

IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL. Appeal No.713/2004

Judgment delivered on 3rd, September, 2009

Brijesh Singh & Another : Appellant
Through : Mr.S.K.Sharma and Mr.Dhruv
Kumra, Advocates

Versus

State (NCT of Delhi) : Respondent
Through : Mr.O.P. Saxena, APP for 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 has been filed under Section 473 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, "Cr.P.C.") against the judgment dated 15th September, 2004 and order on sentence dated 17th September, 2004 by the appellant No.1, who is the husband of the deceased, and appellant No.2, who is the mother-in-law of the deceased. By virtue of the said judgment, appellant no.1 and 2 were convicted and sentenced to undergo rigorous imprisonment for three years for the offence under Section 498A IPC together with fine of Rs.5,000/- each and in default of the payment of fine, rigorous imprisonment for another six months. Appellant no.1 was also convicted and sentenced to undergo fourteen (14) years rigorous imprisonment

and appellant No.2 was convicted to eight (8) years of rigorous imprisonment for the offence under Section 304 B IPC.

2. The facts of the case, as noticed by the learned Additional Sessions Judge, are that Brijesh Singh, appellant No.1, married Shubha on 30th October, 1990. Customary articles forming dowry were given at the time of marriage. Marriage lasted for about 5 years during which period the couple was blessed with a son. The marriage came to an end on 28th October, 1995 when Shubha committed suicide by hanging herself. The case set up by the prosecution is that the alleged demands of dowry made upon the deceased by her husband and her in-laws as well as the harassment and torture inflicted upon her for non-fulfilment of the demands had driven Shubha to end her life by hanging herself by a ceiling fan in her room. FIR was registered under Section 498A/304B/406 IPC and under Section 6 of the Dowry Prohibition Act. Charge under Section 498A/34 IPC and Section 304B/34 was framed against the appellants herein.
3. During trial, thirteen (13) witnesses were examined by the prosecution, eight (8) witnesses were examined by the defence. Appellant No.1 had also examined himself as a witness. According to the appellants Shubha committed suicide as she was tired of her weak state of health and constant illnesses.
4. Counsel for the appellants submits that the judgment passed by the learned trial court is illegal and contrary to the material on record as well as the settled principles of law. It is contended that the learned trial court gravely erred in not appreciating that there is no cogent and believable evidence available on record to

hold the appellants guilty of the offence under Section 498A or 304 B IPC. It is next contended that the learned trial court failed to take into consideration the fact that basic requirements of Section 304 B IPC were not fulfilled herein. The learned trial court, it is contended, completely lost track of the fact that in order to convict a person under Section 304 B IPC, it was mandatory for the prosecution to prove that soon before death, the deceased was subjected to cruelty or harassment by the appellants for or in connection with any demand of dowry. Counsel contends that in the present case even in the charge sheet there is no allegation regarding any incident about the harassment of deceased soon before she committed suicide. Counsel for the appellants submits that PW-2, Om Prakash, father of the deceased did not utter a single word nor made any allegation especially against appellant No.2 regarding harassment for demand of dowry. It is contended that none of the witnesses i.e PW-2, Om Prakash, father of the deceased; PW-8, Sumitra, mother; and PW-6, Saraswati, sister of the deceased, in their statements before the police or before the court have alleged any incident of harassment of the deceased by the appellants for and in connection with demand of dowry soon before the occurrence. Learned counsel for the appellants next submits that there are material contradictions between the statements made by the witnesses i.e father, mother and sister of the deceased. Counsel for the appellants submits that the trial court has failed to consider that at the time of occurrence, none of the appellants were present in the house. It is submitted

that the complainants did not lodge any complaint for more than 72 hours after the incident. This delay has been unexplained in view of the fact that the incident took place on 28th October, 1995 and the FIR was lodged on 31st October, 1995 when the statement was made to the SDM.

5. Mr. Sharma, learned counsel for the appellant also submits that evidence of the prosecution witnesses is not trustworthy and no credence can be given to the evidence which is inconsistent and unreliable. It is also contended that the learned trial court gravely erred in disbelieving the version of the defence witnesses. Even otherwise, it is contended that the trial court erred in awarding the sentence of 14 years to appellant No.1 and 8 years to appellant No.2 under Section 304 B IPC and that the sentence awarded is disproportionate to the allegations made in the case. It is contended that even as per the statement of PW-2, father of the deceased, there was no demand of dowry at the time of marriage, which would show that the conduct of the appellants was not greedy. Thus, the learned trial court has failed to apply its judicious mind which has resulted in grave miscarriage of justice.
6. *Per contra*, learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. He submits that on a careful reading of the testimony of material witnesses, it has clearly been established that on account of the persistent demands made by the appellants as well as her being subjected to cruelty in relation to dowry, Shubha ended her life by hanging and thus, there is no infirmity

in the judgement and order of conviction. Counsel for State submits that the deceased had left her matrimonial home on an earlier occasion as well and stayed with her parents for approximately three years upto April, 1995, and the same would show that she was being harassed throughout her matrimonial life.

7. In response to the submissions of counsel for the State, counsel for appellants submits that the deceased had left her matrimonial home on account of the fact that the appellant No.1, her husband, was without a job and his financial condition was not good and that not because she was harassed for dowry. It is submitted that during this period of separation no report was lodged with the police, which would go to show that the deceased had left her matrimonial home not on account of cruelty, harassment or demand of dowry but on account of the fact that her husband was without a job and also that she wanted economic independence. Counsel for the appellant further contends that admittedly the appellant No.1/husband had met the deceased in April, 1995 at the school where she was teaching. There was no discussion with respect to dowry and no pre-condition was imposed on the appellant No.1, at the time of her return. The father of the deceased has categorically deposed that no demand for dowry was made at the time of marriage. Counsel for the appellants also submits that the appellants have been falsely implicated in the case. Counsel for the appellant has also contended that there is no evidence brought on record to show that cruelty or harassment was meted out to the

deceased for bringing insufficient dowry and in absence thereof, the ingredients of Section 304 B of the IPC cannot be said to have been proved. It is also contended that one of the essential ingredients for convicting a person under Section 304 B IPC is that the woman “must have been” “soon before her death subjected to cruelty or harassment for or in connection with the demand of dowry”.

8. Counsel for the appellants also submits that the demand if at all of Rs.1.00 lac was on account of financial help for business or domestic help and not as a demand of dowry.
9. Counsel for the appellants has relied upon the decision of **APPASAHEB AND ANOTHER VS. STATE OF MAHARASHTRA** reported at 2007 (9) SCC 721 in support of his arguments that the demand made from parents of the deceased to meet the domestic expenses cannot be said to be demand for dowry. He has also relied upon the decision in **BISWAJIT HALDER @ BABU HALDER AND OTHERS VS. STATE OF W.B.** reported at 2008 (1) SCC 202 as well as on **TARSEM SINGH VS. STATE OF PUNJAB** reported at 2008 (16) SCALE 148 to canvass his arguments that before convicting a person under Section 304 B IPC, all the basic mandatory ingredients have to be satisfied. It is contended that in this case, the deceased was not subjected to cruelty and harassment much less in connection with demand for dowry or that any demand in connection with dowry was made soon before her death. Counsel has also contended that assuming without admitting that any demand for dowry was

made, there was no live link between the demand of dowry and the death of Shubha.

- 10.** Before considering the rival contentions of the parties, it would be useful to scrutinise the evidence of some of the material witnesses in this case.
- 11.** PW-1, Harish Dhingra, is the neighbour of appellant No.1, Brijesh. He has deposed that on 28th October, 1995 at about 5.00 p.m., he was present in his office when father of the appellant No.1 along with his another son Harish came from outside and started climbing up the stair case. After some time father of appellant no.1, Brijesh, called his son Harish up-stairs. Harish went up-stairs and called this witness (PW-1) also. On reaching the first floor, he found that the wife of Brijesh (appellant No.1) was hanging from a ceiling fan with the help of a chunni. PW-1 further deposed that the father and the brother of appellant No.1 tried to lift Shubha and also tried to open the knot while saying that there was still some life in her and he should also help them in saving her. However, since the knot could not be opened, the same was cut with a kitchen knife and thereafter Shubha was made to lie down on a *takht*. In the cross-examination, PW-1 denied the suggestion that quarrel used to take place in the family of the appellants.
- 12.** PW-2, Om Prakash, is the father of the deceased. In his evidence he stated that his daughter was married to appellant No.1 on 30th October, 1990. No demand for dowry was made at the time of marriage. However, dowry articles within his means were given including colour TV, bed, fridge, jewellery and other articles.

After 3-4 months of the marriage, the appellants started demanding dowry. PW-2 has further deposed that appellants demanded a sum of Rs.One lakh from his daughter and that he paid a sum of Rs.20,000/- to appellant no.1 Brijesh in the year 1991. However, despite paying Rs.20,000/-, appellants continued to harass his daughter. In the year 1993, Shubha left the appellants and came to his house and remained there for about two years. During this period, his daughter had taken up a job in a school at Gurgaon and used to get a salary of Rs.1200/- per month. The child born out of the wedlock was also staying with them. As per PW-2, it is during this period that his daughter had informed him that the appellants used to harass her. They did not provide her with proper food and used to throw sarees on her face and hence his daughter was not willing to return to her matrimonial home. In the year 1995, appellant No.1 met Shubha in her school and sought to take her back to the matrimonial home. Shubha then asked him to talk to her father. The Principal of her school also advised the same to appellant No.1. The father of the deceased further deposed that two or three days later, appellant No.1 came to meet him and assured him that he would not maltreat his daughter in future and thereafter he did advise his daughter to go back to her matrimonial home and stay with the appellants. His daughter was then kept properly for a month and a half and soon appellant No.1 demanded a sum of Rs.1,50,000/- from him in the month of February/March, 1995. It was then clarified that demand was made in May/June, 1995. PW-2 informed appellant No.1 that he

cannot arrange the entire amount but he would arrange upto Rs.50,000/-. On 21st October, 1995, appellant No.1 again came to his house in order to take the sum of Rs.1,50,000/- from him. PW-2 has also deposed that on 22nd October, 1995, his daughter came to the house in connection with money and also told him that she was not willing to go back. He had also told his daughter that he would send Rs.50,000/- within a day or so and that she should return to her matrimonial home. Shubha returned to her matrimonial home on 26th October, 1995. On 28th October, 1995, his daughter was killed as she was not able to get Rs.50,000/-. This witness (PW-2) has deposed that on 28th October 1995 at about 4.00 pm, appellant No.1 (Brijesh) and appellant No.2 (Pushpa Devi) along with Rajinder and Sumitra had come to their house with his grand son. While appellant No.1 stayed in their house, appellant Pushpa Devi and other persons went to meet some relation in Gurgaon. Brijesh had told him that his daughter was not well. He had asked Brijesh as to why he had left his daughter at the matrimonial home alone. The appellant had then gone to make a STD call. After some time Brijesh informed that Shubha had met with an accident. In the meanwhile, a telephone call was received at the house of his friend Jai Singh Verma that Shubha had committed suicide by hanging. Mr.Verma had informed him of this fact. On reaching Delhi he saw the dead body of his daughter in the mortuary. His statement was recorded by the SDM.

13. During cross-examination, PW-2 has stated that he did not meet any police official or SDM on 28th October, 1995 but met the SDM

on 29th October, 1995 as he was not in a fit state of mind. He did not give any statement before the SDM on 29th October, 1995 nor did he lodge any complaint before the SDM or any police official regarding harassment of his daughter by the appellants for dowry. His statement was recorded by the SDM in his court on 30th October, 1995 when he gave all the details in his statement. In the cross-examination PW-2 further stated that he had not stated before the SDM that money was demanded directly from him prior to 21st October, 1995 nor had he specifically stated in his statement that his daughter disclosed to him that appellants had demanded money. He had, however, stated before the SDM that appellants had been demanding money from his daughter but he could not tell the date, month and place when a sum of Rs.20,000/- was given to appellant No.1, Brijesh. He also stated that he had not given any specific incident of harassment of his daughter nor had he given the manner in which his daughter was harassed or treated with cruelty and by which appellant. He also did not tell the SDM that the sum of Rs.20,000/- was demanded but immediately thereafter he improved his version and stated that Rs.50,000/- was demanded. In his cross-examination he, however, stated that he had told the SDM that money was demanded but he did not tell that *dahej* was demanded. In his statement Ex.PW2/A at point 'Y' SDM had wrongly mentioned *dahej* which was scored out by him. He denied the suggestion that Brijesh did not demand Rs.1,50,000/- on 21st October, 1995. He also denied the suggestion that his daughter was never harassed or treated with

cruelty by appellants, Brijesh and Pushpa. He denied the suggestion that between 28th October, 1995 to 30th October, 1995 he had stayed in the house of the appellants and asked for custody of the child and on refusal he has falsely implicated the appellant by making a statement against him. He also denied the suggestion that he forcibly took the child on 4th November, 1995. PW-2 stated that he had deposed before the Police/SDM that during the period of two years when his daughter stayed with him, she had disclosed that appellants used to harass her and did not provide her with proper food and used to throw sarees on her face. He was confronted with Ex.PW2/A where it had not been so stated.

14. PW-3, Sh.Jai Singh Verma, is the neighbour of the father of the deceased, who has stated that Shubha had remained with her father for about three years after marriage on account of matrimonial acrimony between her and her husband. However, he was not aware about the reasons of the matrimonial discord. On 28th October, 1995, he had received a call at about 4.00 pm from Pahadi Dhiraj, Delhi that Shubha had committed suicide by hanging herself. He had then informed Om Prakash about this incident. This witness was cross-examined by the Public Prosecutor. He denied the suggestion that Shubha ever disclosed to him that her husband and her in laws used to harass her and beat her on account of not providing dowry. He also denied the suggestion that Shubha had told him that her husband wanted to start a business and, therefore, told her that she should bring Rs. One lakh from her parents. He was confronted with the portion of

the statement where he said so before the police. He, however, deposed that Rs.20,000/- was paid to appellant No.1 in his presence in the year 1991 but he could not say whether the same was given to meet the demand of dowry. He was confronted with the portion of the statement where he had said so. He also denied that Shubha had telephoned him and informed that her husband and in-laws were demanding money and were harassing her and they may even kill her. He was, however, confronted with the portion of the statement where he had said so. PW-3 also denied that he had stated that Brijesh had left Shubha at her parental house in 1993 after beating her. He was confronted with the portion of the statement where he had said so. He further deposed that he did not ask Shubha the reason for her sadness. He further deposed that Shubha did not tell him that she was mentally and physically harassed by the appellants or her in laws and that she was not being given proper food and that her in laws used to threaten that they would kill her. He further said that he did not state these facts before the police. He was confronted with the portion of his statement where it was so recorded. PW-3 denied the suggestion that appellant Brijesh took Shubha with him after assuring that he would keep Shubha nicely. He also denied the suggestion that Shubha had telephoned him again to inform that her husband and in laws were harassing her and were beating her in the same manner in which they were treating her earlier. He deposed that Om Prakash, father of the deceased, did not console her that things would become normal with the lapse of time. He denied

the suggestion that he had stated the said facts before the police. He was confronted with the portion of his statement where it was so recorded. He further deposed that Om Prakash never informed him that appellant Brijesh and his family members were demanding a sum of Rs.1,50,000/- and that he did not assure Om Prakash that he would make efforts to arrange a sum of Rs.50,000/-. He also deposed that he had not stated the above facts to the police. He was confronted with the portion of his statement where it was so recorded. PW-3 denied the suggestion that he was deposing falsely in order to save the appellants. He also denied the suggestion that he had been won over by the appellants.

- 15.** PW-6, Saraswati is the sister of deceased-Shubha and an important witness in this case. This witness has deposed that on the date of marriage itself her sister came to know that the appellant No.1 was unemployed and he had not been earning any money. As per PW-6, this fact was disclosed to her when her sister came to the house for *fera* ceremony. Dowry articles were also thrown at the deceased by appellant No.1 and appellant no.2 (mother-in-law of Shubha) had said that sarees were not according to their choice. Dowry was demanded when her sister had returned back after the *fera* ceremony. According to this witness, the demand was made for a motor cycle, Rs.One lakh and Colour TV. Shubha was also taunted that articles given in the marriage were sub-standard. PW,6 deposed that, however, her mother had told Shubha that huge expenses were incurred in the marriage, therefore, they would not be in a position to give

any money immediately but assured that demand would be met in due course of time. As Per PW-6, her sister was tortured. Appellant No.2 also used to beat her sister which was disclosed to her by her sister who also showed injuries on her person. Further, Shubha used to be turned out of her matrimonial house appellants made to stand outside the house the whole night. In the month of December, 1991, Rs.20,000/- was paid by the father of the deceased to the appellants. However, the harassment continued since only Rs.20,000/- were paid against the demand of Rs.One lakh. This witness further deposed that her sister was brought back to her parental house by her brother on the occasion of Rakhi when she disclosed that she was being tortured. Appellant No.1 had left Shubha at the parental house and said that he would not take her back to the matrimonial home till the time their demand is met. Her sister started living in Gurgaon and started working in a school alongside pursuing her higher studies. She started preparing for MBA, besides M.Com. In April, 1995, appellant No.1 approached her sister in the school and told her that he wanted to take her back in the matrimonial home and he would not insist upon fulfilling their earlier demand of Rs.One lakh. The matter was settled and her sister went back to the matrimonial home. However, soon thereafter appellant No.1 started torturing her sister and demanded Rs.1,50,000/- from her sister. This demand was not disclosed to her parents but only disclosed to this witness. Shubha was not allowed to talk to the neighbours and she would be insulted in front of the visitors. PW-6 deposed that her father

had told Shubha that he would sell the land and give Rs.50,000/- as demanded. However, in spite of selling the land and making arrangement for Rs.50,000/- her sister died. She also deposed that 15 days prior to the death of her sister, Rajinder, the elder *jeeja* of appellant No.1, came to the bedroom of Brijesh and when her sister found Rajinder lying in her bedroom she asked Brijesh as to why Rajinder had been lying in her bed room, and to this Brijesh replied that this was nothing and they would blacken her face in future. The Brother, sister and mother of appellant No.1 (Brijesh) were present at the roof when Brijesh told this to his wife. As per PW-6, these facts were told to her by her sister when she came to Gurgaon 3-4 days prior to the date of incident, and that PW-6 had not disclosed these facts to her father but were disclosed to him after the death of her sister. In her cross examination, she has stated that 3 or 4 days prior to death of her sister she had told her father that in her last visit Shubha had informed her that motorcycle and colour TV was being demanded. She further deposed that demand for dowry was made on the very next day of her marriage. However, she was confronted with the statement made before the police where she had not said so. PW-6 stated that she had stated before the police that Pushpa Devi (mother-in-law) used to beat her sister. However, she was confronted with the portion where she had not said so. During cross-examination this witness could not tell the date, month or year of torture. She could also not tell as to which appellant tortured her sister and in what manner and on which date. She stated that her sister was not allowed to go to

doctor for treatment of injuries on her person. She deposed that she had told the police that appellant used to turn her sister out of the house in the night and she used to remain standing outside the house the whole night. She was confronted with her statement Ex.PW6/A where it had not been so recorded. She had stated before the police that a sum of Rs.20,000/- was given by her father to the appellants in December, 1991. However, she was confronted with her statement where it was not so recorded. Similarly, according to this witness, following statements were made by her before the police:-

- (a) Brijesh had told her sister to bring Rs.20,000/- against demand of Rs.One lakh.
- (b) Her brother had gone to bring Shubha on the occasion of Rakhi.

16. With regard to both these statements, she was confronted with Ex.PW6/A where it was not so recorded. PW-6 further deposed that she had not stated before the police that appellant no.1 Brijesh used to demand Rs.1,50,000/- for starting a business. However, she was confronted with the portion 'A' to 'A' of Ex.PW6/A where it had been so recorded. She was also confronted with the portion of the statement with respect to the demand of Rs.1,50,000/- and that her sister asked her not to disclose the same to the parents. She had also not stated so in her statement that her sister was confined in the house and was not allowed to talk to the neighbours. In the cross examination PW-6 had further deposed that after 3-4 days of the death of her sister, she had disclosed to her father whatever was told to her

by her sister in her last visit. Before the death of her sister, her parents came to know about the demand of motor cycle and colour TV by the appellants from the deceased (Shubha). After about two months of the marriage, her mother told her sister (deceased) that they would not be able to meet the demand in view of the fact that huge expenses were incurred in the marriage. She deposed that she had stated before the police that demand was raised on the very next day of marriage. She, however, was unable to tell the date or month of year when her sister disclosed to her that the appellants had been demanding articles and money from her. She had stated before the police that her mother told her sister that she would not be able to meet the demand of appellants as already huge amount had been spent in the marriage. She was confronted with the portion of her statement where it was not so recorded. She had stated before the police that Pushpa Devi used to beat her sister. She was confronted with her statement where it was not so recorded. However, she could not tell the date, month and year of torture. Similarly, she was not able to say as to which appellant tortured her sister in what manner and on which date. Her sister did not go to the Doctor for treatment of injuries on her person. She, however, volunteered to say that she did not do so, as had she gone to the Doctor, her parents would have come to know about this and further that there was no Doctor in the vicinity of their house. The sister of the deceased further deposed that she had stated before the police that appellants used to turn her sister out of the house in the night and she used to remain standing

outside the house whole night. She was confronted with her statement Ex.PW6/A where it was not so recorded. She denied the suggestion that her sister was kept nicely and that no dowry was demanded at any time. She also denied the suggestion that her sister was not tortured or harassed on the point of dowry or otherwise by any of the appellants. She had not stated before the police that accused Brijesh was demanding Rs.1,50,000/- for starting his business. She was confronted with portion 'A' to 'A' of her statement where it was not so recorded. PW-6 further deposed that she had stated before the police that the appellant used to keep her sister confined to the house and they used to see that the deceased did not talk to any neighbour. She was confronted with Ex.PW6/A where it was not so recorded. She had stated before the police that on one occasion Rajinder slept in the bed room of her sister and when her sister objected the said act, appellant Brijesh told that it was nothing and they would blacken her face in the future. She was confronted with Ex.PW6/A where it was not so recorded. Instead, it had been recorded that Rajinder tried to rape the deceased. She told the police that accused Rajinder told Brijesh to send her sister to his house at Aligarh. She was confronted with Ex.PW6/A where it was not so recorded. Information regarding death of her sister was received by her at about 8.00 pm when she telephoned her brother. After receiving information about the death of her sister, she did not come to Delhi. She denied the suggestion that her sister used to remain unwell and that she was treated in St.Stephan Hospital. She, however, volunteered that she was

treated in St.Stephan hospital during her pregnancy. She also denied the suggestion that appellant, Brijesh, took her sister to various hospitals for proper treatment of her sister. She also denied the suggestion that after the death of her sister, her father wanted to take custody of Dushyant (son of the deceased and Brijesh) and for that purposes several sittings took place between her parents and the appellants and that since matter regarding custody of child could not be settled her parents made a false statement implicating the appellants. She also denied the suggestion that her father took Dushyant against the wishes of appellants. PW-6 further stated that the appellant Brijesh had filed a case in Gurgaon seeking custody of the child. She denied the suggestion that appellant Brijesh visited their house several times but they did not allow him to meet the child.

- 17.** Another important witness in this case is PW8, Mrs.Sumitra, mother of the deceased. She has deposed that usual items of dowry were given at the time of marriage but the appellants were not happy with that dowry. As per PW-8, her daughter was insulted and condemned on the ground that dowry given in the marriage was inadequate the appellants used to harass her daughter. Jeeja of appellant No.1 also used to harass her daughter. Even during pregnancy her daughter was not given proper care. Sister of the appellant No.1 had given her a medicine because of which the deceased vomited blood. However, she did not know the name of the jeeja. As per PW-8, her daughter was given beating by appellant No.1 and his jeeja. A sum of Rs.20,000/- was also given within one year of marriage.

Her daughter was tortured by not being given food. The kitchen was also kept locked so that her daughter may not enter the kitchen for taking meals. She was reprimanded frequently saying that she even did not know how to knead the floor and how to cook. Jeeja of appellant Brijesh was the master mind. PW-8 further deposed that appellant No.1 had deserted her daughter and left her at their house saying that only after meeting his demand of dowry he would take her back. She further deposed that after 3 years of marriage, appellant no.1 deserted her daughter and left her at the parental house, in view of the fact that the demand of dowry had not been met. Subsequently, the deceased (Shubha) was employed in a private school and simultaneously also did her studies. After some time, the appellant had met the deceased at the school and begged pardon and persuaded her to return to the matrimonial home and assured that she would be kept quite happy. Believing the assurance of appellant no.1, her daughter returned to the matrimonial home. However, on her return again the harassment started after a week. Her daughter was made to stand outside the room in the night time and in this way she was tortured. The method of torture was suggested by the *Jija* of the accused. The articles which were given customarily were not accepted heartily. As per PW-8, her daughter had made these complaints when she had visited her and also told that she was beaten bitterly. It is also deposed (by PW-8) that appellant no.1 had demanded a sum of Rs.50,000/-, and subsequently a demand of Rs.1,50,000/- was made which amount could also not be given, as the same was

not available. However, PW-8 stated that her husband had thought of arranging Rs.50,000/- by selling some land, so as to give the same to the appellant no.1. She also deposed that 3-4 days prior to her death, her daughter had told her that *Jija* of appellant no.1 shared the bed with her at night and *Jija* of the appellant no.1 used to misbehave with her in an indecent manner. In her cross-examination, this witness has stated that there was no dowry demand before solemnization of marriage or at the time of marriage. In her cross-examination, this witness (PW-8) has further deposed that in her statement before the Police and the SDM she had stated that appellants were not happy and satisfied with the dowry given in marriage. She was confronted with Ex.PW-8/A made before the SDM where it was not specifically recorded. Neither it was so specifically recorded in the statement (Ex.PW-8/DA) made under section 161 Cr.P.C. PW-8 further stated that she had made a statement before the SDM and the Police that appellants had demanded a colour T.V. and a motorcycle. She was confronted with Ex.PW-8/A and Ex.PW-8/DA, where it was not so recorded. She denied the suggestion that demand of Rs.1,00,000/- was made for business purposes. She stated in her cross-examination that she had made a statement before the Police and the SDM that during the time of pregnancy her daughter was not given proper care by the appellants and further she was told by her daughter that sister of the appellant, Brijesh gave such medicines which caused vomiting of blood. She was confronted with Ex.PW-8/A and Ex.PW-8/DA, wherein it was not so recorded. Furthermore PW-8

deposed that during investigation she had stated that her daughter was given beating by appellant, Brijesh and his *Jija*. She was confronted with Ex.PW-8/A and Ex.PW-8/DA, where it was not so recorded. She deposed that she had stated before the SDM regarding demand of Rs.1,00,000/-. She was confronted with Ex.PW-8/A and Ex.PW-8/DA, where it was not so recorded. She had also deposed during her cross-examination that she had stated before the SDM and the Police that her daughter was made to stand outside the house and kept for a long period at night. She was confronted with Ex.PW-8/A and Ex.PW-8/DA, where it was not so recorded. She was confronted with her statement made before the SDM as well as before the Police with regard to demand of Rs.1,50,000/- and with regard to payment of Rs.50,000/- and also arranging for Rs.50,000/- by selling some land, which was not so recorded before the SDM or the Police. She in her cross-examination also stated that she did not lodge any complaint either with the Police Station or in Women Cell or anywhere before the death of her daughter regarding alleged harassment and demand of dowry. She denied the suggestion that her daughter used to remain ill and was got treated from St. Stephen Hospital, Delhi.

- 18.** Besides the appellant no. 1, seven witnesses were examined by the defence.
- 19.** According to DW-1, who is the neighbour, Shubha was suffering from low blood pressure and also from loose motion and vomiting. According to this witness she had given Shubha medicine for low blood pressure as she was also taking the same.

She further deposed that Brijesh, appellant no.1 had also taken Shubha to the hospital for getting ultrasound done and for treatment and she had also accompanied Shubha on one or two occasions. According to this witness, whenever Shubha fell ill she would become depressed and would prefer for death rather than to live in illness and her husband had done everything possible to get her treated for her illness. She has also deposed that in her presence on 29.10.1995 quarrel had taken place between appellant no.1 and his in-laws with regard to the custody of his son, as the parent of Shubha wanted to take the child with them.

- 20.** DW-2, Vinod Jain, has deposed that he is a tenant of appellant no.1 and Shubha was ill and sometimes she used to get fits and doctor used to be called, however, relationship between Brijesh and his wife were cordial. He also deposed that in-laws of Brijesh wanted to take their grand-son away, however, Brijesh wanted to keep his son which resulted in a quarrel between them.
- 21.** DW-3, is a retired employee of Hamdard Wakf Laboratory, who produced the summoned record of the deceased. As per the prescription, Shubha had complained of weakness, heart and mental ailments as well as ladies ailments for which he got treatment on 23.4.1995. In the cross-examination he had stated that the medicines prescribed to Shubha were for mental and heart problem as well as for cold and cough. Medicines for sleep and weakness were also prescribed to her.
- 22.** DW-4, Dr.Balraj Yadav has deposed that Shubha had come to him when she was pregnant and stated that she did not wanted a

second issue. She was weak at the time when he met her and he referred her to St. Stephen Hospital. He is an Ayurvedic Practitioner and whenever Shubha came to him it was an emergency condition and he would refer her to Hindu Rao Hospital or St. Stephen Hospital. In September, 1992 when he had met her, she had come with a neighbour and was very depressed.

23. DW-5, Dr.Ashok Kumar Sethi had examined Shubha on five occasions and according to his testimony, he has treated her for loss of appetite, hyper acidity and weakness and further Shubha had regularly complained him about abdominal pain. In the cross-examination by learned APP, this witness has stated that he had prescribed medicines for vomiting and hyper acidity, sposmo proxivorm for pain. Blood pressure was recorded 100/70, which is low. He had also noted blood pressure to be 98 and he had also provided an injection trimegic for stamina.

24. Dr. C.K. Cherian, head of the department, St. Stephen Hospital was examined as Ex.DW-7. As per his testimony Shubha was under the treatment of the hospital from 24.5.1991, till 31.8.1991 regarding the pregnancy and the delivery was normal. Second time Shubha was admitted on 11.9.1992 with regard to abdominal pain which was diagonozed as pelvic infection. Shubha had herself given history of termination of pregnancy on 26.8.1992 and according to this witness pelvic infection may have been the result of complication of abortion which happened on 22.8.1992, however, there was no case of mental illness. He also deposed that there is only a remote possibility that there

would be a mark mental disturbance after abortion in the early stages of pregnancy and it was usual to have some mental disturbance during pregnancy, but mark mental disturbance are very remote and may be found if lady who has tendency of pre-disposition or tendency to mental disease prior to the pregnancy.

25. DW-8 has deposed that at the time of marriage, he had a house at Delhi and he was receiving rent of Rs.3500/- per month besides family owned land of 25 bighas at Muradabad and after meeting all the expenses, Rs.45,000/- was the saving every year. House at Gurgaon was sold by him in the year 1997 and a son was born to them in the year 1991. The second pregnancy had to be aborted on account of her weak health and for infection caused due to abortion she remained in hospital for five days for which he had met all the expenses. However, as her health deteriorated and her blood pressure remained low and she frequently suffered from Dyrrohea and vomiting, his father-in-law took Shubha to Gurgaon to look after her and their son was admitted in Blue Bells School and he paid the expenses for his son during this period. According to him it is only the dispute with regard to custody of the minor son which led to filing of the FIR by the in-laws on the next date.

26. In the present case both the appellants (husband and mother-in-law of the deceased) have been convicted by the trial Court under Section 498-A as well section 304-B, IPC. While section 498-A, IPC deals with cruelty subjected on a woman by her husband or a relative; section 304-B IPC along with 113-B,

Evidence Act deals with dowry death and presumption as to dowry death.

27. Section 498-A of the IPC reads as under:

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

Explanation.—For the purpose of this section, “cruelty” means—

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

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

Section 304-B, reads 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 purposes 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 113-B of the Indian Evidence Act reads as under:

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 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 purpose of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).

28. Furthermore the term ‘dowry’ has been defined in Section 2 of the Dowry Prohibition Act, 1961 as under:

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 *mahr* 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 as in Section 30 of the Indian Penal Code

29. The essential ingredients of the offence under section 304 B IPC are (i) 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 seven years of marriage; (iii) soon before the death, the victim was subjected to cruelty or harassment by her husband or relative of her husband; (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 Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80, it was held 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.”

30. 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 of each case. Thus the first question which arises for consideration before this Court is whether the appellant no.1, husband of the deceased and appellant no.2, mother-in-law of the deceased demanded dowry and as to whether the appellants had subjected the deceased to harassment in connection with this demand. The second question which arises for consideration of this Court is whether soon before the death, the deceased had been subjected to such harassment for demand of dowry.
31. In light of the principles laid down by the Supreme Court and applying the same to the facts of this case, on a careful reading of the evidence of the father, mother and sister of the deceased, I find that the father of the deceased has categorically stated that no dowry was demanded from them at the time of marriage, whereas no such deposition has been made either by the sister and/or mother of the deceased. However, in so far as demand of dowry, post marriage is concerned, there is consistency in the statements made by the parents and sister of the deceased.
32. The father of the deceased (PW-2) has stated that he did not give any statement to the police or the SDM on 28th October, 1995 (the date of death of Shubha) but later he made a statement

before the SDM wherein he had stated that no demand of dowry was made at the time of marriage. Although some articles like T.V., Fridge etc. were given. Further as per PW-2, after 3-4 months of the marriage, appellant no.1 demanded Rs.1.0 lac from his daughter and that Rs.20,000/- were actually paid to appellant no.1, in the year 1991. I also find that another demand for Rs.1.50 lac is stated to have been made in the month of May and June, 1995 by appellant no.1 and it is alleged that appellant No.1 had come on 21.10.1995 to take the money. What also emerges from the evidence of the father of the deceased is that his daughter left the matrimonial home in the year 1993 and stayed with him for about two years. It is during this period that he was informed that his daughter was not provided proper food and they used to throw sarees on her face. However, I find that appellant no.2 (mother-in-law) has not been specifically named with regard to demand of dowry or harassment in connection with dowry. Although, PW-6, sister of the deceased, has deposed that when her sister (deceased) returned back after the *phera* ceremony, appellants not only demanded a motorcycle, colour T.V. and cash of Rs.1.0 lac, but also taunted her sister that the articles given in the marriage were of sub-standard quality. PW-6 has also alleged that appellant no.2, mother-in-law used to beat her sister (deceased), torture her, resulting in injuries on her person, and even made her to stand outside the house, the whole night and that the deceased had also shown some injuries to PW-6. Her statement is also consistent with that of her father with regard to the return of her sister to the matrimonial home in

April, 1995. This witness (PW-6) has also deposed that all the issues were settled and the deceased went back to her matrimonial home. While PW-6 has stated that the demands and torture of her sister were not disclosed to her parents, she had informed them about the same 3 or 4 days prior to her death. During the cross-examination PW-6 was confronted with her statement made to the police with regard to the fact that the appellants used to beat her sister and this witness was unable to tell the date, month or year of torture and as to which appellant used to torture her sister and in what manner. For the injuries sustained by her sister, she deposed that she did not go to any Doctor. PW-6 was also confronted with the her statement to show that she had not stated before the police that the appellants used to turn Shubha out of the house in the night and who used to then remain standing outside the whole night. On an analysis of the evidence of PW-6 in detail, I find that PW-6 has given an exaggerated account of the ill-treatment meted out to the deceased inasmuch as, the statement of the father of the deceased is completely devoid of any instances with regard to the beating given to his daughter by her in-laws. Even otherwise the incident of beating and the fact that deceased was made to stand outside the house whole night, if believed to be correct, pertained to the period prior to the returning of the deceased to her matrimonial home and cannot be stated to have a live link with the commission of suicide.

33. The mother of the deceased (PW-8), while supporting the statement made by her daughter (PW-6) with regard to demand

of motorcycle, colour T.V. and cash of Rs.1.0 lacs; has also supported the fact that Rs.20,000/- were given to appellant no.1; and that the deceased was made to starve, kitchen was kept locked and the deceased was taunted that she did not know how to knead the floor and to cook. A careful reading of the testimony of the mother of the deceased would also show that it is not her allegation that appellant no.2 ever demanded any money from them or any money was ever paid to her. It is further revealed that even as per her (PW-8), the incidents of beating pertained to the period prior to 1995. Even otherwise such incidents are not related to the demand of dowry.

34. I am of the considered view that although there is evidence to show that appellant no. 2 had harassed the deceased, subjected her to cruelty and demand for dowry was also made, however, all the incidents and allegations levelled against her, pertain to a period prior to her returning back in 1995. The evidence on record shows that the sarees were thrown at her (deceased) face in the year 1991 i.e. soon after the marriage. The demand of colour T.V. and motorcycle as well as Rs.1.0 lac even if assumed to have been made, the same was made during the time period of October 1990- March 1993 (i.e. prior to the year 1995, when the deceased had returned back to the matrimonial home). Thus there is no live link between the cruelty or harassment meted out to Shubha by appellant no. 2 and her committing suicide in October 1995.
35. Another significant factor which is to be taken into consideration is that in the year 1993 (i.e three years after marriage) the

deceased left her matrimonial home and started residing with her parents. The deceased subsequently returned to her matrimonial home in the year 1995. During the entire period of stay of the deceased in the parental house, neither the deceased nor any member of her family made any complaint either to the Police, Women Cell or even to any friend or relations of the parties. This aspect of the matter has been dealt with by the trial court observing that the family had hopes that relationship would be mended and a reunion will take place. Certainly for not lodging any complaint during the period of separation, nothing can be read against the deceased and her family members, but it is rather strange that admittedly, the husband and in-laws were not in touch with the girl (deceased), and yet the family had hopes of a reunion. The same is hard to believe.

36. Furthermore, as per the father of the deceased, in 1995, appellant no.1 had assured him that he would not maltreat her daughter in future. The trial court has also observed that the appellant no.1 had assured the father of the deceased that on the return of Shubha he would not maltreat her. It would thus be seen that appellant no.2 had no role in approaching the family of the deceased for her return nor she visited the home of the parents of the deceased. There is nothing to suggest that there was any discussion between the mother-in-law, appellant no.2 and the parents of the deceased with regard to return of Shubha. This factor would also go on to show that appellant No.2, mother-in-law, had little or no role to play in the life of Shubha and her husband.

37. Similarly, as per the evidence of the mother of the deceased, it is the appellant no.1 who had left the daughter back to the parental house and it is he who took her back and no role at all has been given to the mother-in-law. Nothing has been stated that any demand in relation to dowry was made by the mother-in-law soon before her death. As per the evidence of the mother of the deceased, it was Brijesh (appellant no. 1), who had demanded Rs.50,000/- after her daughter had returned to the matrimonial home in the year 1995 and when Rs.50,000/- was not paid, he later demanded Rs.1.50 lacs.
38. On a careful analysis of the evidence of all the three prime witnesses (PW-2, PW-6 and PW-8), I am of the considered view that the allegations for demand of dowry made against appellant no.2 (mother-in-law) are completely general in nature and only relate to the fact that appellant no.2 found sarees to be of sub-standard quality and that she had thrown the same at the face of the deceased. Admittedly this incident pertained to the year 1991, i.e. soon after the marriage and cannot be said to have a direct nexus or live link with the death of the deceased which took place in October 1995. None of the witnesses have stated that any amount was demanded by the mother-in-law (appellant no.2) or any amount was ever paid to her after 1995.
39. However, relying upon the evidence of parents and sister, it is established that appellant no.2, mother-in-law of the deceased, subjected the deceased to cruelty and harassment prior to 1995. Mother-in-law (appellant No.2) showed her dissatisfaction with the items of dowry; threw the sarees on the face of the

deceased; taunted the deceased that she did not know how to knead the floor or cook food; and insulted her in front of visitors. Thus, while finding that no grounds are made out and there is no evidence on record to show that cruelty or harassment in connection with demand of dowry was meted out to the deceased by the mother-in-law (appellant no. 2) soon before her death, the conviction of appellant no.2 under section 304-B IPC is set aside. Further, I find that there is no infirmity in the judgment passed by the learned ASJ, holding appellant no.2 guilty for the offence punishable under section 498-A IPC.

40. The next question for my consideration is whether appellant no.1 is guilty of the offence under sections 498-A, IPC and 304-B, IPC or not. According to the defence neither any demand of dowry was made nor appellant no.1 had any quarrel with his wife (Shubha) and she died because of her illness. The defence examined eight witnesses in support of its case. I have carefully gone through the evidence of all these witnesses. A bare reading of the evidence of DW-1 would show that Shubha may have been suffering from low blood pressure. But, on reading of the evidence, there is nothing to suggest that Shubha was suffering from depression or her illness was of such a nature which would drive a person to commit suicide. DW-1 has also not described the illness of Shubha to be such which would drive a person to die. The evidence of DW-2, Vinod Jain, who is the tenant of appellant no.1 also does not come to the rescue of appellant no.1 inasmuch as, his testimony that Shubha used to have fits, is not supported by any medical evidence.

41. Similarly the evidence of DW-4 (Dr.Balraj Yadav) can be of no help to the defence, as Dr.Balraj Yadav is only a Ayurvedic Practitioner and he has deposed that each time the deceased came to him, he had referred her to Hindu Rao Hospital or St. Stephen Hospital and on one such occasion when she had come, she was on the family way, and on the second occasion she had come after her abortion. PW-5, Dr. Ashok Kumar Sethi in his evidence has stated that he had treated Shubha for abdominal pain, loss of appetite, hyper acidity and weakness.
42. The Defence had also examined Dr. C.K. Cherian, Head of the Department, St. Stephen Hospital, in support of their contention that Shubha was ill. A careful scrutiny of the evidence of Dr. C.K. Cherian would show that prior to September, 1992, the deceased had visited St. Stephen Hospital during her pregnancy; on 26.8.1992 for her abortion; and, thereafter on 11.9.1992 for pelvic infection, and the same could have been the result of abortion on 26.8.1992.
43. On the basis of the statements made by witnesses, examined by the defence, it cannot be said that after 11.9.1992 or either during the period when deceased stayed with her parents or after February, 1995 when she returned to her matrimonial home, the deceased suffered from any illness.
44. Further if the evidence of DW-8, Brijesh, appellant no. 1 is to be believed that he was looking after his wife and child even during the period when the deceased was staying with her parents and as per his evidence, Shubha was suffering from a serious ailment which would lead to suicidal tendency or her condition was such

that on account of her serious illness she would rather die. He has failed to lead any evidence in this regard for this crucial period. Abdominal pain and infection in the year 1992 would not force her to commit suicide in the year 1995.

- 45.** I find that PW-2, Om Prakash, father of the deceased, has categorically stated that a demand for Rs. 1 lac was made soon after (about 3-4 months) the marriage and that Rs.20,000/- were paid to the appellant No.1 in the year 1991. Father of the deceased has further deposed that despite Rs.20,000/- having been paid to appellant no.1, Brijesh, he continued to harass his daughter (deceased) and this fact was told to her by his daughter, who eventually, because of the harassment caused to her by the in-laws, left the matrimonial home in the year 1993.
- 46.** Further as per PW-2, appellant No.1 had met PW-2 in the year 1995 and requested to take Shubha (deceased) back to his home and assured him that he would not mal-treat his daughter in future. However, what emerges is that, within a month of taking Shubha to the matrimonial home, appellant No.1 in the month of May/June, 1995, demanded Rs. 1.50 lacs, so much so that appellant No.1 came to the house of PW-2 on 21.10.1995 in order to take the said sum of Rs. 1.50 lacs. His daughter also came to his house at Gurgaon on 22nd October, 1995 in connection with the money and told him that she was not willing to go back. PW-2 had, however, told his daughter that Rs.50,000/- would be paid within a day or so and thereafter his daughter (deceased) returned to her matrimonial home on 26th October, 1995.

47. A bare reading of the evidence of PW-2 would show that, certainly the acceptance of Rs.20,000/- in the year 1991 cannot be considered as a live link between the demand for dowry and death of Shubha in 1995, however I find that the father of the deceased has categorically deposed that in the month of May/June, 1995, a demand of Rs. 1.5 lacs was made by the appellant No.1. On 21st October, 1995, i.e. soon before the death of the deceased, appellant No.1 had visited the house of his father-in-law, in order to take money.
48. It also emerges from the statement of PW-6, sister of the deceased, that in the year 1992 her brother had brought the deceased back on the occasion of Rakhi, when the deceased had disclosed about the torture being inflicted upon her.
49. I find that the evidence given by PW-2 (father) stands corroborated by the evidence of PW-8 (mother) as well as PW-6 (sister). Their testimonies are trustworthy, consistent and reliable with regard to the demand of dowry of Rs.1.0 lac in the year 1991, out of which a sum of Rs.20,000/- was paid in the year 1991, and another demand of Rs.1.50 lacs, which was made in the month of May/June, 1995. There is also evidence on record that on 21.10.1995, appellant No.1 had come to the house of his in-laws in connection with demand of dowry of Rs.1.50 lacs and on the very next date 22.10.1995, deceased (Shubha) had come to the house of her father (PW-2) in connection with the money and she was not willing to go back without the money. It was only on the assurance of her father, that the deceased returned to her matrimonial home on 26.10.1995. She later on committed

suicide on 28.10.1995. The *factum* of visit of appellant no.1 to the house of his in-laws on 21.10.1995 and the fact of visit of Shubha to her father's house on 22.10.1995 finds corroboration from the evidence of both the father and the mother of the deceased.

50. This illegal demand for dowry of Rs.1.50 lacs in the month of May/June, 1995, which was repeated on 21.10.1995; the visit of Shubha to her parents' house on 22.10.1995; and thereafter her death in unnatural circumstances on 28.10.1995, would show that there was a direct and live link between her death and the dowry demand which was made. Hence the above incident would be squarely covered by the expression '*soon before death*'.
51. Having regard to the evidence on record, I have no hesitation in holding that appellant no.1 (husband of the deceased) demanded dowry and had subjected the deceased to harassment in connection with this demand soon before her death. I accordingly find no infirmity in the judgment of the trial court holding appellant no. 1 guilty of the offence under section 304-B, IPC and 498-A IPC.
52. The next question which arises is, whether the order on sentence requires any modification.
53. In the case of ***State of Punjab Vs. Prem Sagar & Others***, reported at **(2008) 7 SCC 550**, a two judge Bench of the Supreme Court, while analyzing the sentencing policy that is to be followed by Courts, observed that law should adopt the corrective machinery or deterrence based on the facts of each

case. By deft modulation, sentencing process be stern where it should be, and tempering with mercy where it warrants to be. It would be useful to reproduce para 12, as under:

“12. In a recent decision in *Shailesh Jasvantbhai V. State of Gujarat*¹ this Court opined: (SCC pp.361-62, para 7)

“7. The law regulates social interest, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: ‘State of criminal law continues to be – as it should be – a decisive reflection of social consciousness of society.’ Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should, and tempering with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.”

Relying upon the decision of this Court in *Sevaka Perumal v. State of T.N.*² this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

¹ (2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499.

² (1991) 3 SCC 471 : 1991 SCC (Cri) 724.

13. It is interesting to note that this Court in some cases severely criticised the pattern adopted in the matter of passing of sentence on the accused. (State of M.P. V. Bala³ and State of M.P. V. Govind⁴.)

14. Recently, in State of Karnataka v. Raju⁵ where the facts of the case were that the trial court imposed custodial sentence of seven years after convicting the respondent for rape of minor under Section 376 of the Penal Code, 1860; on appeal, the High Court reduced the sentence of the respondent to three-and-half years. This Court held that a normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years's rigorous imprisonment, though in exceptional cases 'for special and adequate reasons' sentence of less than 10 years' rigorous imprisonment can also be awarded. It was, thus, opined that socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. To what extent should the Judges have discretion to reduce the sentence so prescribed under the statute has remained a vexed question. However, in India, the view always has been that the punishment must be proportionate to the crime. Applicability of the said principle in all situations, however, is open to question. Judicial discretion must be exercised objectively having regard to the facts and circumstances of each case."

54. As already stated above, I am convinced that appellant no.2, (mother-in-law of the deceased) had subjected the deceased to cruelty and harassment. Appellant No.2 had showed her dissatisfaction with the items of dowry and thrown the sarees on the face of the deceased. She had also taunted the deceased that she did not know how to knead the floor or cook food and further insulted the deceased in front of visitors. However, at the same time I find that there is no evidence on record to suggest that cruelty or harassment was meted out to the deceased by the mother-in-law, in connection with demand of dowry and soon

³ (2005) 8 SCC 1 : 2005 SCC (Cri) 1947.

⁴ (2005) 8 SCC 12 (3) : 2005 SCC (Cri) 1958 (2).

⁵ (2007) 11 SCC 490 : 2008 1 SCC (Cri) 787 : (2007) 11 SCALE 114.

before her death. Thus while on the one hand, I find that there is no infirmity in the judgment passed by the learned ASJ holding appellant no.2 guilty for the offence punishable under section 498-A IPC; on the other hand there is no evidence on record to uphold the conviction of appellant no.2 under section 304-B IPC and thus it is accordingly set aside.

55. Further bearing in mind the observation rendered in the case of **Prem Sagar** (*supra*) wherein it has been held by the Apex Court that in the peculiar facts and circumstances of a case, if the Court deems that inappropriate punishment has been meted out to the convict, the Court may in exercise of its judicial discretion, reduce the period of sentence, and also taking note of the case of **Mohd. Hoshan Vs. State of A.P.** reported at **(2002) 7 SCC 414**, wherein the Supreme Court had reduced the sentence of the appellants-accused, under section 498-A, IPC and observed as under:

“The High Court, in our opinion, was right and justified in reversing the order of acquittal and convicting and sentencing the appellants for the offences under Sections 306 and 498-A IPC. We find no good reason to interfere with the same. However, we think it just and appropriate to modify the sentence of imprisonment for the period already undergone and order accordingly having regard to the fact that both the appellants were in imprisonment for about two months; the incident took place on 9-3-1988; Appellant 2 is the mother of Appellant 1 and she is aged 60 years; both the appellants are on bail and it may not be appropriate to send them to jail again. The appeal stands disposed of in the above terms.”

56. In view of the above two noted decisions and applying them to the facts of the present case, I find that appellant no. 2 (mother-in-law of the deceased) is an extremely old lady (aged- 70 years approx.); the incident of suicide pertains to the year 1995;

appellant no.2 has faced the rigours of trial for fourteen long years. Accordingly, I reduce the sentence awarded to appellant no. 2 under section 498-A, IPC to the period already undergone in jail.

57. In so far as appellant no. 1 (Brijesh, husband of the deceased) is concerned, applying the settled position of law as per **Prem Sagar** (*supra*), I find that there is no infirmity in the order on sentence dated 17.09.2004 passed against appellant no. 1, under section 498-A IPC. However, I find that while imposing the sentence of fourteen (14) years of RI to the appellant no.1 under section 304-B IPC, the learned trial court had observed that “*the responsibility was greater upon Brijesh, who had married Shubha and who had fathered her child, a most stringent punishment is called for.*” So as to enable a deeper understanding into the quantum of sentence that may be awarded under section 304-B, IPC, I deem it appropriate to reproduce the case of **Bhupinder Singh Vs. Jarnail Singh** reported at **(2006) 6 SCC 277**, wherein the Supreme Court while awarding sentence in the case involving the offence of dowry-death, observed as under:

“..... In the case of Section 304-B the range varies between 7 years and imprisonment for life. What should be the adequate punishment in a given case has to be decided by the court on the basis of the facts and circumstances involved in the particular case. The stage of imposing a sentence comes only after recording the order of conviction of the accused person.”

58. I also deem it appropriate to reproduce relevant portion of the case of **Hem Chand Vs. State of Haryana** reported at **(1994)**

6 SCC 727, wherein it was held that the extreme punishment should be awarded only in very rare cases. It was held as under :

“7. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

8. Hence, we are of the view that a sentence of 10 years’ RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years’ RI. The other conviction and sentence passed against the appellant are, however, confirmed. In the result, the appeal is dismissed subject to the above modification of sentence.

59. In the case of **Sant Raj Vs. State of Haryana** reported at **(1998) 8 SCC 605**, the Apex Court while upholding the conviction of the accused (husband) under section 304-B IPC, reduced the sentence of life imprisonment to 7 years of RI. Relevant para. of the same reads as under:

“Thus from the fact and circumstances, we are satisfied that the appellant was rightly convicted under section 304-B IPC. His sentence of life imprisonment imposed thereunder by the courts below appears to us to be excessive. We reduce it to the minimum, i.e. seven years’ rigorous imprisonment. ...”

60. In the case of **Vanga Srinivas Vs. Public Prosecutor, High Court of A.P.** reported at **(2007) 10 SCC 219** the Supreme Court reduced the sentence awarded to the appellant-accused, to the minimum statutory period of seven (7) years, on the ground that the appellant had faced the agony of a long trial. It was observed as under:

“22. Considering the fact that the alleged occurrence took place on 24-1-1997 and the appellant-accused has undergone the agony for more than ten years, we are of the view that a sentence of seven years would meet the ends of justice. Accordingly, we modify the conviction and

sentence imposed by the High Court; instead the appellant-accused is convicted under Section 304-B IPC and impose a sentence of seven years' rigorous imprisonment.

61. Further, in the case of ***Baldev Singh Vs. State of Punjab*** reported at **(2008) 13 SCC 233**, the marriage had taken place on 8-6-1991 and the death took place on 3-9-1992, otherwise than in normal circumstances and within seven years of the marriage. The Supreme Court however reduced the sentence awarded to the appellant and stated, *"The conviction as recorded by the trial court and upheld by the High Court, does not warrant any interference. However, the custodial sentence appears to be on the higher side. The same is reduced to the minimum prescribed i.e. seven years. In the ultimate result, with the modification of sentence, the appeal stands disposed of."*
62. Thus I find that although there is no fixed yardstick to determine the sentence that is to be awarded, it does not imply that an excessively harsh punishment be given. The punishment has to be proportionate to the offence and the facts and circumstances under which the accused has been found to be guilty. In this case, I find that the deceased had left her matrimonial home in the year 1993 and had come back to the house of the appellant in April/May, 1995. As per the evidence on record, there was very little contact between the husband (appellant no. 1) and the deceased in the two years that the deceased had been living with her parents. Thus any demand of dowry prior to 1993, cannot be said to have a direct and live nexus with the commission of suicide by the deceased. Between April/May, 1995 and 28.10.1995, the date of commission of suicide there is only

one incident of an alleged demand of dowry. It is not that there were repeated demands for dowry. The evidence of father of the deceased shows that no demand of dowry was made by the appellants at the time of marriage. Even at the time when she joined her husband back after 2 years of separation, the father of the deceased does not state that any pre-condition with regard to dowry was made. Thus as per **Hem Chand** (*supra*) and **Sant Raj** (*supra*), I find that the sentence awarded to appellant no.1 for a period of fourteen (14) years of RI under section 304-B, IPC is excessive and harsh. In case of section 304-B, IPC the minimum sentence that is to be awarded to the accused is seven years and the maximum sentence is life imprisonment. The function of the Court is to weigh the facts and circumstances of each case and come to an objective finding as to the sentence that is to be awarded. It is only in rare cases that the extreme punishment of life imprisonment or a harsh punishment of 14 years of RI should be awarded, and that too be accompanied by cogent reasons as to why does the Court deem it fit to award such punishment and not the statutory minimum of seven years. I also find that appellant no.1 has faced the rigours of trial for a very long time period, i.e. a well fourteen years from now. I am of the view, that the interest of justice would be met if the sentence awarded to appellant no. 1 under section 304-B, IPC is reduced from fourteen years to a period of 8 years.

63. For the reasons aforesaid, I find no infirmity in the impugned judgment dated 15.9.2004, convicting appellant no.1 under sections 304-B and 498-A IPC, however, the order on sentence

dated 17.9.2004 is modified, reducing the sentence awarded to the appellant no.1 under Section 304-B, IPC from 14 years R.I. to 8 years of R.I. The sentence awarded under section 498-A, IPC is upheld. In so far as appellant no.2 is concerned, I find that no case is made out against her under section 304-B, IPC and accordingly, the impugned judgment dated 15.9.2004, convicting appellant no.2 under sections 304-B, IPC is set aside. However, I find that the trial court has correctly held appellant no.2 guilty for the offence under Section 498-A, IPC. Taking into consideration the reasons discussed above, the order on sentence dated 17.9.2004 with respect to appellant no.2 under Section 498-A, IPC, is modified to the period already undergone.

64. Appeal stands disposed of in above terms.

September 3rd, 2009
'ssn'

G.S. SISTANI
JUDGE