of a long period of about 6 ½ years, from the date of marriage, it is not natural that the appellants could treat the deceased with such cruelty that she was drawn to commit suicide. [Para 34] [489-C-H; 490-A]

4.2. It is a clear cut case of gross abuse of the dowry laws. It is difficult to sustain the conviction of the appellants on the said counts based upon the inconsistent, embellished and improved statements of the witnesses, which materially contradict their respective statements recorded earlier. The High Court did not dislodge the reasons given by the trial court for acquittal. The High Court did not make any reference to the deposition of PW.10 in the cross-examination and dealt with the case very casually, adopting a very superficial approach to the whole matter and brushed aside the allegation of an illicit relationship for which there had been documentary evidence on record without recording any cogent reasons for the same. The High Court did not make any attempt to appreciate the evidence with accuracy and reversed the findings of the trial court which were based on the evidence on record and for which detailed reasons had been assigned. [Para 35] [490-B-E]

A **Case Law Reference:**

AIR 2009 SC 152	**relied on**	**Para 14**
(2009) 11 SCC 106	**relied on**	**Para 15**
B **(2009) 11 SCC 334**	**relied on**	**Para 16**
(2008) 15 SCC 440	**relied on**	**Para 17**
AIR 1981 SC 1390	**relied on**	**Para 18**
AIR 2006 SC 2908	**relied on**	**Para 19**
C **AIR 2009 SC 331**	**relied on**	**Para 19**
(2004) 9 SCC 186	**relied on**	**Para 20**
AIR 1974 SC 2165	**relied on**	**Para 24**
D **AIR 2003 SC 1104**	**relied on**	**Para 24**
AIR 2006 SC 2500	**relied on**	**Para 24**
AIR 2008 SC 2066	**relied on**	**Para 24**
E **(2009) 10 SCC 206**	**relied on**	**Para 24**
(2010) 2 SCC 445	**relied on**	**Para 24**
(2010) 9 SCC 189	**relied on**	**Para 24**
AIR 1989 SC 1433	**relied on**	**Para 33**
F **(1996) 7 SCC 275**	**relied on**	**Para 33**
(1997) 2 SCC 637	**relied on**	**Para 33**
AIR (1918) PC 102	**relied on**	**Para 33**

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 891 of 2004.

From the Judgment & Order dated 29.4.2004 of the High Court of Judicature at Bombay in Criminal Appeal No. 865 of
H 1987.

K.T.S. Tulsi, Niraj Gupta, Raj Kamal, Arputham, Aruna & Co., for the Appellants. A

Sushil Karanikar, Sanjay V. Kharde, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by B

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the judgment and order of the High Court of Bombay, dated 29.4.2004, passed in Criminal Appeal No. 865 of 1987, by which the High Court has reversed the judgment and order C of the Trial Court acquitting the appellants of the charges under Sections 306/34 and 498A/34 of the Indian Penal Code, 1860 (hereinafter called as 'IPC').

2. Facts and circumstances giving rise to this case are that D appellant No.1 got married to one Neeru Gupta (hereinafter called as 'the deceased') on 1.12.1978 by way of an arranged marriage. Out of the said wedlock, a female child named Mili was born in 1981. There had been some disputes between the husband and wife on petty matters. Neeru committed suicide on 28.9.1985 by hanging herself in the bathroom when all the E other family members had gone outside. Rajesh (PW.2), brother of the deceased, filed a complaint dated 30.9.1985, against the appellants i.e. the husband and parents in law of the deceased, alleging that they had been demanding dowry and had given ill treatment to the deceased, and that is why F Neeru committed suicide. The police investigated the matter and filed the charge sheet against all the three appellants on 9.1.1986 under Section 306 read with Section 34 IPC and Section 498A read with Section 34 IPC. The prosecution examined a large number of witnesses to substantiate its case. G After the conclusion of the trial, the Sessions Court vide its judgment and order dated 21.5.1987, held that the deceased had committed suicide. However, no role could be attributed to any of the appellants for the same, and the prosecution failed to prove any of the charges beyond reasonable doubt against H

A the appellants. The witnesses examined by the prosecution improved their version with regard to claims of the alleged demands, particularly in respect of the gold ornaments and ill treatment of the deceased. The Trial Court came to the conclusion that the deceased was suffering from epilepsy, B psychosis and depression and had been getting regular treatment for the same. Therefore, it was not a case of dowry demand or treating her with cruelty.

3. Being aggrieved, the State of Maharashtra preferred Criminal Appeal No.865 of 1987 before the High Court of C Bombay and the High Court reversed the order of acquittal, convicted the appellants vide its judgment and order dated 29.4.2004 and imposed the punishment of 3 years RI on the husband, appellant No.1, and 2 years on the other appellants i.e. the in-laws of the deceased. Hence, this appeal.

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4. Shri K.T.S Tulsi, learned senior counsel appearing for the appellants, has submitted that the High Court failed to appreciate the medical evidence and depositions of the prosecution witnesses in the right perspective, as the same E could not establish conclusively that the suicide by the deceased could be attributed to the appellants to any extent. It was a clear cut case of suicide because of depression, as the deceased had been suffering from epilepsy and other mental disorders. The deceased had developed an illicit relationship F with a family friend, Kake, and a letter written by the said Kake had been in the possession of the other family members and, therefore, they had informed her parents and brother about the said illicit relationship. The medical evidence, particularly, the deposition of Dr. Daulatram Nekumal Gurbani (PW.10) made it clear that the deceased had been suffering from serious G depression and such a patient often develops suicidal tendencies. The deceased had also made an attempt earlier to commit suicide in 1985 and she had been taken to the local hospital. Subsequently, she had also been treated at Kanpur. The findings of fact recorded by the Trial Court that there was

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neither any demand of gold ornaments or any kind of dowry, nor had the deceased been subjected to cruelty, could not be held to be perverse by the High Court to bring home the charges against the appellants under Sections 306 or 498A IPC. The parents-in-law of the deceased were not living at Kalyan, as the appellant No.2 had been transferred to Kurudwadi in 1983 and the deceased was living with her husband i.e. appellant No.1, at Kalyan. The High Court committed an error in shifting the burden of proof to the defence as the court observed that the defence failed to prove its version. In fact the prosecution has to prove its case beyond reasonable doubt and the failure of the defence to prove the defence version cannot be a ground for conviction. More so, as there has been no abetment to suicide, the provisions of Section 306 IPC could not be attracted. Thus, in view of above, the appeal deserves to be allowed.

5. On the contrary, Shri Sushil Karanjakar, learned counsel appearing for the State has vehemently opposed the appeal contending that the High Court's judgment is based on cogent reasons and on a proper appreciation of the evidence on record. The High Court has correctly reached the conclusion that the findings of fact recorded by the Trial Court were perverse. The High Court is the final court of facts, its findings do not deserve to be disturbed by this Court in a routine manner. There is sufficient evidence on record to prove the demand of dowry and abetment to suicide. Therefore, no interference is required by this Court with the findings of fact recorded by the High Court. The appeal lacks merit and, thus, is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. Before proceeding further, it may be pertinent to mention here that Shri K.T.S Tulsi, learned senior counsel appearing for the appellants, has informed us that appellant No.3, Sou. Pushamalati Sambhudayal Gupta died in the month

of February, 2010. In view thereof, the appeal by appellant No.3 stands abated and we only have to consider the case of appellant Nos. 1 and 2, i.e., the husband and the father-in-law of the deceased.

8. The Trial Court after appreciating the depositions of the witnesses and examining the documentary evidence on record came to the conclusion that the alleged demand of gold ornaments or ill-treatment of the deceased could not be established and none of the letters produced by the prosecution has been suggestive of either of ill-treatment or demand of dowry. None of the prosecution witnesses, i.e. the family members of the deceased, made such allegations either while lodging the FIR or in their statements recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.'). Such allegations had been made for the first time while making statements before the court during trial. There were material contradictions and improvements, which were not mere elaborations of their statements already made. Thus, their statements in regard to those allegations were liable to be discarded.

9. The High Court reversed the findings of fact recorded by the Trial Court, mainly relying upon the evidence of Dr. Daulatram Nekumal Gurubani (PW.10), as he had deposed that when he had examined the deceased, she told him that she had been deprived of love and affection by her family members. She had no faith in any member of her family. He had also opined that it was not a case of psychosis, but the deceased had been suffering from a mental disorder. The High Court also reached the conclusion that the defence failed to establish that the deceased was suffering from epilepsy before her marriage. The stay of the deceased along with her parents in a Guest House for two-three days after going from Kanpur to Kalyan has also been taken by the High Court as a circumstance adverse to the appellants. The High Court also came to the conclusions that the intimacy between the deceased and Kake did not

mean that she had illicit relationship with Kake; and there had been a demand of a gold chain by appellant No.3.

10. As the High Court has reversed the order of acquittal and taken a view contrary to the view taken by the Trial Court, we have taken upon ourselves the task of appreciation of evidence and considered the legal and factual issues involved in the case.

11. **Letters written by the parties to each other:**

(A) A large number of letters had been placed on record before the Trial Court by both the parties. Letter dated 24.2.1979 (Ext.P-26), written by the deceased to her husband, about 3 months after the marriage reveals that there was no problem in the relationship between the husband and wife. In fact, it suggests that they had deep love and affection for each other.

(B) Letter dated 3.4.1985, written by appellant no. 2 to the father of the deceased, makes it evident that something had gone wrong and the behaviour of the deceased had been totally unwarranted, as it revealed that she had gone out of the house i.e. on the main road, half-naked and she had brought disrepute to the family of her in-laws. However, they had been tolerating such behaviour. She had lowered their prestige so much that they had not been able to show their faces to anyone. It suggested an illicit relationship between the deceased and one family friend, Kake. It also suggested that the deceased wanted to live with the said Kake, as she had developed love for him and she was willing to elope with him. It also suggested that it was wrong on the part of Smt. Shanti (mother of the deceased) to have been giving wrong advice to the deceased and making false allegations that her in-laws were not treating her properly. According to this letter, the deceased had declared that she was no longer interested in Sunil, her husband, as she did not like him any more and in the end

A appellant No.2 had expressed great concern about his grand daughter Mili and stated that he was willing to keep her in a hostel so that she could be spared humiliation because of the illicit relationship between the deceased and Kake. The author of the letter suggested to the father
B of the deceased that he should call the deceased to Kanpur as there could be some untoward/disastrous incident in future.

(C) The undated letter (Ext. P-2) purported to have been written by Kake to the deceased, gives an impression that
C the deceased had not only deep intimacy, but something more with Kake. Kake was also in possession of some of her photographs which he claimed to be his fortune and said that the same would not be returned to her as she had requested and would be burnt only with the end of his life.
D This letter also suggested that he had the opportunity to have a physical relationship with her.

(D) There are several other letters on record showing that after the development of the intimacy between Kake and
E the deceased, both families were disturbed and attempts had been made from both the sides to patch up the matter. However, none of the letters suggests any demand of dowry or ill treatment to the deceased amounting to cruelty by the appellants.

F (E) The letter dated 7.7.1985 written by the complainant, Rajesh, brother of the deceased to appellant No.1, is suggestive in nature. It suggests that appellant no. 1 should try to save the prestige of the family at any cost and forget all that had happened in the past, as the deceased was
G willing to improve herself and accept any advice given by her husband. Another letter dated 9.7.1985, written by the informant, Rajesh, brother of the deceased to the appellant No.2 revealed that the entire family of the deceased had been making serious attempts at re-conciliation. Even in
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this letter there was not even a whisper/mention of any demand of dowry or of ill treatment. A

(F) The letter dated 18.7.1985 written by the father of the deceased to his son Rajesh (PW.2) from Kalyan made it clear that the author along with the deceased had gone to Kalyan to meet the family of the appellants, and they were not welcomed by the mother-in-law of the deceased at the initial stage. They had been staying in Modern Guest House in the same colony. Appellant No.1, the husband of the deceased suggested that the deceased should meet her mother-in-law and apologies, which was accepted by the deceased. The deceased met her mother-in-law and apologized. After some time, the mother-in-law became quiet and calm and started behaving properly and all the appellants treated them well. B C D

(G) The un-dated letter (Ex.P-21) written by the deceased to her father revealed that her mother-in-law wanted her to separate herself from the other members of the family and her parents. It also gave the impression that her mother-in-law was asking for a gold chain ("*zanzir ke liye keh rahi thi*") and created problems for her in meeting her husband and daughter. After the arrival of her brother-in-law to Kalyan, the behaviour of her mother-in-law had improved a lot, but her husband being busy in his practice and did not have sufficient time to be with her. E F

(H) From the original record, a letter dated 1.4.1985 (Ext. 16), by the mother-in-law to the father of the deceased seems to have been written after losing hope completely and concluding that the deceased had become incorrigible. The said letter suggests that the relationship between the deceased and her husband had come to an end. The deceased had become a woman of bad character. They had tolerated her to a great extent. The deceased had been tutored by her mother; she had been misbehaving with them and it had become difficult for them to tolerate G H

her any more. The deceased had been using abusive language to all the family members. She had lowered their reputation and they had been very unlucky to have such a daughter-in-law. As she wanted to live with Kake and not with her husband, they did not want to have any relationship with her. [Appellant No. 3 had denied writing the said letter].

(I) Another letter dated 22.5.1985, is on record written by Jai Narain Gupta from Sandila, U.P. (who seems to be relative of the deceased) wherein a suggestion had been made to patch up the matter. The author has drawn the inference that the problems were being created for the deceased, and she has been treated with cruelty as her in-laws did not receive dowry according to their expectations, though, there is no allegation that there has been any demand of dowry and for not giving the same.

(J) The undated letter written by the deceased to her aunt Manorma Gupta at Barabanki does not suggest anything against the accused, as the deceased had written that everything was fine and that she would discuss things when they met. The undated letter written by her aunt in reply, suggests that there was something amiss. She had mentioned that the whole family was very disturbed, but they were not able to suggest any solution. There was nothing to worry or fear as all of them were with the deceased and she also told the deceased to face things with courage, as she had equal rights to stay in the house and to fight for justice.

12. **Depositions of Prosecution witnesses (Relevant parts):**

(I) Dr. Mohan Kulkarni, a practicing doctor residing in the same building (PW.1)-

"I know both accused Nos. 2 and 3 used to

occasionally visit their block at Waldhuni (Kalyan) after transfer of accused No.2 at Kurduwadi.....I have no any personal knowledge about the relations in between accused No.1 and his deceased wife.....It is true that I was told by accused No.1 some four or five month before the incident that his wife Guddi was getting the attacks of epileptic fits. The ailment of epileptic fits is of neurological problems. I say that these medicines namely used in neurological problems as gardenal, have their side effects on the patient. E.C.T. (Electro Convulsive Therapy) treatment is given to mental patients of some sort. If a person shows abnormal signs then he is branded as a mental patient. I say that those who have tendency of mental depression they tend to commit suicide. It is true that mental disorder in some cases creates mental depression."

(II) Rajesh (PW.2) (Brother of the deceased)-

"It is true that there was nothing wrong in between the accused and Neeru till the delivery of a female child and everything was smooth and cordial, in between them.....

I cannot say why it is not disclosed specifically in my complaint that as accused no.3 instructed Neeru to fetch golden ornaments on account of my marriage ceremony, my father presented with four golden bangles in the ceremony.....

I cannot say why it is not stated in my complaint that after the birth of her daughter we presented Neeru with two golden ear rings and golden chain of two tolas because those were demanded by her husband's family members.....

As I did not remember the exact account of the remaining ornaments presented to Neeru by us as and

A when demanded by her in laws. I did not narrate about them in the complaint. Except my words I have no documentary evidence to show how many golden ornaments were presented to Neeru and when.....

B There is no reference to golden chain any other letters except letter (Exh.21) sent by Neeru to my parents and myself. That golden chain we give to Neeru in 1985 was weighing 2 and ½ tolas.....

The only reference about the golden chain asked for
C by accused no.3 appears in letter (Exh.21) sent by Neeru to us after she was reached at her in laws place on 24.8.1985."

(III) **Manorma (PW.7) Aunt of deceased-**

D "She told me that accused persons had demanded a golden chain from her and hence she was not being called back now shown inland letter dated 10.7.1985 which is written by me to Neeru alias Guddi at Kanpur.....

E I have not stated before the police that when I met Neeru in March 1985 she told me that accused persons were demanding more golden ornaments from her and that they were keeping her starving and were not allowing her to meet her daughter Mili, and that she was craving to
F meet Mili. As I was not well at that time I forgot to narrate the things before the police. I have told this fact for the first time to the court.....

I have not written specifically in my two letters (Exh.39 and 40) addressed to my brother and sister in law that
G Neeru told me that she was subjected to physical assault by the accused and that she was kept starving by the accused and further accused demanded golden ornaments from her."

H (IV) **Ramkishan Gupta (PW.8) Father of deceased-**

"I then arranged for a golden chain and sent Rajesh along with Neeru with a golden chain to Kalyan on 24.8.1985. Rajesh handed over golden chain to accused, and left Neeru in her in laws house and returned back to Kanpur. After 15 days we received a telegram sent by brother of accused no.1 Pradeep Kumar that all was well in the house at Kalyan. On 29.9.1985 we received a phone call informing us the said news of death of Neeru.....

I have not stated in letter (Exh.23/1) that while we were standing out side the house of accused and requesting them to accept Neeru, accused no.3 demanded a golden chain from us and refused to allow Neeru to see her daughter in side the house, because Rajesh already knew all these things at Kanpur. I have no documentary evidence except my words to show that I had written to my sister Manorama and to my brother that accused persons were demanding.....

I have not stated in either of my two statements before the police that when accused no.3 came to attend the wedding of my son Rajesh she demanded golden ornaments for herself (Accused no.3). I have not stated in either of my two statements before the police that even after the delivery of Neeru in 1981 none of the accused persons came to Kanpur to visit her. I have not stated in my first statement dated 1.10.1985 before the police that when Neeru came for delivery at Kanpur she informed us that accused no.3 was demanding golden ornaments from her.....

I have not stated in either of my two statements specifically that when I and my wife went to the house of accused on 17.2.1985 we met all three accused at the entrance and all of them asked me whether I had brought golden ornaments or had come empty handed, and that they had already asked Rajesh to bring along golden ornaments and whereupon I told all three accused that I had

A not brought along golden ornaments as I was not having them and where upon all three accused pointed out towards Neeru and said as to how all those accused had driven Neeru to such a condition and that they would further make her condition miserable. I have not stated in B either of my two statements before the police that when Neeru returned back to our house in March 1985 she told us that all accused told her that till their demand for cash and ornaments was not made, they would not allow Mili to go along with Neeru. I have not stated in either of my two C statements before the police that when accused nos.2 and 3 had come to attend the marriage ceremony at Kanpur in the month of March 1985 accused nos.2 and 3 did not allow me to meet Mili. I had not stated in either of my two statements before the police that when Rajesh brought D back Neeru in the month of June 1985 at Kanpur Neeru told me that she was not allowed to meet her daughter Mili in the house of her husband and accused no.3 asked her if she had brought golden chain or not."

(V) **Daulatram Nekumal Gurubani (PW.10), Doctor-**

E

"In the mid of February, 1985 accused No.1 told me that his wife has become aggressive and was not co-operative and also used to become violent. When I reached the house of accused No.1, there I met accused F No.2 and Accused No.3. I examined Neerubai, the wife of accused No.1. She was lying in store room and was not in a mood to talk anything with me even she become aggressive with me in the sense she was not co-operative with me. Accused No.1 told Neerubai that I was G psychotherapist of Thane Mental Hospital and then Neeru asked me whether I treated my wife in the same way she was being treated by her husband accused No.1. She showed me injury marks bruises on her both knees and a small injury on the lower lip and also bruises on the back. She also told me that she was beaten by her family

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members and by a ward boy of hospital. She also told me that she had been maltreated by her husband, by her mother in law. She also told me that, her ornaments were being worn by accused No.3. On seeing the injury marks on her person I talked with accused No.1 and asked for details. Accused No.1 told me that as Neeru had become violent and we were controlling her it was possible that she sustained small bruises.....

Accused No.1 told me that his wife was suffering from epileptic fits since before her marriage and that she was on Geroin tablets. I told him that there were side effects of this drug and the drug should be stopped after 3 years. He told me that she was on drug for so many years and she is maintained on that drugs. I told him to continue with above tablets and consult Neurologist if she is suffering from the above ailments. I visited her place for 4 times in the same month i.e. February, 1985. During all those visits I never found any signs of epileptic fits.....

Cross examination:

I started my practice in January 1985 at Ulhasnagar and handed the case of Neeru in February 1985 after I passed my M.D. Degree in Psychiatry in July 1984 though I joined mental hospital at Thane as Medical Officer.....

I agree that even in major epilepsy this medicine Geroin is prescribed. It will not be correct to say that because I prescribed medicine Geroin I was convinced that the patient was suffering from major epilepsy. Even though I knew that drug Geroin carried side effect yet I prescribed it though I knew she had no sign of epilepsy because once the drug is started it cannot be abruptly discontinued otherwise the patient may get fits. I stick to the proposition that if an anti-convulsent drugs such as Geroin is given for long period and withdrawn abruptly then she may get convulsions. I am backed by authority. Clinical

A examination alone cannot decide whether a patient is suffering from epilepsy or not. Patient of epilepsy may have a grand-mal or petit-mal. It is true that dose of Geroin daily is more in case of grand-mal than in the case of petit-mal. It is true that a maximum dose of Geroin tablets is 4 tablets
B 3 times a day. I agree that brain scan, EEG and X-ray of all the skull are required for investigations in cases of epilepsy....

It is true that drugs at Sr. Nos. 1 to 5 prescribed by me to Mrs. Neeru wife Exh.46 are normally prescribed in
C a case of epilepsy with psychoses and in depressive state....I have prescribed to Neeru E.C.T. treatment.....It is not stated in my prescription letter (Exh.46) that if the drug as Sr. Nos. 1 to 5 prescribed to Neeru do not work out, then E.C.T. therapy should be started to her, though
D verbally told her so. It is true that I have not specifically stated in my prescription letter (Exh.46) at any time during my visits to Mrs. Neeru on 4 or 5 occasions that as the drugs at Sr.Nos. 1 to 5 in (Exh.46) were working, E.C.T. therapy was not essential.....I have not stated in my police
E statement that the room in which Neeru was found was an unkept room or a store room. I have not stated before the police that when I was introduced to Neeru as a psychiatrist, Neeru asked me whether I treat my wife in the same way as she was treated by her husband. I have not
F stated before the police that before Neeru was examined by me she told me that she was harassed by accused persons and that her ornaments were worn by accused No.3.....

G I have not stated before the police that I examined Neeru and found that there was not any gross psychological problem but she was mentally disturbed and I found that she had no faith in any of the members of the family and I found that she was deprived of love, affection and sympathy of her family members. I have not stated
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before the police that accused No.1 told me she was also epileptic but I did not find any signs and symptoms of that disease with her. I have not stated before the police that I requested accused No.1 where was the X-ray of skull and other investigation papers and accused No.1 told me that his wife was suffering of epileptic fits since before her marriage and that she was on geroin tablet. I have not stated before the police that I told him that there were side effects of this drug and the drug should be stopped after 3 years.....

I agree that Mrs. Neeru did not meet me in April 1985 but she brought the letter of April 1985 of Dr. S. Mahendru in the month of June 1985. I have not stated before the police that Neeru either met me in April 1985 or in June 1985. Beyond my word there is no any other evidence to show that in September 1985 accused Nos. 1 and 2 came to me. I have not stated before the police that both accused Nos. 1 and 2 later on told me that Neeru committed suicide and that they needed certificate about her mental condition....."

(VI) Dr. Ramesh Kumar Mahendru (PW.12) – Doctor from Kanpur :

x x x

".....I say that the experts prescribed E.C.T. (Electro Convulsive treatment) in cases of retarded depression and, manic depressive psychosis. I am shown the chart today by the learned Defence counsel in which the prescription of medicines advised by Dr. Gurubani for Niru and by me are practically same except with a difference that the medicines mentioned at Sr.No.4 does not potentiate as anti depressants but it prevents the reactions caused by the medicines stated at Sr.No.3 in the chart.....

Narco therapy is a kind of suggestive psycho therapy

A under the influence of narcotic drugs such as barbiturates."

13. The above referred letters and the depositions of the witnesses have to be understood/appreciated within the four corners of law, particularly dealing with the issues of reversal of the order of acquittal by the appellate court and discrepancies/improvement/embellishment and contradictions in the statements of the witnesses.

14. **Material Contradictions:**

While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide: *State Represented by Inspector of Police v. Saravanan & Anr.*, AIR 2009 SC 152).

15. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable. it cannot be safe to rely upon such evidence. (Vide : *State of Rajasthan v. Rajendra Singh,* (2009) 11 SCC 106).

16. The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case

beyond reasonable doubt. (Vide: *Mahendra Pratap Singh v. State of Uttar Pradesh,* (2009) 11 SCC 334). A

17. In case, the complainant in the FIR or the witness in his statement under section 161 Cr.P.C., has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. (Vide: *State Represented by Inspector of Police, Tamil Nadu v. Sait @ Krishnakumar,* (2008) 15 SCC 440). B

18. In *State of Rajasthan v. Smt. Kalki & Anr.,* AIR 1981 SC 1390, while dealing with this issue, this Court observed as under: C

> "In the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person." D E

19. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (see: *Syed Ibrahim v. State of A.P.,* AIR 2006 SC 2908; and *Arumugam v. State,* AIR 2009 SC 331). F

20. In *Bihari Nath Goswami v. Shiv Kumar Singh & Ors.,* (2004) 9 SCC 186, this Court examined the issue and held:

> "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." G

21. While deciding such a case, the Court has to apply the H

A aforesaid tests. Mere marginal variations in the statements cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the B trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

Appeal against Acquittal:

22. It is a well-established principle of law, consistently re- C iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to D consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of E acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his F guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration.

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The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier H manner where the other view is possible should be avoided,

unless there are good reasons for such interference. A

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: *Balak Ram & Anr. v. State of U.P.,* AIR 1974 SC 2165; *Shailendra Pratap & Anr. v. State of U.P.,* AIR 2003 SC 1104; *Budh Singh & Ors. v. State of U.P.,* AIR 2006 SC 2500; *S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.,* AIR 2008 SC 2066; *Arulvelu & Anr. v. State,* (2009) 10 SCC 206; *Ram Singh alias Chhaju v. State of Himachal Pradesh,* (2010) 2 SCC 445); and *Babu v. State of Kerala,* (2010) 9 SCC 189). B C D

25. The instant case is required to be examined in light of the aforesaid legal principles. E

Undoubtedly, the record reveals that at an initial stage the relationship between husband and wife had been very cordial and they had love and affection for each other. At a later stage when the family suspected an illicit relationship between the deceased and Kake, the appellants were very much disturbed. Both the families made serious attempts to re-concile and patch up the matter and the appellants agreed that the deceased may be given an opportunity to improve her behaviour. Thus, admittedly there was a doubt that the deceased had developed serious intimacy with Kake, which was much more than what happens in normal course with a family friend. Therefore, the finding recorded by the High Court that the intimacy between them to the extent of having an illicit relationship was not there, loses its significance, for the reason that even the suspicion of such a matter becomes the talk of F G H

A the town and the reputation of the family remains at stake. The protests on the part of the appellants even on a mere suspicion and asking the deceased to keep distance from Kake or improve her behaviour is not something which can be termed to be unwarranted or uncalled for.

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26. There is ample evidence on record to suggest that the deceased had been suffering from psychosis/mental dis-order. According to Dr. Daulatram Nekumal Gurubani (PW.10) the ailment was not of a very serious nature. However, the prescriptions given by Dr. Gurubani (PW.10) reveal that the C deceased had been suffering from serious mental dis-order, otherwise such medicines could not have been prescribed by him. He has prescribed the deceased the medicine Geroin because he was convinced that the deceased was suffering from major epilepsy, in spite of the fact that he was fully aware D that the said drug has side effects. He also deposed that mere clinical examination alone is not sufficient to decide whether the patient is suffering from epilepsy. He further deposed that such medicine can be given to a person suffering from grand-mal epilepsy. More so, had it not been the case of serious ailment E of mental dis-order, the question of prescribing and giving E.C.T. to the deceased could not arise.

27. There had been a lot of improvements and contradictions in his statements. The witness deposed for the F first time in the court during the trial, that when he went to examine the deceased, she was found in an unkept room/store room and that he was introduced to the deceased as a Psychiatrist and that the deceased had asked him whether he treated his wife in the same way as she had been treated by her husband. None of this was mentioned in his statement G recorded by the police. Nor it had been recorded therein that the deceased had told him that she was harassed by the appellants and her ornaments were taken away/worn by her mother in law (A.3). More so, he had not stated in his police statement that the deceased was merely mentally disturbed and

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not suffering from a gross psychological problem. Nor had he stated therein that the deceased had told him that she was not having any faith in any of her family members and she was deprived of their love, affection and sympathy. Such contradictions in his statements cannot be held to be mere explanations or elaborations of his version, but are tantamount to material contradictions or vital omissions. The Rules of appreciation of evidence requires that court should not draw conclusions by picking up an isolated sentence of a witness without adverting to the statement as a whole. In such a fact-situation, it is not safe to rely on his testimony for the simple reason that he had made a lot of improvements/embellishments while deposing in court and vital contradictions exist with his earlier recorded statement. Thus, no reliance can be placed on his depositions to hold that appellants had ill-treated the deceased or that appellant No.3 had taken away/worn her ornaments or that she had been deprived of their love and affection or that she was not suffering from epilepsy etc.

28. The deposition of Dr. Mohan Kulkarni (PW.1) reveals that E.C.T. treatment is given only to mental patients, who have mental depression and tend to commit suicide; the ailment of epileptic fits is a neurological problem. His statement also suggests that her in-laws had not been living with her after 1983, as the appellant No.2 stood transferred to Kurudwadi and had shifted to the said transferred place and her in-laws had been visiting Kalyan occasionally.

This view stands fully corroborated by the deposition of Dr. Ramesh Kumar Mahendru (PW.12), Reader in Psychiatric Medicine, Mental Hospital, Kanpur, as referred to herein above. He had examined the deceased and prescribed medicines for manic depressive Psychosis. The prescription of this witness substantially remained the same as of Dr. Daulatram Nekumal Gurubani (PW.10).

The cumulative effect of the medical evidence given by three Doctors leads us to the conclusion that deceased had

A been suffering from manic depression and certainly had some mental/epileptic/ psychosis problem.

29. So far as the other witnesses are concerned, they are the father, brother and aunt of the deceased. Thus, being close relatives, in such facts and circumstances they might have developed inimical feelings towards the appellants, since they came to the conclusion that the appellants were responsible for the death of the deceased. However, their depositions are full of contradictions and have marked improvements from their statements recorded earlier. The exaggerations and improvements are of such a nature that they make their whole statements in respect of the demand for gold ornaments and/ or the ill-treatment of the deceased liable to total disregard on these counts. Gold ornaments had been given by the complainants to the deceased out of love and free will at the time of the marriage of Rajesh (PW.2) and at the time of delivery of her daughter Mili. Undoubtedly, Rajesh (PW.2) had alleged in the FIR that there had been demand of gold ornaments by the appellants without any details of the same, however, he could not furnish any explanation as why this fact had not been disclosed to the police when his statement and supplementary statement was recorded. Also no such inference can be drawn from any of the letters on record. Only one un-dated letter (Ext.P-21) written by the deceased to her father suggests that her mother in-law had been asking for a chain. More so, as the chain had been given by the complainants to the deceased just 2/3 months before her death, and there is no evidence that any further demand had been there, the issue became totally irrelevant in terms of proving the motive, and it cannot be presumed that any demand had been made. More so, even if it is presumed that there was some demand by appellant No.3, as she is no more, and her appeal stands abated, this issue becomes totally irrelevant for the reason that no such allegation had ever been made against the remaining two appellants.

30. So far as the stay of the deceased with her parents

after coming from Kanpur to Kalyan at the guest house is concerned, admittedly at that time the relations between the parties were strained because of the suspicion that the deceased was having an illicit relationship with Kake. However, it has been admitted by Ramkishan (PW.8), father of the deceased, that subsequently the relations became normal and they were invited at the house of the appellants after the deceased tendered an apology to her mother-in- law. The said witness did not state in his statement before the police that when he went to see the appellants on 17.2.1985, they had asked him whether he had brought gold ornaments or had come empty handed or that he was told that the deceased would not be allowed to live there and they would make her condition even more miserable. Such an improvement was made while deposing in court and no explanation could be furnished by him as to why such vital facts were not stated by him at the time of recording his statement under Section 161 Cr.P.C. This statement is to be discarded as it is not safe to hold the appellants guilty of the offences alleged against them on such an improved version.

31. The deposition of Manorma (PW.7), aunt of the deceased is by no means different, as she had also made major contradictions and improvements in her statement made in court. She had not stated in her police statement that the appellants were demanding gold ornaments from the deceased and her family or that the appellants were keeping the deceased starving and were not allowing her to meet her daughter, Mili. The explanation furnished by her that she had not been feeling well and had forgotten to narrate such material facts, cannot be believed.

32. The statement of Rajesh (PW.2), the brother of the deceased is also full of contradictions and suffers from major improvements. The contradictions are of such a nature that they impair the whole of his evidence. The same cannot be held to be clarificatory. He was not in a position to state what

A ornaments his family had presented to the deceased on different occasions. More so, it was not even stated in his police statement that after the birth of Mili, his family had given gold ornaments as demanded by the appellants. He could not even furnish an explanation as to why the demand of a gold
B chain is not evident from any of the letters between the parties, except in the letter (Ext. P-21).

33. The complainants have denied the receipt of letter dated 3.4.1985 written by the appellant No.2 to the father of the deceased, referred to hereinabove. However, the appellants
C have produced the correspondence with the post office and proved the postal stamp to show that the said letter had been sent by registered A.D. to Ramkishan Gupta (PW.8). The law in this regard is well settled.

D In *Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani*, AIR 1989 SC 1433, this court examined the issue regarding the presumption of service of letter sent by registered post under Section 27 of the General Clauses Act, 1897 and held as under:

E *"There is a presumption of service of a letter sent under registered cover.... No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal*
F *authorities never tendered the registered letter to him.....The burden to rebut the presumption lies on the party challenging the factum of service."* (Emphasis added)

A similar view has been re-iterated by this court in *Chief*
G *Commissioner of Income Tax (Administration), Bangalore v. V.K. Gururaj & Ors.*, (1996) 7 SCC 275; and *Shimla Development Authority & Ors. v. Santosh Sharma (Smt.) & Anr.*, (1997) 2 SCC 637.

H In *Harihar Banerji v. Ramshashi Roy,* AIR 1918 PC 102,

a similar view had been taken by the Privy Council, referring to Illustration (f) of Section 114 of the Indian Evidence Act, 1872.

In view of the above, it was the responsibility of the complainants to prove by adducing evidence of the official of the Post Office, Kanpur that the said letter had not been delivered to them. However, for the reasons best known to the prosecution such an exercise has not been undertaken.

34. The instant case is required to be examined from another angle also. The marriage took place on 1st December, 1978. The complainant party could not place any correspondence on record prior to February 1985 except letter dated 24th February, 1979 written by the deceased herself to her husband. However, it goes in favour of the appellants. Therefore, it is evident that the controversy arose only after the expiry of the period of more than 6 years from the date of marriage. It is quite possible that the dispute arose between the parties only because of the suspicion that the deceased had developed an illicit relationship with Kake. Had there been a demand of dowry or ill-treatment to her on any other ground by the appellants, there could have been some correspondence between the parties during the aforesaid long period of more than 6 years. None of the prosecution witnesses had made any allegation of any demand of dowry or ill treatment during the said earlier period. It is unnatural that after expiry of such a long period, the appellants suddenly became greedy and started demanding ornaments and for not meeting their demand, started ill treating the deceased to the extent that she had to commit suicide. Thus, the allegations made by the complainant party remained unnatural and improbable. More so, the demand had been only of a thin gold chain which could not be very expensive in those days, especially given the socio-economic status of all the parties. For the gold ornament worth such a petty amount after the expiry of a long period of about 6 ½ years, from the date of marriage, it is not natural that the

A appellants could treat the deceased with such cruelty that she was drawn to commit suicide.

35. It is a clear cut case of gross abuse of the dowry laws. We find it difficult to sustain the conviction of the appellants on the aforesaid counts based upon the inconsistent, embellished and improved statements of the witnesses, which materially contradict their respective statements recorded earlier. The High Court did not dislodge the reasons given by the Trial Court for acquittal. The High Court did not make any reference to the deposition of Dr. Daulatram Nekumal Gurubani (PW.10) in the cross-examination and dealt with the case very casually, adopting a very superficial approach to the whole matter and brushed aside the allegation of an illicit relationship for which there had been documentary evidence on record without recording any cogent reasons for the same. The High Court did not make any attempt to appreciate the evidence with accuracy and reversed the findings of the trial court which were based on the evidence on record and for which detailed reasons had been assigned.

36. In view of the above, the appeal succeeds and is allowed. The judgment and order of the High Court of Bombay, dated 29.4.2004, passed in Criminal Appeal No. 865 of 1987 is set aside. The judgment and order of the Trial court in Sessions Case No. 25/1986 dated 21.5.1987 is hereby restored. The appellants are on bail. Their bail bonds stand discharged.

D.G. Appeal allowed.