Supreme Court of India
State Of Karnataka vs M.V. Manjunathegowda & Anr on 7 January, 2003
Author: J Sema
Bench: Y.K. Sabharwal, H.K. Sema.

CASE NO.:
Appeal (crl.) 1530-31 of 1995

PETITIONER:
State of Karnataka

RESPONDENT:
M.V. Manjunathegowda & Anr.

DATE OF JUDGMENT: 07/01/2003

BENCH:
Y.K. SABHARWAL & H.K. SEMA.

JUDGMENT:

J U D G M E N T SEMA,J When a woman enters into wedlock she has many salutary expectations. She would expect happy conjugal life, she would then expect to be a mother one-day, then she would expect to be mother-in-law and grand-mother and so on. All these expectations are shattered by the cruel hands of dowry related death.

The deceased-Kamalamma got married with accused No. 1 on 17.5.1987. On 14.11.1987, she was murdered and her body was found in a dry well. There is no dispute that the death was unnatural. The death of the deceased occurred within 7 years of her marriage with accused No.1. Accused No.1 (respondent No.1 herein) was tried along with accused Nos. 2 and 3 in the Court of Sessions Judge, Chikmagalur, for the offence under Section 302 IPC and in the alternate under Section 304B IPC. They were also charged under Section 201 read with Section 34 IPC. Accused Nos. 1 and 2 were also charged under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 (hereinafter the Act) read with Section 34 IPC. All the accused belong to Manimakki village. They are related to each other. A-2 is the mother of A-1 and A-3. A-3 is the younger brother of A-1. A-1 has also got another younger brother who is married to PW-9 Smt.Girijamma. All of them were residing together in the same house. It is in the evidence on record that the deceased was also residing in the same house along with the accused and other inmates of the house on the intervening night of 13.11.1987 and 14.11.1987.

The learned Sessions Judge, after concluding the trial, found that A-1 was the sole perpetrator of the crime and convicted A-1 under Sections 302 and 201 IPC and sentenced him to undergo life imprisonment and two years' RI respectively. The learned Sessions Judge also found him guilty under Sections 3,4 and 6 of the Act and sentenced him to undergo 5 years' RI and a fine of Rs.15,000/-, six months' RI and a fine of Rs.3000/- and six months RI and a fine of Rs.5000/- on each count under Sections 3,4 and 6 of the Act and in default of payment of fine, to undergo RI for six months. All the sentences were ordered to run concurrently. However, A- 2 and A-3 were acquitted of the offences under Sections 302 and 201 read with Section 34 IPC. They were also

acquitted of the offences under Sections 3,4 and 6 of the Act and were set at liberty. Two appeals have been filed against the said judgment before the High Court. Criminal Appeal No. 493 of 1990 had been filed by the State against the acquittal of A-2 and A-3. Criminal Appeal No.300 of 1990 had been filed by accused No.1 M.V. Manjunathegowda against his conviction, as aforesaid. By the impugned judgment, the High Court had dismissed Criminal Appeal No. 493 of 1990 filed by the State and allowed Criminal Appeal No 300 of 1990 preferred by the accused (respondent No.1 herein) by setting aside the conviction recorded by the learned Sessions Judge. It is against the order of the High Court setting aside the sentence and conviction of the respondent- accused, the State has preferred the present appeals. No separate appeal has been preferred by the State against the acquittal recorded by the Trial Court and confirmed by the High Court in respect of accused Nos. 2 and 3. The peculiar facts and circumstances under which A-1 got married with the deceased - Kamalamma on 17.5.1987 may be summarily recited. The marriage of the deceased-Kamalamma was fixed for 17.5.1987 with one Nagesh Gowda - PW-16, son of Bhyregowda of Byragadde. The marriage was to be performed at 10.30 a.m. The elders and relatives of both the sides had gathered to attend the marriage. However, PW-16 Nagesh Gowda with whom the deceased was supposed to marry did not turn up. The elders and relatives who had come to attend the marriage raised serious concern as the father of the bride PW-6 and other relatives were visibly humiliated. At this stage, it appears that to save the family from humiliation, the elders and relatives of PW-6, who had come to attend the marriage, decided that the marriage of the deceased-Kamalamma should take place. According to the prosecution story, it is at that stage that A-1 had come forward to get married with the deceased on the condition that dowry of Rs.10000/- and three sovereigns of gold be paid to him. It is the further case of the prosecution that A-1 also put a condition that once the payment was made he was prepared to get married with the deceased on the same day. As PW-6 father of the deceased was helpless in arranging the amount of dowry and three sovereigns of gold, the elders and relatives who had come to attend the marriage, contributed their mite and collected Rs.8000/- and the same was paid to the accused. It was also agreed upon that the remaining sum of Rs.2000/- and three sovereigns of gold would be given after harvesting the crop by PW-6. Having resolved the demand of dowry, as aforesaid, ultimately the marriage took place on the same day at about 6.30 p.m. To establish the demand and payment of part dowry, the prosecution examined PW-1 brother of the deceased, PW-6 father of the deceased, PW-7 an independent witness who participated in collecting the amount of dowry before paying to A-1, PW-12 who is also an independent witness in witnessing the demand of dowry and payment of dowry to A-1 and PW-15 who solemnized the marriage. Their testimony is relevant with regard to the factum of demand of dowry and payment of dowry. We shall be discussing their testimony at an appropriate time. The case set up by the accused before the Trial Court was that the death of the deceased was a suicidal death. It was pleaded that the deceased slipped into the well while going to fetch water from the well. The plea of suicidal death was completely ruled out both by the Trial Court and the High Court. Both the Courts held that the death of the deceased was homicidal. Since this controversy had been set at rest by two courts, this point need not detain us any longer. Even otherwise, the plea of suicidal death is completely belied by the medical evidence. PW-22 Dr.Jagannath conducted the post-mortem on 15.11.1987 on being requested by the police on 14.11.1987 at about 5.00 p.m. The post-mortem was conducted on 15.11.1987 from 1.00 p.m. to 3.00 p.m. and the doctor found the following external injuries:-

1. "An incised wound over the skull, i.e. on bregms, anteriorly 15 cms., to posterior aspect of the right parietal region, scalp incised, wound deep to brain matter.

2. An incised wound from middle of the right parietal bone towards the right temporal bone 12 cms. in length deep to brain matter.

3. Right side of the accipital one fractured into five fragments."

The doctor was of the opinion that death was due to shock and hemorrhage as a result of head injury. The doctor was also of the opinion that the injuries found on the dead body were ante-mortem. He was further of the opinion that injuries 1-3 were fatal and they were sufficient to cause the death of a person in the ordinary course of nature. According to the doctor, the deceased met with a homicidal death.

While agreeing with the findings of the Sessions Judge, the High Court has observed as under:-

"Therefore, the deceased going to the well to fetch water and slipping down accidentally, was out of question as rightly observed by the Sessions Court. Similarly, if at all the deceased were to commit suicide, there must be objects pitched to the wall of the well in such a manner as to cause these injuries at one time. The doctor has stated that these 3 injuries could be caused by separate blows. In our view therefore though a medical witness can give certain probabilities as the cause to sustain certain injuries, these probabilities cannot be isolated from existing facts in a given situation. In our view it is not shown in the evidence, at least of the prosecution witnesses including the mahazar witnesses that this well had any sharp objects of the like nature suggested to PW.3 to cause these injuries at one time. If such a probability cannot at least be remotely visualised, then the evidence of PW.3 that this was a homicidal death becomes clear and acceptable and we have no hesitation in agreeing with the Sessions Court in this behalf."

Considering the ocular and medical evidence both the trial court and the High Court ruled out the possibility of death by suicide. The High Court did not accept the demand of dowry and the payment of dowry, as according to the High Court, there were discrepancies in the statements of PW-1 brother of the deceased and PW-6 father of the deceased. It may be noted that PW-1 had stated that Rs.7000/- was paid as against the testimony of PW-6 that Rs.8000/- had been paid. The High Court had considered this discrepancy to be fatal in nature. The High Court was also of the view that as the prosecution had failed to prove that there was an agreement as a consideration for the marriage to pay Rs.10000/- and three sovereigns of gold and that Rs.8000/- were paid out of it, the demand of dowry and payment of dowry was not proved. We are of the view that this finding of the High Court is clearly perverse and against the weight of evidence on record. The High Court, in our opinion, has failed to consider the evidence on record in its proper perspective. It must be noticed that the marriage had taken place on 17.5.1987. PW-1 K.P. Manjegowda (brother of the deceased) was examined on 11.9.1989. PW-6 Puttegowda (father of the deceased) was examined on 12.9.1989. PW-7 K.M.Eregowda (an independent witness) was examined on 12.9.1989. PW-12 Bariban was examined on 14.9.1989. PW-15 Sudhama (Priest) who had solemnized the marriage was examined on 15.9.1989. All these witnesses were examined after more than 2 years of the solemnization of the

marriage, which had taken place on 17.5.1987. One should not fail to take note that the witnesses are rustic villagers. It is difficult to expect them to remember the events with mathematical precision after a lapse of more than two years. It is a common knowledge that ordinarily human memories are apt to blur with the passage of time. More so in the present case, when witnesses are rustic villagers. In such a situation, there are bound to occur certain discrepancies, which are in the form of omission and they cannot be considered as fatal to their evidentiary value, otherwise trustworthy. At the same time, they are unexposed to the technicalities of urban life and they speak plainly what they saw and did. They are straightforward looking people, truthful and trustworthy. Their testimony cannot be thrown out on the ground that it lacks spontaneity. Similarly, the High Court disbelieved the testimony of PWs on the ground that they failed to establish that there was an agreement to pay the dowry. In such a melee and keeping in view the background and the circumstances in which the marriage of the deceased with the accused was solemnized on 17.5.1987, as noticed above, it would be utterly impossible to have a formal agreement, which could be proved by oral evidence. Similarly the amount of dowry referred to by one witness and not mentioned by the other, can be termed to be an omission due to passage of time which, in no case, amounts to major contradiction which would form the basis for impeaching the credibility of witnesses. Mr. D.N. Goburdhan, learned counsel for the respondents, invited our attention to the testimony of PWs 1, 6, 7, 12, and 15 and strenuously contended that there are lot of discrepancies in the testimony of the aforesaid witnesses and no reliance can be placed on their testimony with regard to the demand and payment of part of dowry. This contention deserves to be rejected out-rightly. In our opinion, such minor contradictions would not tantamount to be of substantial character, which would be a ground for impeaching the credibility of the witnesses. To prove the demand of dowry and the payment of dowry, the prosecution led the evidence of PWs 1, 6, 7, 12 and 15. As already noticed, PWs 7, 12, and 15 are all independent witnesses. PW-1 brother of the deceased had stated that his sister's marriage was fixed with PW-16 Nagesh Gowda on 17-5-1987 who did not turn up on the date of the marriage. It is further stated that on that day A-1 came forward to get married with the deceased-Kamalamma on the condition that dowry of Rs.10000/- and three sovereign of gold would be given to him. PW-6 is the father of the deceased who had also made a similar statement. The most important evidence is of PW-7 who is an independent witness and participated in collecting the contribution towards the payment of dowry amount to the accused. He stated that he had been to the marriage of the deceased- Kamalamma fixed for 17.5.1987 with Nagesh Gowda PW-16 and as PW-16 did not turn up at the appointed time, A-1 came forward to get married with the deceased on the condition that he be paid dowry of Rs.10000/- and three sovereigns of gold. PW-7, on receipt of offer from the accused, had a discussion with PW-6. PW-6, however, expressed his inability to pay the dowry as he had no money. PW-7 had further stated that the people who had come for the marriage took a philanthropic view of contributing their mite. As a result a sum of Rs.8000/- was collected. PW-7 had further stated it was decided that the remaining balance of Rs.2000/- and three sovereigns of gold should be given after harvesting the crops. PW-12 was another independent witness who also stated that he had attended the marriage of the deceased with A-1 and the marriage was solemnized after taking the dowry. PW-15 is another independent witness who officiated as a priest for the marriage. He had stated that he had given the auspicious time as between 10.30 am. to 11.30 a.m. on 17.5.1987. But PW-16 Nagesh Gowda who was the bridegroom did not turn up. He had further stated that he waited up to 2.00 p.m. but even then he failed to turn up. He had further stated that after 3.00 p.m. or so the elders came to his house and told him that

A-1 had come forward to get married with the deceased. They further requested him to see if the horoscopes of both A-1 and deceased-Kamalamma would tally, to which he replied in affirmative. Thereafter, he fixed the auspicious time to be between 6.30 p.m. to 7.30 p.m. The marriage was solemnized at 6.30 p.m in which he officiated as priest. This witness had further stated that people were collecting money as A-1 was to be given a dowry of Rs.10000/- and three sovereigns of gold. He had further stated that PW-6 father of the deceased expressed his inability to pay the full amount on that day and requested for a period of three months to pay the remaining balance. Looking at the totality of the evidence, as noticed above, we are of the view that there is over-whelming evidence with regard to the factum of demand of dowry and payment of the part of dowry on 17.5.1987. The High Court failed to take note of the totality of the evidence into consideration and took out the minor discrepancies here and there as ground for impeaching the credibility of the witnesses and thereby committed a grave miscarriage of justice.

The next question to be considered is whether the offence under Section 302 IPC has been established against A-1 beyond all reasonable doubts. According to the prosecution story, the only eye-witness is PW-9 Smt.Girijama, who is no other than the wife of the brother of A-1. This witness has turned hostile. According to PW-9 on 13.11.1987, the deceased- Kamalamma and her sister had slept in one room in the house of the accused. All other accused and father-in-law and her husband were sleeping in another room. On the next day, early in the morning at about 4.00 am i.e. 14.11.1987 she got up and found that the deceased-Kamalamma was not there. She prepared coffee but the deceased did not turn up. Then she informed the husband of the deceased and mother-in-law. According to the prosecution story, the deceased had gone to the bath-room and set fire for warm water. At that time A-1 was abusing his wife. There is a small window through which PW-9 could see what was going on in the bathroom. On hearing the abusive language she went there to see what was happening there. There she saw, through a small window, that A-1 had hit the deceased on her head with MO 11 (axe) with all his might. The deceased- Kamalamma fell down at the stone in the bathroom unconsciously. Then again A-1 assaulted on her head. Due to heavy blow there was a lot of bleeding and the blood spread on that stone. Thereafter, she went and woke her mother-in-law A-2. As she also got up, PW-9 showed all that to her who also saw it through that window. Thereafter A-2 and A-3 went to the bathroom and all were talking that Kamalamma was no more. A-1 was also threatening that this should not be disclosed to anyone. Thereafter A-1 asked A-3 to bring battery from inside. Thereafter A-1 bodily lifted the dead body of his wife and went outside. A-3 was putting the torch and A-2 also followed them. PW-9, being terrified and panicky, woke up her husband and showed the blood in the bathroom. Her husband also got very much afraid and he did not go outside. Thereafter, she went to answer the second call of nature. By that time she learnt that A-1 and A-3 had come back to the house. The blood was washed out with water. The other inmates of the house were told that they should tell on inquiry by the police or anyone else that the deceased - Kamalamma had died as she fell into the well while returning from the other well from where they were to bring water. If the statement of PW-9 is excluded from consideration, the entire prosecution story with regard to the offence of murder under Section 302 IPC, rests on the circumstantial evidence. It is now well-established principle of law that in the case of circumstantial evidence the chain must unerringly link to the guilt of the accused. There is no evidence on record to show that there was a trail of blood from the house to the place where the dead body was found in the well. There was no evidence of dragging the body. The recovery of blood stained shirt and lungi

and MO 11 (axe), said to have been stained with blood, seized at the instance of the accused was disbelieved by the High Court. We are also of the view that dragging of body of the deceased from the house to the well, where the dead body was found, could not be the handy work of an individual. The accused must have been assisted by the other inmates of the house inasmuch as there were seven inmates in the house on the fateful day. The High Court on re- appreciation of the evidence, with regard to the offence under Section 302 IPC, came to the conclusion that the prosecution had failed to establish complete and conclusive chain of circumstances to bring the guilt of A-1 beyond reasonable doubt. The High Court also considered a seizure memo namely the seizure of clothes, which were found hanging over a beam in the hut and the fact that the father of A-1 was present there. The High Court disbelieved the seizure, as there was no evidence to show that those clothes belonged to none other than A-1. Similarly, the seizure of MO 11 (Axe) and recovery of the stone from the bath-room of the house was disbelieved by the High Court for the reasons assigned in the judgment and the same do not warrant any interference. In our view, therefore, the acquittal recorded by the High Court for the offence under Section 302 IPC against A-1 does not suffer from any infirmities and it is confirmed.

The next and important question to be considered is as to whether A-1 is liable for conviction under Section 304B IPC. As already noticed, an alternate charge was framed under Section 304B but the Sessions Court as well as the High Court did not record any findings under this count. The Sessions Judge did not record any separate finding under this section presumably because the accused was convicted under Section 302 IPC. The High Court did not record any conviction under this section as the High Court was of the view, which according to us is erroneous, that no demand of dowry and payment of dowry has been established. We have already held that there is over-whelming evidence against A-1 with regard to demand and receipt of part of dowry.

The Dowry Prohibition Act, 1961 (Act 28 of 1961) was enacted by the Legislature effective from 20th May, 1961. The Statement of Objects and Reasons for enactment of the legislation are 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 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.."

Ever since the Act came into being, there is a sea of change by various amendments so as to make the Act more purposeful and punishment deterrent. Realising that despite the Dowry Prohibition Act, the evil practice of giving and taking of dowry remains unabated and the dowry related offences were menacingly on the increase, the Act was amended by Act No. 63 of 1984. After taking note of the observations of the Committee on Statute of Women in India and with a view to making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti- dowry publicity, the Government referred the whole matter for consideration by a Joint Committee of both

the Houses of Parliament. The Committee, after examining the whole matter in great depth in its proceedings, recommended to examine the working of the Dowry Prohibition Act. The Act was further amended vide Act No. 43 of 1986. The Statement of Objects and Reasons are as follows:-

"The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the House of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are:

(a) The minimum punishment for taking or abetting the taking of dowry under Section 3 of he Act has been raised to five years and a fine of rupees fifteen thousand.

(b) The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry.

(c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

(d) Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.

(e) Offences under the Act are proposed to be made non- bailable.

(f) Provision has also been made for appointment of Dowry Prohibition Officers by the State Governments for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

(g) A new offence of "dowry death" is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure 1973 and the Indian Evidence Act, 1872 have also been proposed.

We are only pointing out the aforesaid Statement of Objects and Reasons to demonstrate the importance of Legislation and the intendment of the Legislature with a view to curb the increasing menace of evil practice of giving and taking of dowry by imposing a deterrent punishment.

Consequent upon the aforesaid amendment Section 304B IPC was inserted in the Indian Penal Code and Section 113B was inserted in the Indian Evidence Act respectively.

Section 304B of the Indian Penal Code reads as follows: -

"304B. Dowry death. (1) Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand or dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Section 113B of the Indian Evidence Act was inserted by Act 43 of 1986 w.e.f. 5.1.1986. It reads: -

"113B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code 45 of 1860)"

The aforesaid legal position, as it stands now, is that in order to establish the offence under Section 304B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry.

If the prosecution is able to prove the aforesaid circumstances then the presumption under Section 113B of the Evidence Act will operate. It is the rebutable presumption and the onus to rebut shifts on the accused. The accused was examined under Section 313 Cr.P.C. The defence of the accused was a total denial. Therefore, the presumption as to dowry death envisaged under Section 113B of the Evidence Act remains unrebutted. We have already held that there is over-whelming evidence against the accused with regard to the demand of dowry and acceptance of a part of dowry. In this connection the evidence of PWs 1, 6, 7, 12 and 15 are referred to. The only question remains to be answered is as to whether the deceased was subjected to cruelty or harassment by the accused in connection with any demand of dowry soon before her death or not. To answer this question, it will be profitable to refer to the testimony of PW-1, the brother of the deceased and PW-6, father of the

deceased. From the prosecution of evidence on record, it will clearly appear that the remaining balance of dowry was Rs.2000/- and three sovereigns of gold. PW-1 had stated that four days earlier to Diwali festival she came to the parental house and asked them to clear the dowry due and she also said that she was tortured by her husband and her mother-in-law on the dowry issue. To this, PW-1 replied that he would pay in January after the harvest. But the deceased told him that she would not go back to her husband's house as her husband (accused) and her mother-in-law would torture her if she went back without money and gold. She was persistent that she would not go back after Diwali festival. Then PW-1 also stated that his father PW-6 went along with her sister (deceased) and stayed there over-night and came back the following morning. Thereafter, on 14.11.1987 they received information that his sister had been murdered. PW-6 is the father of the deceased. He stated that his daughter- Kamalamma is married to the accused. He also stated that A-1 demanded that if he gave Rs. ten thousand and three sovereigns of gold as dowry, he would marry the deceased. He further stated that after the marriage there was a due of Rs.2000/- and three sovereigns of gold. He further stated that his daughter had come to his house four days prior to the Diwali festival and informed that she was being tortured by not brining the balance amount and gold. She further told him that her husband told her not to come to the house without bringing the balance of dowry amount and gold. PW-6 further stated that after the Diwali festival his daughter refused to go back to her husband's house without the balance amount of dowry and gold apprehending torture and harassment. PW-6 ultimately took his daughter to the house of accused and told them that he would immediately clear the balance amount and gold after harvesting the crops. He stayed over-night in the house of the accused and left the house only the next day. He has stated that on Thursday he had taken his daughter to the house of the accused and stayed for a night there. On Friday, the next day, he came back to his own house. The following day i.e. Saturday at about 8.30 a.m. he received the information that his daughter had died. He stated that Saturday was 14.11.1987. This would clearly show that PW-6 took his daughter to the house of the accused on 12.11.1987 and halted over-night there and returned to his house the next day i.e. 13.11.1987 and the deceased was murdered on 14.11.1987, stated to be early in the morning. There was no evidence on record which would throw some light that in the intervening period of 13.11.1987 and 14.11.1987 there was some settlement or resolution with regard to the balance amount of dowry being paid to the accused. From the testimony of PW-1 and PW-6, it clearly appears that soon before her death she was subjected to cruelty or harassment in connection with the demand for dowry by her husband. In the absence of the evidence on record showing any settlement or resolution for payment of balance of dowry amount and gold in the intervening period of 13.11.1987 and 14.11.1987, the cruelty and harassment in connection with any demand for dowry as on 12.11.1987 would continue till her death on 14.11.1987. This would constitute cruelty and harassment in connection with demand for dowry soon before her death. As already noticed, the marriage of the deceased with the accused was solemnized on 17.05.1987 and she died within 7 years of marriage. Having regard to the entire facts and circumstances and evidence on record we are of the view that the offence under Section 304B IPC is found to be well established against A-1. The next question to be considered is the quantum of punishment. While considering the quantum of punishment, the Court must keep in view the background and intendment of the legislature so as to eradicate the evil practice of giving and taking dowry by prescribing the deterrent punishment. This was clear from the Objects and Reasons of Amending Act of 1986 (Act 43 of 1986). Consequent upon the aforesaid amendment Section 304B IPC was introduced in which the punishment is, imprisonment for a term which shall not be less

than seven years but which may extend to imprisonment for life. As would reveal from the various amendments as noticed above, despite stringent law, the evil practice of giving and taking of dowry remains unabated. On the contrary, it is menacingly on the increase. In the instant case, the conduct of the accused is of vital importance while considering the quantum of punishment. The marriage of the accused with the deceased on 17.5.1987 is neither an arranged marriage nor a love marriage. As already noticed, it is a marriage by accident and the main consideration was the payment of dowry and not out of love. It also appears from the testimony of PW-9 that a suggestion was put to the witness that accused used to permanently go to one Kallugudde Earegowda's house for work and that Kallugudde Earegowda has three female children. It was also suggested that accused was also having love affair with the first daughter of Kallugudde Earegowda. All this go to show that the main consideration of the accused marrying with the deceased was love of dowry and not love for the girl. So greed of the accused of the dowry, even for a paltry sum of Rs.2000/- and three sovereigns of gold, would cost the precious life of a human being. Such conduct of the accused is not only abhorrent to the concept of rule of law, but also against the conscience of the entire society. The practice of giving and demanding dowry is a social evil having deleterious effect on the entire civilized society and has to be condemned by the strong hands of judiciary. Despite various amendments providing deterrent punishment with a view to curb the increasing menace of dowry deaths, the evil practice of dowry remains unabated. The Court cannot be oblivion to the intendment of the legislature and the purpose for which the enactment of the law and amendment has been effected. Every court must be sensitized to the enactment of the law and the purpose for which it is made by the legislature, keeping in view the evil practice of giving and taking dowry, which is having a deleterious effect on the civilized society. It must be given a meaningful interpretation so as to advance the cause of interest of the society as a whole. No leniency is warranted to the perpetrator of the crime against the society. Keeping these overall accounts and circumstances in the background, we are of the view that a deterrent punishment is called for. Accused No.1 (M.V. Manjunathe Gowde) is accordingly convicted under section 304B IPC and sentenced to rigorous imprisonment for ten years. The impugned order of the High Court is set aside and the appeals filed by the State are allowed to the extent indicated. We, however, refrain from interfering with the order of acquittal passed by the High Court insofar as the offence under Section 302 IPC is concerned.

The accused-respondent is now directed to surrender before the concerned court to serve out the sentence. If the accused does not surrender, the Sessions Judge, Chikmagalur, shall take necessary steps in accordance with law to apprehend the accused.