

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. A. NO. 613/2001

Date of Pronouncement 27 April, 2009

#ARVIND DUBEY & ORS. Appellants
Through : Mr.G.P. Thareja with Ms.Namita Roy,
Advocates for the appellants.

Versus

STATE Respondent
Through : Mr.Lovkesh Sawhney, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **YES**
2. To be referred to the Reporter or not? **YES**
3. Whether the Judgment should be reported in the Digest? **YES**

G.S. SISTANI, J.

1. The present appeal is directed against the judgment dated 24.07.2001 and order on sentence dated 28.07.2001, passed by the Ld. ADSJ, Delhi, in FIR No. 848/98, PS Malviya Nagar, under section 498A/304B, Indian Penal Code, 1860 (hereinafter referred to as, "IPC"). Post trial, appellants no.1 and 3 were sentenced to undergo Rigorous Imprisonment (hereinafter referred to as, "R.I.") for ten years with a fine of Rs.5,000/- and in default of the payment of fine, the said appellants were directed to undergo a further RI for two months. Appellant no.2 was sentenced to undergo RI for seven years with a fine of Rs.5,000/- and in default of the payment of fine, he has been directed to undergo RI for two months. The appellants were

given the benefit of Section 428 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, "Cr.P.C.").

2. The necessary facts as noticed by the trial court are: Ms. Sughandi, daughter of PW-1, Sh. Devender, was married to appellant no. 1 (Arvind Dubey) on 20.06.1997. Within fifteen months of her marriage, she is stated to have committed suicide on 06.09.1998, at the residence of her in-laws by hanging herself. As per the case of the prosecution, at the time of her marriage, the appellants had given sufficient dowry, as per their capability, however, her in-laws were not satisfied and they had made a demand for a colour T.V., which demand could not be fulfilled by the father of the girl, although a Black and White T.V. was given to the girl. However, the demand for a colour TV persistent and a further demand for a motor cycle was made. As the demands could not be met, the deceased (Ms. Sughandi) was continuously harassed for the inability of her parents to meet the demands. As per the case set up by the prosecution, the deceased (Ms.Sughandi) was not being allowed to even communicate with her family and write letters to her father and brother and she was only able to write letters in the absence of her husband and in-laws. During the fifteen months period of her marriage, once she had come to stay with her father in February, 1998 and at that time also she had reiterated to her father that her in-laws were demanding a colour TV as well as a motorcycle and as these items were not being provided, her in-laws were harassing her and also used to

beat her. She had pleaded to her father to give articles to her in-laws so that she could live peacefully. In turn her father had assured her that he wiykd somehow manage the amount and purchase a colour T.V. for her in-laws. But before the colour T.V. could be bought, the father received the news of suicide by his daughter. Arvind Dubey, husband (appellant no. 1 herein), Dhananjay Dubey, father-in-law (appellant no. 2 herein) and Urmilla Dubey, mother-in-law (appellant no. 3 herein) of the deceased were charged for the offence under section 498 A and 304 B, IPC.

3. In this case, nine witnesses have been examined by the prosecution. One witness was examined by the defence. Before the evidence can be minutely examined and scrutinized, the submission of learned counsel for the parties may first be noticed.
4. Learned counsel for the appellant submitted that the Trial Court has not appreciated the evidence on record and has based the conviction solely on some letters alleged to have been written by the deceased to the members of her family. It is further contended that the Trial Court Judge has failed to consider the letter **alleged to be** written by the deceased two days prior to her committing suicide (Exhibit PW-1/6). According to learned counsel for the appellant, in this letter the deceased has given a complete clean chit to her in-laws. She had written that there is no harassment by her in-laws and on the contrary she had pleaded to all the members of the family not to instigate her

against her in-laws and not to interfere in her marital life. It has been vehemently argued by the learned counsel that in the same letter, the deceased had cautioned her father about making any comments about her father-in-law that “he keeps drinking alcohol” and his remarks against her husband and calling him a “hund” (bull). It is submitted that in fact the Trial Court has erred in not reading this letter of the deceased in favour of the appellants and wrongly came to the conclusion that the said letter may not have been written by the deceased out of her own free will.

5. It is next contended by the learned counsel for the appellant that the conviction of the appellant is liable to be set aside since the suicide note in the hand of the deceased shows that she had committed suicide of her own free will and for the reason mentioned by her that she did not have any desire left for living. It is submitted that the Trial Court should have in fact relied on the suicide note and the same has not been appreciated in the right perspective.
6. It is further submitted that there are various contradictions in the statement of PW-1 (father of the deceased) in the statement made before the SDM and the statement made before the Court. It is also submitted that the conviction is based on the sole testimony of the interested witnesses and their evidence cannot be relied upon in the absence of corroboration from any of the independent witnesses, as neither

any neighbour nor family members or friends have been examined in evidence.

7. Learned counsel for the appellants submits that the ingredients of Section 304(B) IPC have not been satisfied as there is nothing to show that the deceased was subjected to cruelty in relation to demand of dowry soon before her death. Counsel further submits that a bare reading of the letters would show that the deceased was an emotional person and she was home sick and further she was insecure as her father and brothers had not come to meet her.
8. It is lastly contended that there is nothing on record and there is no evidence to show that the husband of the deceased had at any point of time made a demand for dowry. In fact the letters would show that the deceased had no complaint against her husband. It is stated that the reading of the evidence including the letters would clearly show that Section 304 (B) IPC would not be attracted.
9. *Per contra* learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt.
10. Learned APP for the State submits that the letters are the best evidence available on record, which were written prior to the deceased having committed suicide and the *factum* of these letters has not been denied. Counsel for the State further submits that a joint reading of the letters with the evidence of PW-1, the father of the deceased and PW-6, the brother of the

deceased, would show that the deceased was being harassed and subjected to cruelty as the demand for dowry made by the appellants was not fulfilled. Counsel also submits that a bare reading of the letters would also show that the deceased was not allowed to communicate with her family as in every letter she has written that she was writing the letter in the absence of her in-laws. It is lastly submitted that the first letter written by her on 12.07.1997 (within twenty days of her marriage) would itself show that a demand was made for a colour T.V. and she expected that the same would be provided at Raksha Bandhan. The deceased had in fact written to her brother that in case he would not come on Raksha Bandhan then she would be like a “living dead person”.

11. Learned counsel for the State also submits that the evidence on record shows that soon before her death the deceased was subjected to cruelty and torture only on account of the fact that her parents failed to provide the dowry to her in-laws and for which she was forced to commit suicide. Learned counsel further submits that in fact there cannot be a straight jacket formula to decide as to what period can be termed as “soon before” in terms of section 304 B of the IPC. Counsel also submits that the term “soon before” may vary in the facts and circumstances of each case and in this case the deceased was married only for a period of fifteen months, out of which, she stayed in her matrimonial house for less than thirteen months. She wrote various letters to her father and brothers and that

the last communication had been written merely two days prior to her death. Besides, during her period of stay in her matrimonial home, she had told her father that she was being harassed for not giving a motorcycle and colour T.V. in dowry and that she was not permitted even to write letters to them. The harassment and demand of dowry was soon before the incident. In view of these circumstances, learned counsel submits that the Trial Court has rightly held the appellants guilty.

12. In the evidence PW-1, the father of the deceased has stated that at the time of the marriage the accused persons had demanded dowry. It would be useful to analyze in detail the evidence of PW-1, father of the deceased; PW-4 Constable Mahesh; PW-6, Keshav Pandey, brother of the deceased; PW-7 ASI Ekpai Singh, who first reached at the spot; PW-8, the doctor who conducted the post mortem; and PW-9, Sh.S.K.Singh, SDM.
13. PW-1, Davender Pandey, has deposed that Ms. Sugandhi (deceased) was his daughter. She had married appellant no. 1, Arvind Dubey, on 20.06.1997. Dhananjay Dubey and Vimla Dubey are the father and mother of Arvind Dubey. At the time of marriage, the appellant had demanded one colour TV and motor cycle. However, due to paucity of funds, he could not give these items in dowry. For this reason, the appellants used to quarrel with his daughter (deceased), used to beat her and that his daughter (deceased) had told him about this behavior meted out to her. PW-1 further deposed that in February, 1998,

he had called his daughter to live with them. He deposed that his daughter had told him that she was being harassed for not giving motor cycle and colour TV in dowry and that she was not being permitted even to write letter to her family. He told her daughter that he would make appropriate arrangements for money and would first buy her a colour TV and then at the marriage of his younger son he would arrange money and give the motor cycle to the appellants. When appellant no.1 came to take Sugandhi (deceased) back to the matrimonial home, he had told appellant no.1 that he would somehow arrange for the money and would first give a Colour TV and then a motor cycle. PW-1 also deposed that his daughter was not allowed to write letters to him, but sometimes, without bringing it to the notice of her in-laws she used to write letters to them. He further deposed that in the marriage, he had given a black and white TV and not a colour TV. And that his son lives in Assam. On 06.09.1998 he had received a telephone call from the in-laws of Sugandhi that Sugandhi had committed suicide. His son then gave a telephone call in Bihar to his family. On hearing this news, he along with his son Keshav Pandey came to Delhi. On reaching Police Station Malviya Nagar, they learnt that the dead body of his daughter Sugandhi was in AIIMS Hospital and where he identified the dead body of his daughter vide statement Ex.PW1/A. His statement was recorded before the ADM vide Ex.PW1/D which bears his signature at point 'A'. He had received the dead body of his daughter from the police vide

memo Ex.PW1/D. Ex.PW1/E1 to E5 were the letters which were received by him from his daughter. One more Regd. Letter was received after the death of Sugandhi which is Ex.PW1/E6. Envelope/Regd. Letter in which last letter was received is Ex.PW1/E7. He had handed over five letters (copies) to the police vide memo PW1/F which bears his signature at point 5. All the six letters were in handwriting of his daughter and he identified her handwriting as he was well acquainted with her writing. He deposed that he had also seen the diary Ex.PW1/G which has been written in the handwriting of his daughter. At page 136 of the diary, page marked by the I.O., there was a suicide note of his daughter, Ex.PW1/H.

14. In his cross-examination by the learned counsel for the appellant, PW-1 deposed that after receiving information of the death of his daughter, they reached Delhi on 08.09.1998 at about 5.00 a.m. in the morning. After reaching Delhi he took one or two persons of his village who live in Delhi and then went to the police station. The names of the persons from his village, whom he had taken to the police station were Thakur Prasad and Narender Singh. During cross-examination, PW-1 further deposed that he might have reached the police station at about 10.00 or 11.00 a.m. His statement was not recorded at the police station but it was recorded before the SDM. Police took him to SDM for recording the statement where his son's statement was also recorded. The statement of his son was not recorded at the police station but only before the SDM on that

day. When his statement was recorded before the SDM, SDM had asked the questions and the statement was recorded by someone who was sitting nearby. He had told the SDM that in February, 1998 he went to bring his daughter to his house (confronted with statement Ex.PW1/B where the fact is recorded in a different manner and it is recorded that his daughter came to him in February, 1998). He had told the SDM that his daughter had informed him that she was being harassed for not giving a motor cycle and a colour TV in dowry and that she was not even permitted to write letters to them. At this stage PW-1 was confronted with statement Ex.PW-1/D where the fact of the daughter telling about not permitting her to write letters was mentioned but it was not mentioned that she told this fact to the witness in February, 1998, when she went to the house of the witness. PW1/E4 and E5 were also received by Post, however, it is stated that PW-1 did not preserve the envelopes. He had not told the SDM that when Arvind (appellant no.1) came to take her back at his house he had told Arvind that he would give a colour TV and a motor cycle by arranging money somehow. He had told that he would somehow give a colour TV and a motor cycle to her in-laws. PW-1 further deposed that he had not told the SDM that his sons in Bihar had received a telephone call from the in-laws of Sugandhi about her having committed suicide, and that he had shown and given photocopies of letters PW-E1 to E5 to the SDM, however, diary of his daughter was seen by him at the police station. He

deposed that it was wrong to say that he had falsely told the SDM that his daughter was not permitted to write letters and she was harassed for not giving a colour TV and a motor cycle. PW-1 further deposed that it was wrong to say that his daughter was happy in her matrimonial home, and that it was also wrong to say that he was not writing letters to his daughter. PW-1 voluntarily deposed that he was regularly writing letters to his daughter. He also deposed that his daughter had died within 15 months of her marriage and out of these 15 months she had lived for two months at his house in Bihar. He denied the suggestion that suicide note is not in the handwriting of his daughter in the diary or that the accused persons had never demanded a colour TV and a motor cycle from his daughter or that she was not harassed for any dowry demand and further that he was deposing falsely.

15. PW-4, Ct. Mahesh, deposed in his examination-in-chief that in the year 1998 he was posted at P.S. Malviya Nagar. On 06.06.1998, ASI Iqbal had received DD No.88B and he accompanied him. They went to PTS Malviya Nagar, House No.143 and where they found the dead body of Sugandhi Devi lying on the bed. He took the dead body to the mortuary of AIIMS Hospital after the arrival of SDM as per the instructions received by him. The dead body remained under his protection/guard upto 09.09.1998 in the mortuary. After the post-mortem was conducted, the body was handed over to the father and brother of the deceased. Doctor had given him a

sealed parcel containing viscera which he brought to the police station and gave to the I.O. seizure memo of Viscera, Ex.PW4/A.

16. PW-5, SI Lekh Raj Singh, P.S. Khajuri Khas, New Delhi, deposed that on 15.09.1998 the case file of FIR no.848 was assigned to him. On 16.09.1998 he had obtained the post mortem report of the deceased and he arrested Arvind Dubey in this case on 09.10.1998. As per PW-5, he prepared the personal search memo of Arvind Dubey vide Ex.PW5/A and also prepared the challan in respect of Arvind Dubey and submitted the same to the Court. On 24.03.1999, Dhananjay Dubey, Urmila Devi and Kum. Bharti met him in the Court as they had surrendered before the Court and he formally arrested them in this case and on 25.3.1999 he prepared the challan and submitted the same to the court. He further deposed that all the persons who were arrested by him were present in the Court. He had sent the viscera of the deceased to FSL Malviya Nagar. PW-5 deposed that on 10.12.1998 he had seized photocopies of the letter from Davender Nath Pandey vide Ex.PW1/F and the photocopies of letter were Ex.PW/1 E1 to E5. The diary of the deceased containing her writings was also seized by ASI Pal vide Ex.PW5/B and handed over to him. The diary Ex.PW1/G is the same diary which was seized by him vide Ex.PW5/B.
17. In his cross-examination by learned counsel for the appellant, PW-5 deposed that it was correct that during the bail application of the accused persons before the Sessions Judge he

did not produce this diary. PW-5 denied the suggestion that he intentionally did not produce this diary before the Court.

18. PW-6, Keshav Kumar Pandey, deposed that Sugandhi (deceased) was his sister. She was married to Arvind Dubey sometime in 1997. At the time of marriage, they fulfilled all the demands of the in-laws of their sister as per their capacity however, he stated to not remember the demand properly. PW-6 further deposed that the in-laws of her sister used to demand a colour TV and a motor cycle and also forbade her to write letters to them, however, she used to write letters to them clandestinely. He had assured his sister that they will fulfill this demand of colour TV and motor cycle. As per PW-6, his sister (Sugandhi) came to their house in February, 1998 and told them that they should give a colour TV and a motor cycle as she was being harassed and beaten by her in-laws for these demands. She had told that her in-laws used to beat her and had made her life miserable. He further deposed that they told to the in-laws of Sugandhi that they will meet their demand of colour TV and motor cycle at the time of marriage of his younger brother which was soon to be performed. He also deposed that they had no money as they had only recently married Sugandhi. It was further deposed by PW-6 that after sometime, Dhananjay Dubey gave a telephone call to his elder brother at Dibrugarh that Sugandhi had committed suicide. PW-5 deposed that he was told by the in-laws that she had hanged herself. He did not know the real cause of her death because

he was not there and the dead body of his sister was in AIIMS. The letters written by his sister to them are Ex.PW1/E1 to E6 (letters are in original). He had made the statement to SDM which was Ex.PW6/A, which bears his signature at point 'A' and he identified the dead body of his sister vide statement Ex.PW6/B. He further identified the accused persons namely, Dhananjay Dubey, Arvind Dubey and Urmila Dubey.

19. In his cross-examination by learned counsel for the appellants, PW-6, deposed that they had received the information of the death of his sister, one day after her death. After receiving the news, they arranged for the money and on the next day, they reached Delhi by train and directly went to the police station. PW-6 deposed that his statement was not recorded by the Thanedar but was recorded by the SDM. The police first took them to the office of the SDM where their statements were recorded and then they went to the hospital where dead body of his sister was kept. PW-6 deposed that the letters which had been presented in the Court were the letters written by his sister. However, no letter was received in his presence by his parents in Bihar. He denied the suggestion that no demand of colour TV and motorcycle was made.
20. PW-7, Iqbal Singh, ASI, P.S. Malviya Nagar, he deposed that on 06.09.1998 he received DD No.888, which is Ex.PW-7/A. He proceeded with Ct. Mahesh for PTS Malviya Nagar and where he found one lady named Sugandhi w/o Arvind Dubey lying on the bed. On enquiry he learnt that only one year had passed since

the marriage of the deceased, so accordingly he informed the SDM and the SHO. SDM, Sh. S.K. Singh, came to the spot and after making enquiries, the SDM directed PW-7 to call the father and mother of the deceased and further directed him to preserve the dead body for seventy two (72) hours in the mortuary. He shifted the body to AIIMS mortuary and sent message to SSP Chhapra (Bihar) for informing the parents of Sugandhi Devi. On 08.09.1998, the relatives of the deceased came to Delhi and contacted him and he produced them before the SDM. He also recorded the details of his proceedings in DD No.25B and copy of DD No.25B is Ex.PW7/B. The SDM had recorded the statement of parents of Sugandhi on 08.09.1998 and thereafter directed to register a case under provision of IPC.

21. PW-8, Dr. T. Millo, Sr. Resident AIIMS, New Delhi, deposed that he had seen the post-mortem report Ex.PW8/A of Smt. Sughandi Devi which was prepared by Dr. Ranjit Kr. Das and bears his signature at point A. Since Dr. Ranjit Kumar Das has left the hospital, his whereabouts were not known. PW-8 deposed that he had worked with Dr. Ranjit Kr. Das and could identify his writing and his signatures. The injuries stated in post-mortem report were:

“Ligature mark present over the upper part of the front neck measuring 26 cms. in length and 2 cms. in breadth which was deficient on back. The neck circumference was 35 cms. It was situated 7 cms. Below the chin, 7 cms. Above the supra sterna notch, 2 cms. Below the left mastoid and 7 cms. Below right mastoid. Sub cutaneous tissue underneath the ligature mark was glassing and

white. No extravasation of blood in the neck tissue. Hyoid, thyroid, cartilage and cricoid cartilage are intact. Intima of carotid intact. Colour of ligature mark reddish brown hard like parchment. On internal examination, uterus contains a female fetus measuring 30 cms. in length and 1.2 kg in weight, of placenta 350 gms. The time since death is about 3 ½ days.

Opinion – The cause of death in this case is asphyxia due to anti-mortem hanging. However, Viscera has been preserved to rule out concomitant poisoning.”

22. PW-9, Sh. S.K. Singh, Addl. Private Secretary to Agriculture and Railway Minister, Government of India, deposed that on 06.09.1998 he was working as SDM Hauz Khas and received a call around 6.30 a.m. from P.S. Malviya Nagar that one Mrs. Sugandi had been found hanging. He went to the spot, and found that the body of Sugandi was lying on the bed. He could see ligature marks on the neck and after that he ordered the Investigating Officer to keep the body of the deceased in mortuary of AIIMS for 72 hours and directed to inform the father of the deceased about the incident. The father of the deceased appeared before him on 08.09.1998 and his statement was recorded in his presence which was attested by him at point B and bears his signature. The statement of brother of the deceased was also recorded in his presence and attested by him at point B. The Statement is Ex.PW6/A. After the statement of these two persons were recorded, he ordered the SHO for registering the case against the accused persons under the appropriate provisions of the IPC.

23. In the cross-examination, PW-9 deposed that the statement Ex.PW1/B and PW6/A were not in his hand writing, however, he

got the same recorded, being an SDM as he had powers. PW-9 further deposed that it was incorrect to say that he recorded the statement of the witnesses as per their statements under Sections 161 already recorded by the I.O.

24. DW-1, Constable Ajit Singh, No.2801, PCR South Zone, New Delhi, deposed that he had brought register of PCR, South Zone Control Room. As per the said register, on Eagle 24 PCR Van Duty of Dhananjaya Dubey was fixed from 8 p.m. to 8.a.m. as Incharge on the night intervening 5th and 6th September, 1998.
25. In his cross-examination he deposed that none of the entry was in his hand. No duty hours were mentioned in the register but since duty is of 12 hours so he had told the duty hours as 8.00 p.m. and to 8.00 a.m. It was incorrect to say that the duty hours were not the same as told by him.

“Court Question: Duties were fixed by Sub-Inspector level officer who was Duty Officer and was sitting in PCR Van. The entry in the register was made at the time when the duty was fixed. If somebody does not report on duty then the absent was marked. The presence or absence were checked by wireless. In the register he had brought no record of the local of the PCR Van Eagle 24 during those hours.”

26. I have heard learned counsel for the parties, taken into consideration the rival contentions as well as carefully scrutinized the material on record.
27. The trial court has reproduced in the judgment under appeal translation of letters dated 12.7.1997, 2.8.1997 and 28.9.1997

written by the deceased to her family members. The first letter dated 12.07.1997 was sent by the deceased after about Twenty days of her marriage to her brother, Udhav Kumar, in which she had written about the letter received from her brother and then stated that too much responsibility has been thrust upon her by her in-laws. In the said letter, the deceased had written as under:-

“That I am writing this letter stealthily from every body. Just now all of them were here, now they have gone. Bhaiya on the occasion of Raksha Bandhan you must come with T.V. otherwise these people would harass me as all of them have become one on this question. Bhaiya since father had spent Rs.75,000/- on my marriage, for five thousand, daily in the evening and morning I was being taunted and harassed. Brother if you would not come on Raksha Bandhan then I would be like a living dead person. Bhaiya, no one here loves me. Please do not mention all these things in the letter you write. This letter I shall post when I go for a walk in the night. Brother, in your letter do not mention any thing written by me, because everybody reads my letters. Brother please make an attempt to come, also please do not say anything to Babujee (father).”

28. The second letter is dated 2nd August, 1997, written after about Twenty days of the first letter. In this letter, she has made a complaint to her brother as to why he had forgotten her and has reminded him of earlier days. After writing these normal things, she has written that she was writing this letter stealthily and has further written that even if she was one minute late (in doing work), the temperature of her in-laws goes high, and that she has been given the responsibility of entire work. She wanted that she should get sometime to be with herself but she

was not given a minute to be alone. She had further written as under:-

“Soon Raksha Bandhan is coming. Everybody is speaking as to who would be coming from my house. What should I say, I fail to understand. Father-in-law and mother-in-law and every one else is saying that we had told entire PTS Colony that at Raksha Bandhan, T.V. would be given. We will now see if Davinder Pandey sends TV or not. He has cheated my son in the marriage and no motor cycle has been given in the marriage. Babuji please tell me what should I do. Babuji when you will come? Before Kashav Bhaiya goes to Assam you should at least once come here and counsel them that would have been better. Babuji, father-in-law is obstinate person and if he says something that would be bad for my life. If my brother would have been there I would not have requested you so much. Brother had informed me on telephone that rice crop has been destroyed.”

29. The third letter is dated 28th September, 1997, (Ex.PW-1/E 5).

This letter has been written by the deceased to her father. In this letter she has written as under:-

“Babuji, whatever you saw here the condition are same and have not changed. So-much-so you had altercation with Mummi (mother-in-law) and tension was created. After all what I can write in the letters so much. When my husband says something in my favour that becomes fatal and mother-in-law and father-in-law start telling my husband that he had become slave of his wife. Please advise me what should I do. Babuji you should not bother about me. Babuji they had put restriction on my sending the letters. This letter I was writing stealthily. I shall be sending now letters only rarely and shall write the letter when I am alone but you should keep sending letters..... When brother would come then I shall act according to situation I cannot do anything now. If you had not come and had not counselled them, I would have hated my life. Your counselling had given me new life..... Babuji Kaka Bhaiya has sent Rs..... (not legible) on seeing this money my mother-in-law was furious and told that she would trample their pride.”

30. The fourth letter is dated 15th October, 1997, which is Ex.PW-1/E-3 addressed to Madhav Pandhey in which she has written that after receiving a phone call from her brother she had learnt that Kashav Bhaiya had gone. She wrote that everybody in her in-laws family was opposed to her going to her parental house in November. She requested her father to come in November. She wrote that she was being treated in the family as a worker only, and not as a daughter-in-law. She was being treated as a domestic servant. She stated that her husband tells her not to mind the language of her mother-in-law, because mothers-in-law speak in such a language. She further wrote that her father-in-law had told her that when Davinder Pandey (father of the deceased) would come, "**unkon main tarsa dunga**". She wrote that there was no peace in the family, and even after doing the entire work, if she goes to bed, then again quarrel starts.
31. Next letter is dated 12th August, 1998. While writing this letter the deceased had written that she was writing the letter in a hurry since at that time no one was at home but anyone could come at any time. She had written that there were heavy restrictions on her and whenever her brother made a telephone call, her mother-in-law blamed her (deceased). Then she further wrote "Babuji my husband has also put restrictions, mother-in-law has told my husband that your father-in-law (deceased's father) has called "HUND". Now on all these issues

they are creating problem for me. If they learnt that I wrote letter, then it would be very bad for me. Mother-in-law wants that my husband should beat me or scold me in her presence, but I do not give my husband a chance to do so. Now this has become a cause of talk and concern. Now what should I write in the said letter, but I would request that no one from your side would come but in any case Prabhu Ram Bhaiya should never come..... Babuji you should not bother about me or wait for my letters because I am not left alone at any time. Moreover, I am not keeping well. Ultra sound was done. Medicine was being given. Doctor has told that if ulcer is not cured I may have to be operated..... My mother-in-law has made such conditions at home that I do not know what would happen. I had not remembered my mother so much when she died but now I remember her very much. I request you, if you write a letter to me, please do not mention anything about my letter”.

32. The submissions of learned counsel for the appellant can be summarized as : The trial court has failed to appreciate the evidence on record inasmuch as the last letter written by the deceased gave a clean chit to her in-laws; order on conviction has been passed by the trial court solely on the basis of certain letters allegedly written by the deceased; the trial court failed to place reliance on the suicide note in the right perspective; conviction is based on the sole testimony of interested

witnesses; and there is no incident to show that a demand of dowry was made 'soon before her death'.

33. The submissions of the counsel for the State can be summarized as : State has been able to prove its case beyond any shadow of doubt; and, letters written by the deceased herself, are testimony to her sufferings and the continuous demand for dowry which ultimately led her to commit suicide.
34. At this stage, it would be apt to note the essential ingredients that constitute an offence under section 304-B IPC, (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; and, (iv) such cruelty or harassment must be in connection with the demand of dowry. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under section 113(B) of the Evidence Act. In the case of ***Prem Kumar Vs. State of Rajasthan***, reported at 2009(1) JCC 482, the law regarding 304-B, IPC, has been discussed elaborately. It would be relevant to reproduce paras 6 to 11 of the said judgment:

“6. In order to attract Section 304B IPC, the following ingredients are to be satisfied.

- i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.
- ii) Such death must have occurred within 7 years of the marriage.

- iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- iv) Such cruelty or harassment must be in connection with the demand of dowry.

Sections 304B [] read as follows:

304-B. Dowry Death- (1) Where the death of a woman 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 for 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 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.

.....

7. The term "dowry" has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') as under:

Section 2. Definition of 'dowry' - In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly –

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I- For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of

cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression 'valuable security' has the same meaning in Section 30 of the Indian Penal Code (45 of 1860).

8. Explanation to Section 304B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is : what is the periphery of the dowry as defined therein ? The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in ***Pawan Kumar and Ors. v. State of Haryana (1998 (3) SCC 309)***.

9. The offence alleged against the accused is under Section 304B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the accused seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients

being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

10. Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B IPC and Section 113B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:

113-B: 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 has 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).

11. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.

- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death."

35. The case of the appellant is thus to be decided on the aforesaid parameters. As far as the ingredients no.1 and 2 are concerned, there is no dispute that *Sugandhi* died under unnatural circumstances in her matrimonial home. She was married to appellant no.1 on 20.6.1997 and she died in the Fifteenth 15th Month of her marriage by hanging herself. The court is thus to consider whether *Sugandhi* was subjected to cruelty or harassment by her husband or the relatives of her husband soon before her death and whether such cruelty or harassment was in connection with the demand of dowry. But first the submissions of the appellant shall be considered.

36. Torture and cruelty of a married woman often takes place within the four corners and within close doors of the matrimonial home and consequently there is none available to give evidence in support of the cruelty and torture committed on the girl. In this case, however, the deceased in letters written to her father and brother poured her heart out with regard to her condition, the cruelty, demand for dowry and humiliation which she was subjected to in her short married life which lasted for approximately 15 months. She wrote a number of letters to her family, the genuineness of which has not been disputed. Her father, PW-1, deposed that letter Ex.PW-1/E-1 to PW-1/E-5 were received from her while one letter Ex.PW-1/E-6

was received by registered post after her death. No question was put to this witness in cross-examination that these letters were not in the hand writing of the deceased or that they were not written by her to her father and brother. It may be noticed that two letters have been written on inland cards while two letters have been written on small notebook pages. It is the last letter on which counsel for the appellants has strongly relied upon, which has been sent by the registered post. The first letter of 12.7.1997 was sent after about Twenty (20) days of marriage and was addressed by the deceased to her brother. In this letter she had stated that she is writing this letter stealthily from everybody and asked her brother to come on Raksha Bandhan with a colour television otherwise she would be harassed by her in-laws. Although she acknowledged that her father had spent Rs.75,000/- on her marriage but for Rs.5,000/- only she was being taunted and harassed morning and evening. She cautioned her brother that in case he would not come for Raksha Bandhan, she would be like a 'living dead person'. She also cautioned her brother not to mention these facts in the letter which he would write to her, as everybody reads her letters. This letter would show that the deceased did not have the liberty to communicate with her family members besides the fact that her in-laws had made a demand of colour T.V. She repeated this fact about writing letters stealthily in the subsequent letter dated 2.8.1997, in the third letter dated 28.9.1999 as well as in the letter dated 12.8.1998. In the

subsequent letters she had reiterated the demand of dowry, the fact that she was made to do the entire household work and treated like a domestic servant. The demand of television was reiterated in the letter dated 2.8.1997 wherein an additional demand of motor cycle also surfaced. The last letter written by the deceased two days prior to her death is in complete contrast to her earlier letters. This letter was surprisingly sent by registered post. It is strange why a daughter would write a letter to her own father and send it by registered post. Letters written prior to this letter were sent either on inland letter card or through ordinary letters. Thus, it creates a suspicion about the authenticity of this letter. In my considered opinion, this seems nothing but a ploy and an attempt to simply create evidence that such a letter was written. In contrast to her earlier letters, in the last letter the deceased wrote that her father had behaved wrongly with her in-laws and made false accusations against her mother-in-law that she had put restrictions on her attending the phone or writing letters. She further rendered an explanation that on many days she could not attend to the phone due to restrictions imposed on her by the doctor from coming down stairs. In this letter the deceased addressed all the issues one by one, be it the drinking habit of her father-in-law or her husband being called a '*hund*' or with respect to the gifts at Raksha Bandhan. In fact she praised her mother-in-law and stated that she was being showered with love in her matrimonial home. Reading of this letter in

comparison to earlier letters leaves no element of doubt that this letter was written under pressure by the deceased and not out of her own free will. This coupled with the fact that the said letter was sent by registered post, leaves no room for doubt that the deceased was forcefully made to write this letter. This shows the extent to which her in-laws would go into forcing her to create evidence for them. The trial court has rightly not placed reliance on this letter, thus, the first submission of learned counsel for the appellant is without any force. The letters written by the deceased dated 12.7.1997, 2.8.1997 and 28.9.1997, genuineness of which have not been disputed, thus reflect the true picture and the tales of miseries suffered by *Sugandhi* before she committed suicide. On examining the evidence of the father, PW-1 and brother PW-6 of the deceased, I find that there are no material contradictions which go to the root of the matter as both the witnesses have stated that demand for a colour T.V. and a motorcycle was made for which Sugandhi was being harassed. The appellants used to quarrel with the deceased and used to beat her. Thus it cannot be said that there are contradictions in the depositions of these witnesses.

37. I also find no force in the argument of counsel for the appellants that merely because PW-1 is the father of the deceased and PW-6 is the brother of the deceased, their evidence cannot be relied upon, being interested witnesses. The law with regard to placing reliance on evidence of close relations and partisan

witnesses has been a subject matter of various decisions of the Apex Court. It has repeatedly been held that reliance can be placed on the evidence of interested witnesses provided their evidence is truthful and further before placing reliance on the evidence of interested witnesses a duty is cast upon the Court to scrutinize their evidence carefully, minutely and with extra caution. In my considered opinion, the evidence of PW-1 and PW-6 truthful, reliable and stands fully corroborated by the contents of the letters written by the deceased to her father and brother.

38. It would be worthwhile to note herein the observations of this Court in Crl.A.No.470/2003, **Harish Vs. The State**, particularly paragraphs 41, 42, 43, 44, on the point of interested witnesses:

*“41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalte Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:-*

“14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses

who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

42. Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported at **AIR 2003 (90) Supreme Court 3613.**

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and others v. The State of Punjab* (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:-

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses

requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rajasthan', (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

9. Again in *Masalte and others v. The State of U.P.* (AIR 1965 SC 202) this Court observed : (pp. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10. To the same effect is the decision in *State of Punjab v. Jagbir Singh*, (AIR 1973 SC 2407) and *Lehna v. State of Haryana*, (2002 (3) SCC 76). As observed by this Court in *State of Rajasthan V. Smt. Kalki and another*, (AIR 1981 SC 1390), normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who

are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in *Krishna Mochi and others v. State of Bihar etc.* (JT 2002 (4) SC 186)."

43. This view has again been reiterated recently in the case of **State of NCT of Delhi Vs. Rani Kant Sharma & Ors.**, reported at 2007 (3) JT 501, relevant portion is reproduced below:

11. In some cases persons may not like to come and depose as witnesses and in some other cases the prosecution may carry the impression that their evidence would not help it as there is likelihood of partisan approach so far as one of the parties is concerned. In such a case mere non-examination would not affect the prosecution version. But at the same time if the relatives or interested witnesses are examined, the court has a duty to analyse the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above, the court has to analyse the evidence with care and caution. Additionally, the accused persons always have the option of examining the left out persons as defence witnesses.

44. Again in the case of **Manoj Vs. State of Tamil Nadu**, reported at 2007(5) JT 145.

9. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such

cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

10. In **Dalip Singh and Ors. v. The State of Punjab** it has been laid down as under:-

“A witness is normally to be a considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

11. The above decision has since been followed in **Guli Chand and Ors. v. State of Rajasthan** in which **Vadivelu Thevar v. State of Madras** was also relied upon.”

39. There is no shadow of doubt lingering in my mind that the deceased was subjected to cruelty for dowry and harassed by her in-laws. To satisfy the mandatory condition of section 304 B in the light of the evidence on record, it is now to be considered whether the demand and cruelty was meted out to her soon

before her death or not. What would constitute a period soon before the incident would depend upon the facts of each case. While there is no one single definition of the expression 'soon before' and neither can there be a straight jacket formula nor a test with regard to this expression, Courts have interpreted this expression keeping in view the peculiar facts and circumstances of each case. In the case of **Hira Lal v. State (Govt. of NCT), Delhi**, reported at (2003) 8 SCC 80, it was held by the Apex Court that:

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession”. The determination of

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

40 In this case the marital journey of *Sugandhi* began on 20.06.1997 and abruptly came to an end on 06.09.1998 when she committed suicide in the fifteenth month of her marriage. Within twenty days of her marriage, when *Sugandhi* addressed the first letter to her father on 12.07.1997, she has noticed about the traumatic short journey of her marital life. The second letter was written 20 days after the first letter i.e. on 02.08.1997. Her third letter is of 28.09.1997 and subsequent letters are dated 15.10.1997 and 12.08.1998. The statement of the witnesses and the evidence on record duly stands corroborated by the letters dated 12.07.1997, 2.08.1997 and 28.9.1997 written by the deceased, leave no element of doubt in the mind of this Court with respect to the commission of offence by the appellants. Based on the evidence of PW-1 and PW-6 as well as taking into consideration the letters 12.07.1997, 02.08.1997 and 28.09.1997 written by the deceased to her father and brother, there is no shadow of doubt that her in-laws, appellants herein had made her a target of

their illegal design for demand of dowry in the form of a colour T.V. and a motorcycle and in relation to the demand of dowry, she was subjected to cruelty and harassment. The series of letters would show that the interval between the cruelty and /or harassment had approximate and live link with its effect. By no stretch of imagination it can be said that the cruelty inflicted on the deceased was remote in time and had become stale enough not to disturb her mental equilibrium. Thus I find that the learned court below has rightly convicted the appellants. The judgment dated 24.07.2001 and order on sentence dated 28.07.2001, passed by the Ld. ASJ, Delhi, in FIR No. 848/98, PS Malviya Nagar, under section 498A/304B, IPC is upheld. Accordingly, I find no merit in this appeal and the same is dismissed. In case the appellants are on bail, let the bail bonds be cancelled and the appellants be taken into custody forthwith.

**G.S. SISTANI
(JUDGE)**

April 27, 2009
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