(2014) 04 DEL CK 0116

Delhi High Court

Case No: Crl. A. No. 109 of 2000

Rama Shankar		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: April 29, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 428
- Evidence Act, 1872 - Section 101, 106
- Penal Code, 1860 (IPC) - Section 302, 304B, 34, 498A

Citation: (2014) 210 DLT 518

Hon'ble Judges: Sunita Gupta, J; Kailash Gambhir, J

Bench: Division Bench

Advocate: O.P. Wadhwa and Mohd. Shahid, Advocate for the Appellant; Sunil Sharma, APP, Advocate for the Respondent

Final Decision: Allowed

Judgement

Sunita Gupta, J.

Dowry, dowry and dowry. This is the painful repetition which confronts, and at times haunts, many parents of a girl child in this holy land of ours where, in good old days the belief was: "Yatra naryastu pujyante ramante tatra dewatah" (where woman is worshipped, there is abode of God. We have mentioned about dowry thrice, because this demand is made on three occasions: (i) before marriage; (ii) at the time of marriage; and (iii) after the marriage. Greed being limitless, the demands become insatiable in many cases, followed by torture on the girl, leading to either suicide in some cases or murder in some.

1. The aforesaid passage narrated by a two-Judge Bench in State of Himachal Pradesh Vs. Nikku Ram and others, , reflects the degree of anguish of Hon''ble Supreme Court in regard to the unfortunate tradition of demand of dowry from the

girls parents and the treatment meted out to the women in this country despite the same being a criminal offence. Marriages are made in heaven, is an adage. A bride leaves the parental home to go to the matrimonial home, leaving behind sweet memories there, with a hope that she will see a new world full of love in her groom''s house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters the dreams. In-laws are characterized to be out-laws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction. Present is another case of unnatural death of a young lady within one and a half years of her gonna.

2. Rama Shankar (A1) is the husband of deceased Maya while Bhagwat Prashad (A2) and Prem Patta (A3) are her father-in-law and mother-in-law. Although the marriage of Rama Shankar Al with deceased Maya had taken place on 15th May, 1989, gonna in fact had taken place only in the month of February, 1996 and it was only thereafter that the deceased started residing with her husband and in-laws in the matrimonial home. Hardly 1 1/2 years had elapsed, when demon of dowry devoured the life of Maya who must have married with high hopes of having heavenly abode in her husband''s house.

3. Prosecution case lies in narrow compass. On 1.9.97 at 9:25 p.m., an information was received from an unknown person on telephone in police post Nihal Vihar under PS Nangloi that one lady, namely, Maya was lying dead in house No. RZB-29, Nihal Vihar. The said information was reduced into writing vide DD No. 17 and it was assigned to SI Azad Singh for inquiry. He along with H.C. Devender, Ct. Suresh and Ct. Surender left for the spot at first floor of the above said house where the dead body of Smt. Maya, w/o accused Rama Shankar was found lying. Ram Bharan Moriya s/o Gaya Prashad, father of the deceased was found present there. He got recorded his statement/complaint wherein he stated that the deceased was his daughter and she was married to accused Rama Shankar, s/o co-accused Bhagwati Prashad and Smt. Prem Patta on 15.5.89; that gonna had taken place in Feb., 96; that the accused persons used to harass her for not bringing more dowry; that accused Bhagwati Prashad and Prem Patta used to demand a plot of land while accused Rama Shankar, used to demand a colour television. All the accused persons used to harass his daughter for non-fulfilment of their demands which they were unable to fulfil due to financial constraints. Whenever his daughter Maya visited them, she complained of harassment and torture at the hands of the accused persons due to non-fulfilment of the aforesaid demands. He had talked to the accused persons on a number of dates and asked them not to raise such demands of dowry and lastly on 31.8.97, he visited their house and asked them to send Maya with him, which they declined. On 1.9.97 at about 11.00 a.m., accused Rama Shankar informed him on telephone that the condition of his daughter Maya was critical and if he wanted to

meet her, he should come immediately. When he reached the house of the accused persons, he saw that his daughter Maya was lying dead on the first floor. He noticed injury marks on her left cheek and right side of her chin. Thereupon he called his relatives and verified the facts and came to the conclusion that the accused persons had killed his daughter in furtherance of their common intention for non-fulfilment of their demands of dowry. On inquiry, it was revealed to him that Maya had been murdered between 9:00 to 10:00 a.m.

4. On the aforesaid statement of the complainant, an endorsement was made by the SI and was sent to the Police Station on which FIR No. 697/97 under Sections 498A/302/34, IPC was registered. The investigation was handed over to the SI. The place of occurrence was inspected and the site plan was prepared. Articles lying at the spot were taken into possession. The dead body was sent to mortuary for post mortem. The accused persons were arrested and their personal search was conducted. Scaled site plan of the place of occurrence got prepared from the draftsman, Post mortem report was collected. After completion of the investigation, charge sheet was filed.

5. All the accused persons were charged under Sections 498A/34, IPC and Sections 302/34, IPC vide orders dated 27.4.1998. Accused persons pleaded not guilty and claimed trial.

6. In order to bring home guilt of the accused, prosecution had examined as many as 13 witnesses Thereafter, accused persons were examined u/s 313, Cr.P.C. and the entire incriminating evidence was put to them, which they denied in toto.

7. According to all the accused persons, accused, namely, Bhagwati Prashad was not at the house at the time of this occurrence and, in fact, he was in his office being employed as Mali in CPWD. According to accused Prem Patta and Rama Shankar, they both were present at their house at the time of this occurrence when deceased Maya Devi went upstairs on the first floor and committed suicide by hanging herself. Accused persons examined DW1 Arjun Prashad in defence.

8. After meticulously examining the entire material on record, learned Additional Sessions Judge convicted all the appellants for offence under Sections 498A/302/34, IPC and sentenced them to undergo imprisonment for life along with a fine of Rs. 10,000/- each and in case of default, to undergo RI for another three months for offence under Sections 302/34, IPC. They were further sentenced to undergo RI for a period of 3 years under Sections 498A/34, IPC along with a fine of Rs. 1,000/- each and in default, to undergo further RI for a period of three months. Both these sentences were to run concurrently. They were granted benefit of Section 428, Cr.P.C.

9. Feeling dissatisfied, the present appeal has been preferred.

10. We have heard Mr. O.P. Wadhwa, Advocate for the appellants and Mr. Sunil Sharma, learned Public Prosecutor for the State and have perused the record.

11. It was submitted by learned Counsel for the appellant that there is an unexplained delay of 12 hours in lodging the FIR, inasmuch as, the death has taken place at 9:00 a.m. The father of the deceased visited the place of incident, yet did not lodge any FIR immediately nor informed the police. In fact, he returned back to his house and it was only at 9:25 p.m. that FIR was lodged after due deliberation. As such, the unexplained delay of 12 hours in lodging the FIR is fatal to the case of the prosecution. It was further submitted that the marriage has taken place in the year 1989 whereas gonna has taken place in the year 1996. The allegations regarding demand of dowry are vague.

12. No independent witness has been examined to corroborate the testimony of the parents of the deceased regarding the dowry demands. As such, the allegations being quite vague, conviction for charge u/s 498A, IPC cannot be sustained. Moreover, the appellants were innocent. The deceased committed suicide. Even Dr. K.L. Sharma, who had conducted post mortem on the body of the deceased, could not deny the possibility that internal signs observed in the post mortem report are possible during committing suicide by ligature hanging. As per the opinion given by the doctor, cause of death was vasovagal inhibition with element of asphyxia consequent to pressure exerted over sides of the neck and vasovagal inhibition is possible only from a screw driver which is not so in the instant case. Furthermore, appellant Bhagwati Prashad was not even present at the spot as he was working as a Mali in Horticulture Department of CPWD. As per the attendance register brought by DW1 Sh. Arjun Prashad, he was present on his duty on the date of incident. Even the remaining two appellants are innocent and have been falsely implicated at the behest of parents of the deceased. As such, the conviction order deserves to be set aside.

13. Mr. Sunil Sharma, learned Public Prosecutor for the State, on the other hand, countered the arguments of learned Counsel for the appellant by submitting that delay, if any, is not fatal to the case of prosecution, inasmuch as, the prosecution witnesses were not going to be benefited by lodging FIR belatedly. On the other hand, since the offence has taken place within the matrimonial home, by delay in lodging the FIR, the accused were in a position to manipulate the scene of crime, which is manifest from the testimony of the Investigating Officer who has deposed that in order to mislead the police, there was manipulation in breaking outer Kunda to intentionally show that door of the room had been opened after using force. Moreover, if the accused were really innocent and the deceased had committed suicide then why the information was not given by the accused to the police immediately after the incident. As such, delay, if any, in lodging the FIR which has been satisfactorily explained is not fatal. It was further submitted that the demands raised by the appellants stands amply proved from the testimony of parents of the

deceased who have deposed that Rama Shankar used to demand a colour TV and the remaining two accused were demanding a plot of 50 sq.yds. Father of the deceased was unable to fulfil the demands of the accused persons due to financial constraints. Both the witnesses were consistent in their stand and they stood firm on their statements despite lengthy cross-examination. It was further submitted that it is highly unlikely that the parents who lost their daughter would implicate someone leaving the real culprits. Even if, no complaint was lodged to any authorities regarding the dowry demands, it has come in the testimony of the witnesses that they did not want any trouble for their daughter at her in-laws'' place and wanted her to settle down peacefully. They also could not complain to the mediator as he had pre-deceased Maya. As such, it was submitted that the motive for the crime was to extort dowry from the poor parents of the deceased which stands amply proved.

14. It was further submitted that the appellants have taken a plea that the deceased committed suicide because she was mentally disturbed as she was not able to bear a child. However, the theory of suicide is ruled out by the post mortem report which shows that the external injuries suffered by the deceased were ante mortem in nature. It also rules out suicide as it states that the injuries found on the deceased were caused by a hard blunt weapon as well as by applying manual pressure after putting a cushion like folds of cloth and that led to death of the deceased due to asphyxia and vasovagal inhibition with elements of asphyxia consequent to pressure exerted over sides of the neck. Injury No. 2 was sufficient to cause death in ordinary course of nature. Some injuries were caused when the deceased tried to resist her strangulation as well. The injury of blunt weapon could have been from the iron rod recovered at the instance of Rama Shankar. Similarly, the Saree recovered from the toilet at the instance of Prem Patta could be used for manual strangulation used as a cushion of folded cloth.

15. It was further submitted that the plea of alibi taken by Bhagwati Prasad was rightly not believed by the learned Trial Court, inasmuch as, such a plea was required to be proved by cogent evidence. No suggestion was given to any of the prosecution witnesses that Bhagwati Prashad was not present at the house on the date of incident. At the fag end of trial, a suggestion was given to the Investigating Officer of the case which was denied by him and he further stated that no documentary proof was produced before him. The appellant examined Arjun Prashad, Assistant Director, Horticulture. However, the attendance register brought by him was not authentic and the learned Trial Court dealt in detail for rejecting his testimony. No witness was examined by the accused from 10, Teen Murti where, according to him, he had gone after marking his presence. As such, the plea of alibi was rightly not believed by learned Trial Court. It was submitted that impugned order does not suffer from any infirmity. As such, the appeal is liable to be dismissed.

16. We have given our considerable thoughts to the respective submissions of the learned Counsel for the parties and have perused the record.

17. It is the undisputed position that death was unnatural. There is no eyewitness to the incident and the case of the prosecution rests on circumstantial evidence. Thus, there is a definite requirement of law that a heavy onus lies upon the prosecution to prove the complete chain of events and circumstances which will establish the offence and would undoubtedly only point towards the guilt of the accused. A case of circumstantial evidence is primarily dependent upon the prosecution story being established by cogent, reliable and admissible evidence. Each circumstance must be proved like any other fact which will, upon their composite reading, completely demonstrate how and by whom the offence had been committed. Hon''ble Supreme Court and this Court have clearly stated the principles and the factors that would govern judicial determination of such cases.

18. Reference can be made to the case of Sanatan Naskar and Another Vs. State of West Bengal, , where it was observed as follows:

27. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye-witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eyewitness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the accepted principles in that regard.

28. A three-Judge Bench of Hon''ble Apex Court in Sharad Birdhichand Sarda Vs. State of Maharashtra, held as under:

152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Vs. The State of Madhya Pradesh, . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of U.P., (1969) 3 SCC 198 and Ram Gopal Vs. State of Maharashtra, . It may be useful to extract what Mahajan, J. has laid down in Hanumant case (supra):

10.... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be

such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , where the observations were made:

19.... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ''maybe'' and ''must be'' is long and divides vague conjectures from sure conclusions;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the Panchsheel of the proof of a case based on circumstantial evidence.

19. In view of the aforesaid principles governing the case based on the circumstantial evidence, let us turn to the case in hand.

20. We shall deal with the challenges and the stance in oppugnation one by one.

21. The first ground of attack is that there is delay in lodging FIR and in the absence of explanation, the case of prosecution should be thrown overboard. Delay in the lodging of the FIR is not by itself fatal to the case of the prosecution nor can delay itself create any suspicion about the truthfulness of the version given by the informant just as a prompt lodging of the report may be no guarantee about its being wholly truthful. So long as there is cogent and acceptable explanation offered for the delay it looses its significance. Whether or not the explanation is acceptable will depend upon the facts of each case. There is no cut and dried formula for

determining whether the explanation is or is not acceptable.

22. In this context, we may refer with profit to the authority in State of Himichal Pradesh Vs. Gian Chand, , wherein a three-Judge Bench has opined that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay. If the explanation offered is satisfactory and there is no possibility of embellishment, the delay should not be treated as fatal to the case of the prosecution.

23. In Ramdas and Others Vs. State of Maharashtra, , it has been ruled that when an FIR is lodged belatedly, it is a relevant fact of which the Court must take notice of, but the said fact has to be considered in the light of other facts and circumstances of the case. It is obligatory on the part of the Court to consider whether the delay in lodging the report adversely affects the case of the prosecution and it would depend upon the matter of appreciation of evidence in totality.

24. In Kilakkatha Parambath Sasi and Others Vs. State of Kerala, , it has been laid down that when an FIR has been lodged in a belated manner, inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened. Similar view has also been expressed in Kanhaiya Lal and Others Vs. State of Rajasthan, .

25. In Mahtab Singh and Another Vs. State of U.P., , there was a delay of few hours in lodging the FIR. In that case also, the brother of the deceased returned to the place of occurrence after the accused persons had left only to find his brother dead with his face and head severely injured. He travelled to Harur to inform his brother who accompanied him to the place of occurrence in a car and then to the police station where the first information report was lodged. It was observed that some time was obviously wasted in this process of travel to and from the place of occurrence and to the police station for lodging the report. The report gave a detailed account of the incident. The version given by author of the FIR remained consistent with the version given in the first information report and as such, it was observed that there was no reason to disbelieve the prosecution case only because the first information report was delayed by a few hours especially when the delay was satisfactorily explained.

26. Scrutinized on the anvil of the aforesaid enunciation of law, we are disposed to think that the case at hand does not reveal that the absence of spontaneity in the lodgement of the FIR has created a coloured version. Ram Bharan (PW4) has explained that he received information on telephone at about 10:00 or 11:00 a.m. from accused Rama Shankar regarding the critical condition of his daughter, as such, he went to the house of accused by bus and saw the dead body of his daughter lying in a room. On examination of the dead body, he found a rod hole on one side of her neck and blackish spot on the other side. He suspected that his

daughter has been murdered by the accused persons on account of not giving dowry. Therefore, he returned to his house and informed about the incident to his relatives and friends and again returned back to the house of accused along with them and showed them the scene of occurrence and the dead body of his daughter. Some of his relative informed the police through telephone who reached the spot, thereupon his statement was recorded which culminated in registration of FIR. Under the circumstances, delay in lodging the FIR has been satisfactorily explained. Moreover, the unnatural death has taken place within the matrimonial home. According to the appellants, the deceased had committed suicide. If that was so, why did the appellants themselves not inform the police about unnatural death of Maya. There is force in the plea of learned Public Prosecutor for the State that by delay in lodging the FIR, it was only the appellants who were benefited, inasmuch as, according to SI Azad Singh, when he reached the spot, the door of the room in which the dead body was lying, was opened. He noticed that the bolts of the kunda inside the room were intact but some manipulation had been made with the outer kunda of the door to mislead the police. It was suspected that the outer kunda was broken intentionally to show that the door of that room had been opened after using force. Under the circumstances, the first limb of the argument advanced by the learned Counsel for the appellants has, therefore, failed and is hereby rejected.
27. This brings us to the question regarding conviction of the appellants u/s 498A of the Indian Penal Code.

28. The expression ''dowry'' in ancient times applied to that which a wife brought her husband in marriage, goods given in marriage or the marriage portion. Maybe, it was conceived of as a nest-egg or security for the wife in her matrimonial home, especially since, most of the systems regarded a married woman as an addition to her husband''s family. But in course of time, it assumed a different shape and degenerated into a subject of barter, acceptance of the woman as a wife depending on what her parents would pay as dowry, varying with the qualification and the status of the bridegroom''s family. As felicitously put by Krishnaswami Aiyar, C.J. on behalf of the Full Bench in Sundaram Iyer v. Thandaveswara Iyer, 1946 Tra L.R. 224,

But an abuse of the situation soon came into view when the bridegroom came to be marketed as a commodity for the value of his accomplishments and future promises and the high standards of the scriptural marriage which was a sacrament came to be contaminated by sordid considerations of immediate monetary gains at the sacrifice of the abiding purposes of the marriage union.

29. The position cannot be said to have improved since then. Possibly, a social revolution was needed to put an end to the menace. Obviously, the enactment of a law prohibiting this evil was to go a long way in tackling the menace. The Parliament in its wisdom enacted the Dowry Prohibition Act, 1961 (Act No. 28 of 1961). The objects and reasons were set out as follows:

The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs. 2,000. Such a provision appears to be necessary to make the law workable.

30. The Act came into force on 1.7.1961. But it was found that even an enacted law did not help in eradicating or at least lessening the menace. Hon''ble Supreme Court had occasion to say in Bhagwant Singh Vs. Commissioner of Police, Delhi, , that:

The greed for dowry, and indeed the dowry system as an institution, calls for the severest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed.

31. This led to the Criminal Law (Second Amendment) Act bringing in stringent criminal provisions to combat the menace and to some amendments in the Dowry Prohibition Act itself giving it more teeth. The objects and reasons for the amendment by Act 63 of 1984, were set down as follows:

The evil of dowry system has been a matter of serious concern to everyone in view of its ever-increasing and disturbing proportions. The legislation on the subject enacted by Parliament, i.e., the Dowry Prohibition Act, 1961 and the far-reaching amendments which have been made to the Act by a number of States during the seventies have not succeeded in containing the evil. As pointed out by the Committee on the Status of Women in India, the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. Government has been making various efforts to deal with the problem. In addition to issuing instructions to the State Governments and Union Territory administrations with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity. Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth and its proceedings have helped in no small measure in focusing the attention of the public and rousing the consciousness of the public against this evil.

32. Further, Section 498A in IPC was inserted by Criminal Law (2nd Amendment) Act, 1983 which came into effect from 25th December, 1983. The object for which Section 498A, IPC was introduced is amply reflected in the Statement of Objects and

Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short ''the Cr.P.C.'') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law and relatives. The avowed object is to combat the menace of dowry death and cruelty. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A, IPC. Cruelty has been defined in the explanation for the purpose of Section 498A.

33. Section 498A reads as follows:

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

Explanation.--For the purpose of this section ''cruelty'' means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

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

34. Despite such stringent provisions, things have not improved. This is illustrated by this case. As stated above, within 1 1/2 years of gonna, Maya met an unnatural death in her matrimonial home. The material witnesses to narrate the pathetic tale of Maya are none else but Sh. Ram Bharan (PW4) and Smt. Gaya Devi (PW5), father and mother of the deceased. Ram Bharan has unfolded that after the gonna had taken place in the month of February, 1996, Maya started residing with the appellants at Nihal Vihar. Appellant Rama Shankar started demanding a colour TV whereas the remaining two appellants started demanding a plot measuring 50 yards which he could not afford being too poor as he was employed as a Mali in Delhi University and was earning Rs. 3,500/- approximately and had four other daughters. He further deposed that as and when his daughter visited him, she used to complain that the accused persons were demanding dowry and due to

non-fulfilment of the same, she was being harassed. He further deposed that whenever he visited her at her matrimonial home, he never met her to the exclusion of the accused persons. His testimony finds due corroboration from Smt. Gaya Devi (PW5). Both of them have deposed about the persistent demand of colour TV and a plot of 50 sq. yards by the accused persons and harassment/maltreatment of the deceased on the issue of non-fulfilment of the said demands. The mere fact that no complaint was made by them to Biradari Panchayat or in the Anti-Dowry Cell regarding illegal demands of dowry or harassment by the accused persons does not lead to conclusion that no such demands were made because the witness has explained that no such complaint was made because he could never expect that the accused persons would go to the extent of killing his daughter. In the Indian tradition bound society, normally it is the desire of the most of the parents that their daughter should live at the matrimonial home and the matter is normally not reported either to the Biradari Panchayat or to the legal authorities till the situation goes out of control. No complaint could be made to the mediator as he had predeceased their daughter Maya. Non-examination of any independent witness again is of no consequence, inasmuch as, such like incidents happen within the four walls of matrimonial home and except for the bride even this fact does not come to the notice of her relatives unless the demand is either made directly from them or the pathetic tale is narrated by the bride to her parents or other family members. That being so, the possibility of any third person or outsider coming to know about such demands or harassment is a remote possibility. Although mother of the deceased in her cross-examination has deposed that her daughter used to tell her friend who was the daughter of one police official regarding the harassment but non-examination of that friend itself is not fatal because the parents of the deceased have been consistent in their stand and despite cross-examination, nothing could be elicited to discredit their testimony. Their testimony is quite credible regarding the illegal demands of colour TV and a plot by the appellants 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. Under the circumstances, learned Trial Court rightly observed that essential ingredients of Section 498A IPC were duly established by the prosecution and the appellants were rightly convicted for the offence alleged against them. The finding does not call for any interference in this regard.

35. Coming to the charge under Sections 302/34, IPC, it is undisputed that deceased Maya met an unnatural death, however, according to the appellants, it was a case of suicidal death whereas according to the prosecution, it was homicidal death. There is a popular adage that the witnesses may lie but the circumstances will not. For this, we have to advert to the statement of PW6 Dr. K.L. Sharma and the post mortem report Ex. PW6/A prepared by him.

36. Dr. K.L. Sharma deposed that on 2nd September, 1997, he conducted post mortem on the body of Smt. Maya, wife of Rama Shankar. The body was received

with the inquest papers at 3:00 p.m. on 2nd September, 1997. The eyes showed redness all over and the tongue was pressed between front teeth and the nails were blue. On external and internal examination, following injuries were found:

External Examination:

1. Injuries abrasion mark over right side, lower chin 2x2 cm transverse in disposition.

2. Diffused bruises over left side neck 4cm in width. The colour was brownish.

3. Lacerated split wound with bruises around, 3x1 cm over lower left side of cheek obligation and the area of left middle part of the border of mandible. No saliva secretion seen. Cut injury No. 3 is muscle deep only.

4. Diffused abrasion with bruises around mouth, and tip of the nose, colour was brownish.

Internal examination:

Head and brain were normal except blood spots in white matter of the brain. Neck bones were intact. No bruising of the neck muscle and subcutaneous bruising over left side of neck was seen. The wind pipe contained blood stained fine froth. Chest visceras were normal except lungs oedematous and congested. Abdomenal visceras were normal and the stomach contained liquid only. The urinary bladder and rectum were empty. Uterus was empty and normal.

It was opined that cause of death was vasovagal inhibition with element of asphyxia consequent to pressure exerted over sides of the neck, injury Nos. 1, 2 and 4 were caused by manual pressure after putting a cushion like folds of the cloth, injury No. 3 was caused by hard blunt weapon. All the injuries were ante mortem in nature and were caused just before death. Injury No. 2 was sufficient to cause death immediately in ordinary course of nature.

37. In cross-examination, he deposed that internal signs observed in the post mortem report are possible during committing suicide by ligature hanging. However, the external injuries as mentioned in the report are not consistent with ligature suicidal hanging.

38. Learned Counsel for the appellant has filed an abstract of "Vasovagal Death" for showing that it is possible only from a screw driver. However, this abstract has absolutely no bearing on the present case, inasmuch as, the abstract was under the heading "Vasovagal Death from Screw Driver Stabbing of the Neck".

39. The expression Stimulation of Vagus has been explained in Textbook of Forensic Medicine Principles and Practice authored by Krishan Vij, Professor and Head of the Department of Forensic Medicine, Government Medical college, Chandigarh, in 1st Edition of 2001 as follows:

Vagal Inhibition--Also variously known as Vasovagal attack, reflex cardiac arrest, nervous apoplexy, instantaneous physiological death or syncope with instantaneous exitus-or primary neurogenic shock. This state is characterized by sudden stoppage of heart following reflex stimulation of vagus nerve endings. There is a wide network of sensory nerve supply to the skin, pharynx, larynx, pleura, peritoneum covering the abdominal organs or extending to the spermatic cord, uterine cervix, for the reflex action and pass through the lateral tracts of spinal cord, effect the local reflex connections over the spinal segments and men travel to the vagus nucleus in the brain. The vagus nucleus has connections with sensory cerebral cortex and thalamus, besides the spinal cord, as stated. The efferent then originate from there and affect the heart through the related branches.

Such deaths occur with dramatic suddenness within seconds or at the most in a few minutes. The loss of consciousness is usually instantaneous on these occasions and death follows soon afterwards. Consequently, the mobility is negligible and the victim is likely to be found in the posture/position in which he/she was at the time of death. The condition, therefore, is characterized by fulminating circulatory failure which may be attributed either to reflex slowing/stoppage of heart, reflex vasodilatation leading to profound fall in blood pressure or a varying combination of both the mechanisms. The victims are usually young adolescents of nervous temperament but anyone may be susceptible. The factor responsible for initiating or triggering the vasovagal phenomenon may be a minor trauma or relatively simple and harmless peripheral stimulation at the vulnerable sites upon the body as described earlier. Obviously therefore, a variety of circumstances have been incriminated as precipitating factors, as outlined below:

Sudden pressure over the neck especially over the region of carotid sinuses as may be operating in occasional cases of strangulation and hanging (Carotid sinus is a dilated part of the wall of the carotid artery and contains numerous nerve ending from the glossopharyngeal nerve and communicates with the medullary cardiovascular center and dorsal-motor nucleus of vagus in the brain, related with the control of blood pressure and regulation of heart-activity). Such deaths are of considerable medico legal significance as death may ensue under the circumstances in which there had been no intention to kill. In some instances it may be reasonable to regard such deaths as borderline between a natural and an accidental death. Sudden blow on the abdomen or scrotum, larynx or genital organs. During intubation of, or from impaction of food/some other material into the larynx.

40. Thus, death of a victim of an assault with a screw driver from vasovagal inhibition as a result of stabbing to the neck is only one form of vasovagal death but it does not mean that vasovagal death is possible only by assault with a screw driver.

41. As opined by Dr. K.L. Sharma, the cause of death is vasovagal inhibition with element of asphyxia consequent to pressure exerted over sides of the neck, injury Nos. 1, 2 and 4 were caused by manual pressure after putting a cushion like folds of

the cloth, injury No. 3 was caused by hard blunt object and all these injuries were ante mortem in nature and had been caused just before death. Besides that, he also noticed external injuries on the person of deceased Maya and categorically deposed that such like external injuries are not possible in case of suicidal death by ligature hanging and the same are inconsistent with ligature suicidal hanging. The appellants have not challenged the opinion of the doctor that injury No. 3 has been caused by hard blunt weapon. Therefore, it is proved that external injury No. 3 found on the body of the deceased Maya was caused by hard blunt weapon. If the deceased had committed suicide, as alleged by the appellant, how could she sustain injury No. 3 which remains unexplained. Similarly, external injury No. 1 is abrasion mark over outside lower chin. Injury No. 4 is diffused abrasion with bruise around mouth and tip of the nose. Deceased was a young lady of about 21 years of age. The instinct of self-preservation is strongest in all human beings. Seemingly, violence had first been applied to her by the accused and while offering resistance, she must have sustained external injuries.

42. In the present case, certain recoveries made pursuant to disclosure statements made by appellant Rama Shanker and Prem Patta also indicate that the death of Maya was homicidal. As per the testimony of SI Azad Singh (PW13), in pursuance to the disclosure statement Ex. PW10/C made by the appellant Rama Shankar, he got recovered one iron rod Ex. P1 from the roof of the house whereas appellant Prem Patta got recovered Saree Ex. P2 from near the latrine of the first floor which were seized. Testimony of SI Azad Singh regarding recovery of these articles at the instance of Rama Shankar and Prem Patta finds due corroboration from the testimony of Head Constable Devender Singh (PW10) and statement of both these witnesses in regard to the recovery remains unchallenged as even no suggestion has been given that these articles were not got recovered by them in the manner alleged or that the same had been planted upon them. As per the opinion of Dr. K.L. Sharma, external injury No. 3 on the body of the deceased Maya was caused by hard blunt object and iron rod Ex. P1 is undoubtedly a hard blunt object and, therefore, it is possible that external injury No. 3 could have been caused by the iron rod Ex. P1. Similarly, the injury Nos. 1, 2 & 4 were opined to be caused by manual pressure after putting cushion like folds of cloth. Saree Ex. P2 is capable of being used as a cushion like folds of the cloth.

43. Besides the fact that Dr. K.L. Sharma has categorically deposed that external injuries on the person of deceased were inconsistent with the theory of suicide, even scene of crime does not fortify the version of the appellant that the deceased committed suicide. SI Azad Singh has deposed that the room in which the dead body was lying, was open. The bolts of the kunda inside the room were intact. The outer kunda had been broken intentionally to show that the door of that room had been opened after using force. The kunda as well as rod were found to be intact and, therefore, he suspected that there was manipulation in breaking the kunda in order to mislead the police. Above all, if the appellants had no role to play in the

death of the deceased, no explanation has been furnished by them as to why they themselves did not inform the police regarding the commission of suicide by deceased as alleged.

44. The appellants Rama Shankar and Prem Patta have not disputed their presence in the matrimonial home where the unfortunate incident had taken place. Appellant Bhagwati Prasad, however, has tried to take a plea of alibi alleging that he was posted as Mali in CPWD Office at 10, Teen Moorti and he left for his office at 7:30 a.m. on his bicycle. His office hours were from 9:00 a.m. to 5:00 p.m. and after marking his attendance in the attendance register at 9:00 a.m., he left for actual place of work at Kothi No. 10, Teen Moorti. He was informed by his son Rama Shankar at about 12:45 p.m. about this incident. In order to substantiate this plea, he had examined DW1 Arjun Prasad, Assistant Director, Horticulture, CPWD, who brought the attendance register of appellant Bhagwati Prasad to prove that he was on duty in his office on 1st September, 1997.

45. It goes without saying that when the accused takes plea of alibi, same is required to be proved by him with absolute certainty so as to completely exclude his presence at the place and time of occurrence. The plea of alibi has not been believed by the learned Trial Court due to following reasons:

(i) First of all it is noticed that it was never his case in cross-examination of PW Ram Bharan and his wife Gaya Devi that he was not at the house at the time of this occurrence and that he had left for his office at 7.30 a.m.; that he marked his attendance in the office of CPWD with DW1 at 9.00 a.m. and went to work at Kothi No. 10, Teenmurti; that at 12.45 p.m. his son Rama Shanker came there along with his friend and told him about this occurrence. This shows that the plea of alibi raised by accused Bhagwati Parshad is an afterthought and is not believable.

(ii) Secondly, accused Rama Shanker has stated in statement u/s 313, Cr.P.C. that he had gone to his fathers office at 12.45 p.m. and he informed his father about the death of Maya. This is inconsistent with what has been stated by accused Bhagwati Parshad because according to him his son Rama Shanker did not say anything to him and it was his friend who told him that Maya was no more. This falsifies the statement of accused Rama Shanker in that regard.

(iii) Thirdly, accused Prem Patta in her statement u/s 313, Cr.P.C. did not say that accused Rama Shanker had gone to his fathers office along with his friend Ramanand to inform him regarding the death of Maya. So the statement of accused Prem Patta does not lend corroboration to the plea of her husband Bhagwati Parshad.

(iv) Fourthly, according to Rama Shankar, his friend namely Ramanand had accompanied him to the office of his father to give information regarding the death of Maya. It is found that the said Rama Nand has not been examined by the accused persons in their defence to lend corroboration to their plea. They have withheld the

best independent witness in their possession knowledge who could have thrown light on this aspect. However, he has not been examined by the accused persons for the reasons best known to them. On this account the only inference that can be drawn is that had they examined him (Rama Nand) he would not have supported their plea.

(v) Fifthly, defence evidence led by the accused to prove his alibi is also not worthy of credence. As admitted by DW1 in his cross examination the register brought by him commences only from August 1997. He claims that prior to Sept., 97 the area of Teenmurti was under Two W. Sub-Division and there was re-distribution of the area thereafter and Teenmurti Marg area was attached to 5W. Sub-Division and so attendance register of the Malis of 5W Division commences from August 1997. Explanation given by DW. 1 is not believable in the absence of any proof of Office Order regarding re-distribution of the area. DW. 1 had admitted in his cross-examination that no such endorsement is attached to the attendance register produced by him. He also admitted that there is no certificate appended to the register that it is a attendance register to mark the attendance of the Malis of 5W-Division. He also admitted that the register does not have any Sl. number on each page and there is also no certificate as to the number of sheets it contained when it commenced. DW1 has further admitted that the attendance on 1.9.97 is not marked by accused Bhagwati Parshad and that only letter "p" against his name is mentioned. He also admitted that letter "P" in the relevant entry is not in his handwriting nor it was written in his presence. He also admitted that the said letter "P" is not written by accused Bhagwati Parshad in his handwriting. DW1 has further admitted that there is no mention of arrival and departure against the name of the accused Bhagwati Parshad on 1.9.97. All these admissions by DW1 go to show that the alleged attendance vide letter ''P'' on 1.9.97 in DW1/1 is not written by him or by the accused. It is not proved in whose handwriting the letter ''P''. has been written. So entry in the attendance register Ex. DW1/A is not proved as per law. Otherwise also the attendance register produced in the Court is a suspect document. It does not commence from the first month of the calender i.e. January prior to this occurrence. Generally attendance register in Govt. Departments commences from January every year. There is no proof that the said register was issued in the month of August. 97 on account of any redistribution of the area of the sub-divisions. Explanation given by DW1 in this regard is not believable for want of any documentary proof. Moreover the attendance register does not bear Sl. page number nor does it bear any Sl. number or page number nor any certificate by the concerned department. The attendance register produced in the Court does not show the arrival time of accused Bhagwati Parshad in the office on the day of this occurrence nor on any other date prior to this occurrence. He is marked present even on Sundays and it shows that the register is a suspect document. The said register also does not prove that accused Bhagwati Parshad had informed his department at 12.45 p.m. when he left the office after getting information from his

son and his friend. There is nothing on record to prove that he left the office at 12.45 p.m. after submitting any application for grant of leave or permission to leave the office.

46. We are of the considered view that the learned Trial Court has given cogent reason for arriving at the conclusion that Bhagwati Prashad has failed to prove his plea of alibi. Therefore, his presence at the spot at the time of occurrence was proved.

47. As seen above, the remaining two appellants have not disputed their presence at the spot at the time of occurrence. It is undisputed case of the parties that the deceased Maya was residing with the appellants in their house ever since her gonna, i.e. 1 1/2 years prior to the occurrence.

48. Since the unnatural death had taken place within the matrimonial home and presence of the appellants stands established, then, u/s 106 of the Evidence Act, 1872, onus of proof was upon the appellants to show as to how Maya sustained injuries. Section 101 of the Evidence Act lays down the general rule that in a criminal case, the burden of proof is on the prosecution and Section 106 is not intended to relieve it of that duty. However, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

49. The applicability of this provision has been explained by Hon''ble Supreme Court in State of Rajasthan Vs. Kashi Ram, , where it was held as under:

The principle is well settled. The provisions of Section 106 of the Evidence Act, 1872 itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in In Re: Naina Mohamed, . There is considerable force in the argument of Counsel for the State that in the facts of this

case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.

50. In this context, observations made by Hon''ble Apex Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, , and particularly to paragraphs 15, 21 and 22 are reproduced as under:

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

xxx xxx xxx

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of the Hon''ble Supreme Court. State of Tamil Nadu Vs. Rajendran, ; State U.P. Vs. Dr. Ravindra Prakash Mittal, ; State of Maharashtra Vs. Suresh, ; Ganesh Lal Vs. State of Rajasthan, and Gulab Chand Vs. State of Madhya Pradesh, .

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or one offence takes places in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram Vs. State of Himachal Pradesh, it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "Khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In

Ganeshlal Vs. State of Maharashtra, the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313, Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State U.P. Vs. Dr. Ravindra Prakash Mittal, the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly Hon''ble Apex Court reversed the judgment of the High Court acquitting the accused and convicted him u/s 302, IPC. In State of Tamil Nadu Vs. Rajendran, the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of crime.

51. Ram Naresh @ Lala Vs. State , was also a case where cause of death was asphyxia as a result of compression of neck by ligature. On facts it was found that it was homicidal death. Deceased was living with the accused and it was observed by this Court that it was for the accused to give explanation as to how the body of deceased was found lying on the sofa inside the room, which he failed to furnish and as such keeping in view totality of the circumstances it was held that the circumstances pointing to the guilt of the accused are completely inconsistent with plea of the innocence.

52. The observations made by this Court in Rani Vs. The State of Nct of Delhi, , also requires mention. Although that was a case pertaining to Section 498A/304B, IPC, but the observations are equally applicable to the facts of the present case, inasmuch as, the incident had taken place within the four walls of matrimonial home of the deceased. It was observed as under:

There is an unfortunate development under criminal justice system that even in those cases where accused should be examined as a witness by the defence, the

accused persons are not examined as a witness. In matrimonial offences, it is the accused and his family members who know what transpired within the family and they should always volunteer themselves as witnesses in the Court so that the Court gets their side of the version by way of evidence and testimony. u/s 106 of Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. When a death takes place within the four walls of matrimonial home, the husband and in laws should come forward and depose as to what was the real cause of death. The criminal practice in India has been on the lines of old track that accused must not speak and he should not be examined as a witness. I do not know why this practice developed but in all matrimonial offences, this practice is shutting the doors of the Court, to the version of the other side, by their advocates.

53. In view of the above, since the accused persons were last seen with the deceased, the burden of proof rested upon them to prove what had happened thereafter since those facts were within their personal knowledge. Appellants have alleged that she committed suicide by ligature hanging which plea is inconsistent with the medical evidence. The post mortem report reflected external injuries on her person which were ante mortem and according to Dr. K.L. Sharma, the external injuries found on the person of the deceased, as mentioned in the post mortem report, are inconsistent with the theory of suicide.

54. According to the appellant Rama Shankar, the deceased was never subjected to any cruelty and neither any demand of TV nor of plot of land was ever made. His father-in-law offered him to get an employment on the condition that he should stay with him as Ghar Jamai. His wife also insisted that they should stay at her parents'' house. He went on further stating that on the evening prior to the date of occurrence, he returned to his house at 9:00 p.m. when he was informed by Maya about the visit of her father. She also told him that her father had called him at his office along with certificates. Next morning, when he was taking breakfast, Maya told him that she wanted to go to his parents'' house to have some talks with her mother, he offered her to take her to her father''s office from where she could go to her parents'' house along with her father, however, she declined. So, he dropped that idea and told her that they would go there some other day. Thereafter, she went upstairs murmuring something which he could not hear. After taking breakfast, he went upstairs and found the room closed from inside. He called Maya but there was no response. He peeped through a window and saw her hanging. He tried to break open the door but could not do so. Then he came down and informed his mother. Thereafter, he opened the kunda of that room with a screw driver. However, he could open only two screws out of four. Then he broke open the plaster by side of chokhat. He was trying to bring her down after opening the Saree with which she was hanging but could not control her weight and she fell down. He saw a cut mark on one side of her face. There was ligature mark around her neck. He went to his father''s office accompanied by one of his neighbour Ramanand and informed

about the incident.

55. Prem Patta has taken the plea that on the day of the incident, the deceased expressed her desire to go to her mother''s house, however, Rama Shankar told her that he was going to duty and she could go to see her mother some other day. After taking his meal, her son went up to first floor where he saw Maya Devi hanging. He called her and she saw Maya hanging. She became perplexed and became unconscious. Rama Shankar summoned the doctor who declared Maya to be dead.

56. None of the appellants have explained about external injuries sustained by the deceased. Besides that, recovery of iron rod at the instance of Rama Shankar and Saree at the instance of Prem Patta corroborates the post mortem report according to which the injury No. 3 was caused by hard blunt weapon. Iron rod is undoubtedly a blunt weapon. Similarly, injury Nos. 1, 2 & 4 were caused by manual pressure after putting cushion like folds of cloth and saree was capable of being used as a cushion like folds of cloth.

57. A suggestion was given to PW4 Ram Bharan and PW5 Gaya Devi that their daughter was mentally disturbed as she could not bear a child by that date and, therefore, she committed suicide which suggestion was denied by them. Maya was only 21 years of age when she died. She had not passed child bearing age. The gonna itself had taken place about 1 1/2 years ago. No evidence has been led by the appellants that she was suffering from some gynaecological problem running counter to her child bearing capacity. On her being in such a problem, mere would have been some history of her consultation with medical experts and related treatment. The appellants being her husband, mother-in-law and father-in-law would have definitely been in a position to put forth documentary evidence in this behalf. A bald suggestion given to PW4 and PW5 could not be believed that the deceased was suffering from some mental depression for having not conceived. Rather in cross-examination of PW4 Ram Bharan, it has come that on inquiry from the appellant Prem Patta, he came to know that Maya had delivered a stale 5-6 months child. Moreover, it seems highly improbable that a young bride whose gonna had taken place only 1 1/2 years prior to the incident would take the extreme step of committing suicide.

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

(i) The cause of death was vasovagal inhibition with element of asphyxia consequent to pressure exerted over sides of the neck.

(ii) The deceased has been subjected to cruelty by her husband, mother-in-law and the father-in-law over the demand of colour TV and plot of 50 sq. yards and persistently pressed by them.

(iii) The cruelty and harassment was in connection with the demands of dowry.

(iv) The three appellants were the author of this crime who caused her death on the given date, time and place.

(v) The plea of suicide taken by the appellants has been found to be false and in fact inconsistent with the external injuries found on her person for which no explanation could be furnished by the appellants.

(vi) The appellant Bhagwati Prasad has taken a false plea of alibi which was an additional link in the chain of circumstantial evidence pointing towards guilt of the accused persons.

59. In our opinion, the learned Additional and Sessions Judge recorded the conviction adopting a meticulous approach by depth analysis of the evidence and the circumstances established on record. On thoroughly cross-checking the evidence on record and the circumstances established by the prosecution and the findings recorded by the Trial Court, we find that its conclusion is quite justified and reasonable. The impugned judgment does not suffer from any perversity Which calls for any interference.

60. As a result of the above discussion, the appeal being bereft of merit is dismissed. The sentence of the appellants was suspended by this Court and they were ordered to be released on bail. Their bail bonds are cancelled. They shall be taken into custody forthwith to serve the remaining period of sentence.

Trial Court record along with the copy of the judgment be sent back.